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Integrity Inquiry into the functioning of the Government of Sint Maarten

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1. Introduction

On September 30, 2013, the Council of Ministers of the Kingdom of the Netherlands ("Kingdom") by Kingdom Decree charged the Governor of Sint Maarten with the responsibility to conduct an Integrity Inquiry ("Inquiry") to identify shortcomings and provide recommendations into the proper functioning of the Government of Sint Maarten ("GoSM" or "Government") as required in a democratic state governed by the rule of law. The Kingdom Decree resulted from concerns of the Council of Ministers of the Kingdom based upon media reports, public questions, perceptions about integrity and reputation, and perceptions from reported integrity breaches by politicians in Sint Maarten.

The Governor of Sint Maarten ("Governor"), thereafter by Governor's decision dated December 4, 2013, established a three-person Steering Committee supported by a professional secretariat to allow for an independent, impartial and effective process. The Steering Committee, Dr. Marten Oosting, Chairman, and members Mr. Jaime Saleh and Mr. Miguel Alexander, have extensive backgrounds and careers in law, public policy and good governance assessments across the Kingdom and former Netherlands Antilles. On December 20, 2013, the Governor issued an Invitation to Tender to engage an international accounting firm with experience and expertise in conducting forensic integrity inquiries to execute the assessment.

On February 21, 2014, PricewaterhouseCoopers (US) International LLC ("PwC") was commissioned by the Governor of Sint Maarten ("Client") to perform an independent Inquiry into the GoSM. The scope of the Inquiry extended to the programs and activities of the public administration sector including the Government and State-owned Companies ("SoCs"). The period of the Inquiry was 24 weeks from the commencement date of February 26, 2014, as defined in the contract and related documents ("Contract Documents").

Accordingly, our services were performed and this Inquiry Report ("Report") was developed in accordance with the Contract Documents dated February 21, 2014 and are subject to the terms and conditions included therein.

Pursuant to our risk management policies, we are required to note that our services were performed in accordance with the Standards for Consulting Services established by the American Institute of Certified Public Accountants ("AICPA"). Accordingly, while we have rendered observations and recommendations in this Report, we are not providing "audit services," nor are we providing an "opinion" pursuant to the AICPA's Standards for Audit and Attest Services as we would, for example, if we were asked to perform an audit of the financial statements of a publicly traded company. Accordingly, we did not "verify" or "audit" any information provided to us pursuant to AICPA audit standards since this was a consulting engagement – rather we accepted the material that we were provided by the various Government Ministries and officials as authentic and accurate. We have noted in this Report when the information provided was not in accordance or responsive to our requests. Finally, we are obliged to note, pursuant to the aforementioned consulting standards, that our work is limited to the specific procedures and analysis described herein and that we did not conduct procedures that are not specified in this Report. This Report is based only on the information made available to us through August 1, 2014. Accordingly, changes in circumstances after this date could affect the findings outlined in this Report.

In the course of the Inquiry, PwC gathered information through document requests and field research. The services performed were carried out on the assumption that such information is accurate and complete. PwC makes no representations with respect to the accuracy, authenticity or completeness of information provided to us and cannot assume any responsibility for incomplete, inauthentic or inaccurate information. We will, however, as indicated above, note in this Report if the information was not provided in accordance

with our requests for such information or if there was a reluctance to produce such information. The sufficiency of the material contained in the submissions was analyzed and referenced against witness statements and other material when making observations and recommendations pursuant to AICPA consulting standards.

This Report has been prepared solely for the use and benefit of, and pursuant to, a client relationship exclusively with the Governor of Sint Maarten. The Inquiry is designed to add value and improve the quality of governance on Sint Maarten and the functioning of the public administration. Furthermore, the Report refers to recommendations to be implemented throughout the Government to address issues of integrity on the ground and improve public administration. Recognizing the fact that PwC has no contractual or other responsibility to the GoSM, the Report is intended to be used by the GoSM to add value and improve the public administration of Sint Maarten, and therefore it is allowable for the GoSM to use the Report for those purposes. We disclaim any contractual or other responsibility or duty of care to others based on its use, benefit or reliance by third parties.

This Inquiry is not a penal inquiry or an inquiry designed to forensically establish admissible evidence within the meaning of a penal system.

The services performed do not include the provision of legal advice, and PwC makes no representations regarding questions of legal interpretation nor whether our recommendations are implementable under the law of Sint Maarten. Nothing contained herein should be taken to imply, infer, or in any other way represent legal advice or conclusions.

2. Executive summary

2.1. Background

Sint Maarten obtained its status as an autonomous country within the Kingdom of the Netherlands on October 10, 2010 ("10/10/10"). One of the early challenges facing the newly constituted Government of Sint Maarten ("GoSM" or "Government") was developing independent institutions that were capable of administering to the domestic affairs of the country. This was not an easy task, and one made all the more challenging by certain characteristics, such as limited human and financial resources, that are common in small island communities such as Sint Maarten.
Communities where social, political, and economic ties develop over multiple generations pose a challenge for establishing a system of good governance by the rule of law. In such environments, informal relationship networks often govern how business and politics are conducted, and supersede formal rules and procedures. The primacy of informal relationships allows those in positions of political and economic power to use their networks to advance private interests at the expense of the public good.

Nearly four years have passed since the GoSM assumed responsibility for the domestic affairs of the island, and progress towards establishing a system of governance grounded in the rule of law has been slow and uneven. The country has witnessed a number of high profile allegations of public corruption in recent years that, whether true or not, have cast a shadow over the real and substantial progress that it has made in forming an autonomous government. Perhaps the most damaging examples that have surfaced include allegations of corruption, conflicts of interest, and unethical conduct by Ministers and elected officials whose conduct has undermined the perception of Government integrity.

The repeated nature of these allegations appears to have eroded public trust in the GoSM and highlights the lack of accountability in public administration, as well as the difficulty that Government leaders have encountered in addressing this problem. The visible lapses in public integrity that plague the GoSM have raised considerable concern about the quality of governance in Sint Maarten, and have prompted a call for an independent integrity assessment to benchmark existing policies, procedures, and practices against global standards. Such integrity assessments are becoming increasingly common practice in the international community as governments seek to improve their reputation and strengthen domestic political support by demonstrating their commitment to aligning their public integrity framework with internationally-recognized leading practices. This Report represents the culmination of an independent assessment of Sint Maarten's integrity architecture in accordance with global integrity standards and leading practices.

2.2. Scope of the Integrity Inquiry

PricewaterhouseCoopers (US) International LLC ("PwC") was commissioned by the Governor of Sint Maarten, under the direction and guidance of an appointed Steering Committee, to conduct an independent assessment of the integrity challenges facing Sint Maarten and develop recommendations for strengthening the country's integrity architecture. This Integrity Inquiry ("Inquiry") commenced on February 26, 2014 and was conducted over the course of 24 weeks, culminating in this Report. The mandate associated with this Inquiry included permission to interview and obtain relevant documents from officials in all seven Ministries in Sint Maarten. In addition, the Integrity Inquiry team ("Inquiry team") met with a variety of other stakeholders and concerned members of civil society. A particular focus

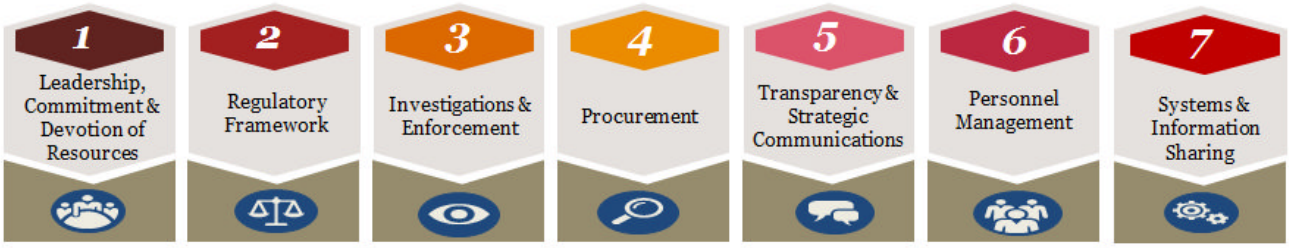
of the Inquiry included an assessment of vulnerable sectors and activities, as well as the following four large state owned companies ("SoCs"):

- Sint Maarten Harbour Holding Company N.V. ("SMHHC" or the "Harbour")
- N.V. Gemeenschappelijk Electriciteitsbedrijf Bovenwindse Eilanden ("GEBE")
- Princess Juliana International Airport Operating Company N.V. ("PJIAE" or "Airport")[1]
- Sint Maarten Telecommunication Holding Company N.V. ("Telem")

It is important to underscore that the Inquiry was not a penal inquiry and focused on the time period from 10/10/10 to present. The Inquiry team was not empowered to compel the production of documents nor permitted to review investigative files by law enforcement authorities. Accordingly, the observations and recommendations presented in this Report are the product of an inquiry that did not contain all the documents that were requested nor enjoy unfettered access to Government information. The scope of the Inquiry did not include the integrity and proper functioning of parliament, the Judiciary (the joint Court of Justice), Stichting Overheids Accountants Bureau ("SOAB"), the High Councils of State (Council of Advice, General Audit Chamber, and the Ombudsman) or other Governmental functions not explicitly referred to in the scope.

2.3. Government of Sint Maarten integrity architecture

The Inquiry team conducted a broad survey of global public integrity standards and leading practices utilized in the international community to develop a set of relevant benchmarks for the Inquiry. The Inquiry team relied on these benchmarks to guide their research and inform the findings and recommendations that are offered throughout the Report.
The following graphic outlines the seven elements constituting the public integrity architecture assessment framework used by the Inquiry team:



Each element is designed to aggregate a wide range of leading practices distilled from the United Nations Convention Against Corruption ("UNCAC") and other more targeted standards related to specific issues such as public procurement, transparency, conflicts of interest, enforcement, and more.[2] Of particular relevance to the governance challenges facing Sint Maarten are a variety of legal instruments, standards, and leading practices related to the regulation of vulnerable sectors such as prostitution, gambling, and immigration, which the Inquiry team incorporated into the assessment criteria within each element. The

[1]It is noted that the business operations of the airport take place in PJIAE, which is a wholly-owned subsidiary of the airport's holding company, of which the GoSM is the sole shareholder. As a result the Inquiry regarding the airport primarily covered PJIAE.

[2]The United Nations Convention Against Corruption, which entered into force in 2005, represents a watershed in the development of a global consensus on public integrity. With 171 state parties, UNCAC is the most widely subscribed to anti-corruption and public integrity standard, and establishes an international benchmark for the actions nation states must take to combat public corruption and enhance integrity and efficiency in public administration.

Inquiry team used the seven elements above to evaluate the GoSM's current public integrity architecture, including relevant laws, policies, procedures, and practices.

Grounded in the observations under each element, an overall "maturity finding" of "low," "medium," or "high" was assigned based on the degree to which Sint Maarten's laws, policies, procedures, and practices aligned with the global benchmarks captured in each element:

GoSM Integrity Architecture Element	Current Maturity Based on Global Standards		
	Low	Medium	High
Leadership, Commitment and Devotion of Resources	●		
Regulatory Framework		●	
Investigations and Enforcement	●		
Procurement	●		
Transparency and Strategic Communications	●		
Personnel Management		●	
Systems and Information Sharing	●		

Based on numerous observations included in this Report, and taking into consideration the individual maturity findings in each element of the public integrity architecture assessment framework, the overall integrity architecture maturity finding for Sint Maarten is considered to be "low."

2.3.1. Government of Sint Maarten key observations

The governance challenges facing Sint Maarten are real and substantial. The Inquiry team noted significant gaps in the integrity architecture of the GoSM related to each of the seven integrity elements underlying the assessment. Two major observations noted by the Inquiry team are as follows:

- Low accountability due to inadequate enforcement of integrity-related laws, regulations, and policies
- Lack of preventative measures to avoid integrity breaches

Low accountability due to inadequate enforcement of integrity-related laws, regulations, and policies

The central theme that emerged through the interviews and research conducted by the Inquiry team is that Sint Maarten currently faces a substantial shortcoming in accountability that is largely attributable to a lack of enforcement across a full spectrum of integrity-related laws, policies, and procedures.

Accountability is the foundation of governance by the rule of law, and is grounded in the principle that every individual, institution, and entity - including the government - is subject to laws and policies that are applied equally to all, regardless of social, economic, or political standing.[3] The enforcement of laws and policies in an impartial, objective, timely, and consistent manner is essential to fostering accountability, and many of the findings in this Report illustrate gaps and weaknesses in the GoSM's current enforcement practices.

The Inquiry team identified a number of factors contributing to the low levels of enforcement in the GoSM, which have been categorized as follows.

Weak commitment to public integrity

A key reason for the lack of enforcement by the GoSM is a weak commitment to public integrity. A number of public officials at the highest levels of Government, including some Ministers, do not consistently demonstrate integrity in the course of performing their duties.

The apparent absence of consequences following integrity breaches further illustrates the GoSM's lack of commitment to public integrity. Although there are a number of policies and standards that establish baseline expectations for integrity in public administration, the consequences for failing to satisfy these expectations appear to be weak, non-existent, or ignored. The Inquiry team noted reports of several apparent violations of the National Ordinance on the Rights and Obligations of Civil Servants ("LMA"), including dereliction of duty, that have not been addressed through disciplinary action. Criminal enforcement of integrity-related misconduct, such as corruption, is also slow or seems to be absent. Despite several credible allegations of corruption that were widely reported in the local media since 10/10/10, charges have been brought in three cases, and according to a Ministry of Justice official, one corruption case has resulted in a conviction. Frequent lapses in integrity by public officials that go uninvestigated and the apparent lack of consequences for corrupt behavior undermines the credibility of the GoSM and reinforces the perception that integrity breaches are acceptable, if not expected, behavior from public officials.

Although civil servants are required to take an oath of office upon entering service, there is no formal written Code of Conduct for civil servants that clearly articulates their obligations, and includes an administrative, investigative, and disciplinary framework and expectations of integrity to which all employees are held accountable. While the Ministry of General Affairs has been in the process of drafting a Code of Conduct, it has yet to be implemented, and the draft version provided to the Inquiry team does not currently align with global standards and leading practices.

Other integrity-related policies, such as those governing the declaration of assets by public officials and the exchange of gifts are either insufficiently detailed or lack clear provisions for punishing violations. The Inquiry team noted that the requirement under the National Ordinance Promotion of the Integrity of Ministers ("Integrity Ordinance") for Ministers and the Minister Plenipotentiary to declare their assets upon entering and leaving office is largely ignored, with incomplete and potentially inaccurate declarations frequently submitted for review. Yet, in the absence of any penalty for Ministers in office for failing to comply with the asset declaration requirement in a timely manner or the apparent lack of enforcement related to inaccurately declaring assets, there is little incentive for Ministers to alter their behavior.

Finally, there is a notable lack of appropriate, effective, and reliable channels and protections to encourage and facilitate reporting of integrity breaches by both Government officials who witnessed integrity breaches

[3] *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, United Nations, S/2004/616; http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/395/29/PDF/N0439529.pdf?OpenElement

firsthand or members of civil society who may have been victimized. Citizens are not currently able to submit complaints anonymously to an administrative reporting system, and reporting mechanisms and protocols appear to be unclear. The lack of confidential reporting mechanisms hinders enforcement efforts because instances of misconduct within the GoSM are less likely to be discovered without cooperation from Government employees and public citizens.

The examples above illustrate areas where the GoSM's commitment to public integrity was considered weak, which has contributed to low levels of enforcement and a lack of accountability and do not account for the scores of allegations and information provided to the Inquiry team across a range of integrity issues. A number of other factors also contribute to the low levels of enforcement discovered by the Inquiry team, including a lack of capacity, poor coordination among key Government functions, and low transparency, which further undermine efforts to build a culture of public integrity.

Insufficient capacity

Key enforcement functions within the GoSM lack sufficient capacity to effectively carry out their mandate. The National Detectives do not have enough personnel who possess the specialized forensic and financial investigative expertise to handle integrity-related cases in an efficient manner (e.g., corruption, money-laundering, etc.) In addition, the National Detectives claim that they do not have sufficient access to equipment – including basic office supplies, which are essential to the operation of any modern bureaucracy. The transient residency of Dutch prosecutors in Sint Maarten also raised concerns among those interviewed by the Inquiry team since the short-term tours of duty currently served by prosecutors are not conducive to developing strong working relationships with counterparts in the National Detectives and Police. These short-term assignments also limit prosecutors' understanding of the local culture, which may influence enforcement priorities. Capacity constraints are also visible in immigration enforcement. Illegal residents who are apprehended by immigration authorities are often released due to insufficient detention facilities for holding detainees pending deportation. Fines are also not frequently levied on businesses that employ illegal workers, rendering incentives to comply with immigration policies weak.

Poor coordination between enforcement functions

Poor coordination between key enforcement functions is a recurring theme that emerged through the interviews and research conducted by the Inquiry team. With respect to criminal enforcement, the National Detectives, Prosecutor's Office, and the financial intelligence unit ("MOT"), the GoSM's Financial Intelligence Unit, all play critical roles in detecting, investigating, and punishing corruption and other public integrity breaches. Yet a lack of coordination between these units has contributed to a dearth of anti-corruption enforcement actions in Sint Maarten. Insufficient communication and coordination regarding case management and workflow issues often hamper performance and outcomes. For example, the National Detectives indicated that they have completed 80% of outstanding corruption investigations, and that these files are ready for prosecution. The Prosecutor's Office, however, indicated that many of these supposedly closed investigations were not complete and could not be used to advance a prosecution. The failure to coordinate - and communicate - in this instance could have created a situation where neither institution was clearly responsible for a set of cases. The resulting lack of "ownership" could allow such cases to languish in the system.

Lack of transparency

The Inquiry team identified a lack of transparency as another characteristic of the GoSM that is currently undermining accountability. Information about enforcement actions, such as aggregate statistics on investigations, prosecutions, and convictions are not readily accessible. While there is a National Ordinance in place that provides for the reactive disclosure of administrative information in response to

specific inquiries, there is little guidance provided regarding proactive information disclosures. Indeed, the Inquiry team noted that a number of key types of information are not currently publicized by the GoSM, including bid and contract documentation for public procurements, asset declarations by Ministers and other senior officials, and economic license holders. The failure to subject this type of information to public scrutiny further contributes to the low levels of accountability.

Lack of preventative measures to avoid integrity breaches

While enforcement is a critical feature of a strong public integrity architecture, and an essential mechanism for enhancing accountability, it is also important to develop the appropriate institutions and controls to prevent integrity breaches from occurring in the first place. The importance of proactively identifying and addressing integrity risks is consistently emphasized in a variety of global standards, including the UNCAC. Two weaknesses identified by the Inquiry team in relation to this preventive function in Sint Maarten are the institutional framework and information sharing capabilities of the GoSM.

Weak institutional framework to prevent integrity breaches

The nascent Integrity Bureau ("Bureau") represents a weakness in the GoSM's institutional framework. Leading global standards underscore the importance of establishing an independent, credible, and properly-resourced integrity body that can function as an internal champion for public integrity. Although initial steps have been taken to establish an Integrity Bureau within the GoSM, there are substantial challenges that must be addressed before it can effectively contribute to efforts to enhance the quality of governance in Sint Maarten. First, there is a lack of clarity regarding the mandate and function of the Integrity Bureau, and many Government employees are unsure of whether or not to report suspected integrity breaches to the Bureau. There is also an institutional conflict since the Bureau is currently housed within the Ministry of General Affairs, which allows key accountability mechanisms like Persons of Confidence (two individuals within each Ministry appointed by the GoSM to provide guidance to civil servants on integrity issues) to be embedded within the institutional structure they are intended to oversee. Independence is an essential characteristic of an integrity oversight body, and the Integrity Bureau should be constituted as an entirely independent body that is separate from existing Ministries and is sustainably resourced, well-staffed and supported by the Government through a multi-year budgeting process.

The Inquiry team also identified notable gaps in the basic institutional framework related to the gaming and commercial sex work industries. The weak regulatory framework surrounding the operation of casinos in Sint Maarten creates significant risks, including money-laundering and organized criminal activities. The absence of a centralized gambling regulatory oversight body - something that is a common feature in many other countries with gambling industries - is a highly visible gap in the GoSM's institutional framework. Many of the issues noted by the Inquiry team, including absenteeism among Casino Controllers, and a lack of monitoring of casino revenue for tax collection and anti-money laundering purposes, will be difficult to address without a centralized oversight body that can drive accountability. The risks associated with the commercial sex work industry are also heightened by the absence of a centralized authority to oversee licensing and other regulatory measures. Filling these gaps in the GoSM's institutional framework can help prevent integrity breaches and lay the foundation for more consistent enforcement of industry-specific regulations.

<u>Lack of critical integrity-related policies</u>

Another gap identified by the Inquiry team was the absence of certain critical integrity-related policies, as well as the failure of existing policies to provide for administrative, civil, and criminal repercussions in the event of a violation. The absence of a Government-wide policy prohibiting conflicts of interest is

particularly problematic in a small island where relationship networks are highly intertwined. Law enforcement and prosecution officials are especially vulnerable to conflicts of interest since many discretionary decisions, like whether to launch an investigation or pursue a prosecution, can be influenced by personal interests and relationships. While the LMA does contain a provision on the exchange of gifts, a lack of specificity limits the effectiveness of this policy, and many public officials expressed uncertainty regarding threshold issues such as what constitutes a "gift." Perhaps most troubling is the apparent lack of effort on behalf of the Government to address fundamental gaps like the absence of a Government-wide conflict of interest policy. Instituting such a policy should be a relatively easy regulatory task given the plethora of available models based on international standards that have been developed with a clear global consensus.

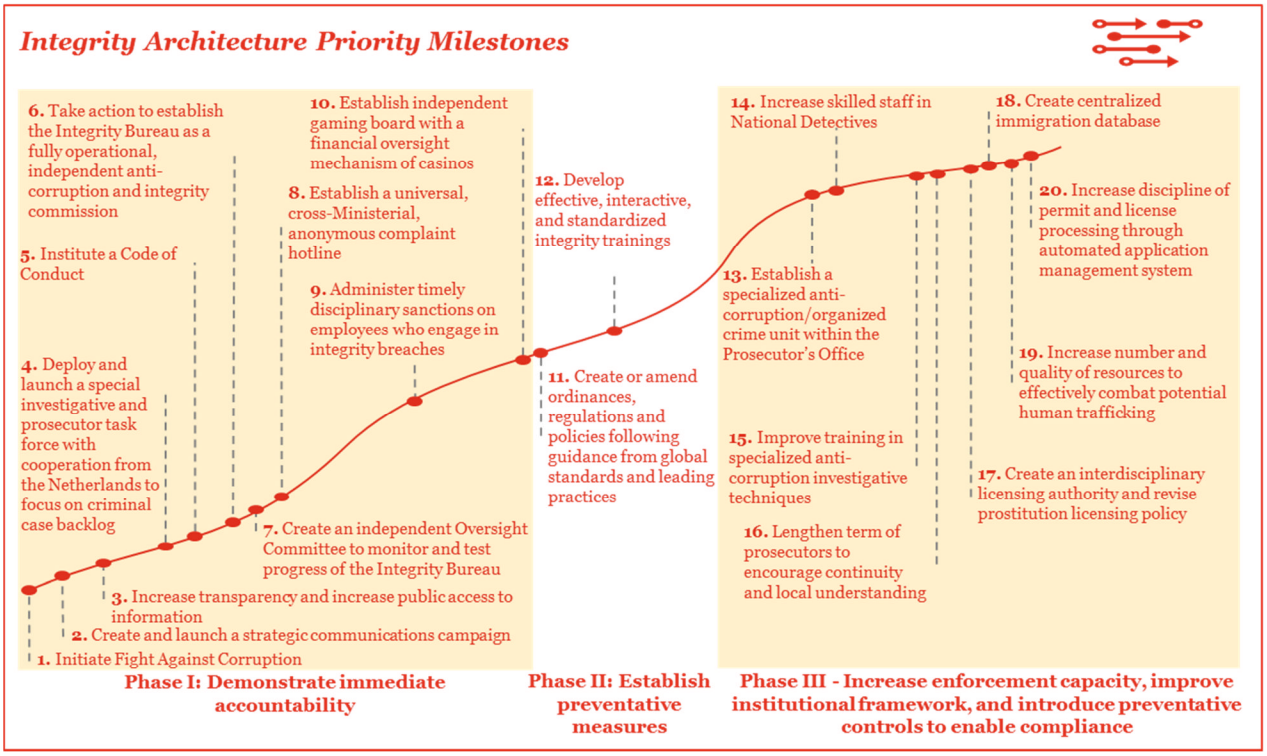
Inadequate information sharing and control framework

Poor information sharing as well as information automation between Government functions hinders the GoSM's ability to identify risks and prevent integrity breaches. An illustrative example can be found in the control of illegal immigration. Poor coordination and information sharing between the Ministry of VSA, the Ministry of TEZVT, and the Ministry of Justice undermine efforts to enforce immigration regulation including in the commercial sex industry.

The control framework around key Government functions, such as public procurement, is also insufficient. Public procurement is a major source of Government expenditure, and the lack of a National Decree containing general measures detailing the specific procedures required to encourage fair competition and ensure efficiency creates tremendous opportunity for waste, fraud, and abuse. Similarly, controls around the application process for permits/licenses do not effectively prevent the improper use of discretion by public officials to issue licenses to personal contacts. The lack of automation also leads to vulnerability for facilitation payments to occur in exchange for expedited processing of permits/licenses.

2.3.2. Government of Sint Maarten priority recommendations

Building on the maturity findings for each element, the Inquiry team identified key priority recommendations for the GoSM, which are sequentially represented as a roadmap for strengthening public integrity in Sint Maarten. These recommendations are placed in a sequence as a guideline for implementation. Some recommendations may be implemented out of sequence for reasons such as budgeting and human resource availability. Recommendations that can be implemented should not be delayed because others sequenced earlier cannot be implemented. In that regard, these recommendations should be viewed with some flexibility as to sequencing.



As a first step in order to help deliver objective and timely implementation of recommendations included in this report,

0. **Create an Integrity Project Management Office ("PMO") to serve under the Council of Ministers to implement the recommendations included within this Report:** The PMO function should be primarily staffed with senior officials with the requisite authority to oversee implementation efforts within their Ministries. The Integrity Bureau should convene Integrity PMO meetings and should work with the PMO to create consistent implementation plans. The Council of Ministers should ultimately be responsible for the implementation of recommendations.

Phase I: Demonstrate commitment to accountability

Phase I should focus on the GoSM immediately demonstrating to the local population and international stakeholders a commitment to accountability through:

- Improving public access to information
- Rapid enforcement of a backlog of existing disciplinary and criminal cases.
- Transforming the Integrity Bureau to become an independent body charged with preventing integrity breaches within the GoSM and coordinating integrity activities across departments. The Integrity Bureau should be monitored by an oversight committee who should hold the body accountable to improving integrity and test progress of launched integrity initiatives.
- Instituting a Code of Conduct that all Government officials are bound by. The overriding principle for a Code of Conduct is that GoSM employees and officials have a duty to protect the public interest. They must, at all times, demonstrate and adhere to the highest standards of ethics and professional conduct to maintain the public's confidence and trust.
- Implementing anonymous reporting provisions and clearly articulating reporting mechanisms to the public and Government employees. Investigations around complaints filed should be conducted immediately, followed by appropriate enforcement action.
- Instituting a gaming control board to demonstrate a commitment to the prevention and detection of money laundering and organized crime. The gaming control board should be responsible for providing financial oversight of the casinos.

1. **Commit to demonstrating integrity at the highest levels of leadership and promoting accountability for misconduct regardless of political standing. In order to demonstrate this commitment, transform the existing integrity initiative into an official "Fight Against Corruption" campaign focused on increasing enforcement activities. As a first indication of commitment to fighting corruption, adhere to the principles of UNCAC and publicly commit to the implementation of the principles and procedures of UNCAC:** The Government should make every effort to improve its public perception and demonstrate its commitment to fighting corruption. The current campaign has not been sufficient or effective. Once the Government declares its intention to pursue an integrity initiative, it must follow up on its commitments and demonstrate progress. Bold statements without concrete actions will undermine public trust.

2. **Create and launch a strategic communications campaign around the Fight Against Corruption to encourage public scrutiny and engage the public in monitoring progress of Government commitments:** Create a separate section on the GoSM website dedicated to the Fight Against Corruption that allows for any information related to the initiative to be easily accessible and transparent. Content should also be developed on customer rights and responsibilities as well as the role of the private sector and civil society. Progress updates should be well documented and published, and integrity PMO updates should be published. Enforcement statistics on integrity breach cases should be published quarterly on the Fight Against Corruption website as a way to measure progress on enforcement and to serve as a deterrent.

3. **Increase transparency and public access to information to enhance accountability. The following information from all Ministries should be published on the Fight Against Corruption website:**

- Procurement/bid/contract documentation for goods and services including large infrastructural works
- Third-party contracts
- Public expenditures
- Appraisals and contracts of Government-owned buildings or rented buildings
- Appropriately redacted asset declarations of Ministers (and other high-level officials as possible)
- Online open records (such as public transportation license holders, business license holders, etc.)
- Financial statements and board information of SoCs

4. **Deploy and launch a special investigative and prosecutor task force with cooperation from the Netherlands to help clear the backlog of widely-known corruption cases. The task force's focus should be to process the backlog of corruption cases and demonstrate the commitment by the GoSM to resolving these public scandals:** Seek to enhance GoSM's credibility to actively prosecute existing cases thereby reinforcing the earlier recommendation to promote the Fight Against Corruption campaign.

5. **Institute a Code of Conduct that is applicable to all Government employees. Adjust the existing draft Code of Conduct to align with the Model Codes of Conduct published by international standard setting bodies. Enforce sanctions against employees who violate the Code of Conduct in a timely manner:** The Code of Conduct should clearly articulate the obligations and expectations for integrity applicable to all GoSM employees, and be based on the principle that public officials are responsible stewards of the public interest. The Code should specify that public officials must at all times observe the highest standards of ethics and professional conduct. Violations of the Code (including by senior leadership) should prompt swift and appropriate disciplinary action in order to demonstrate the Government's commitment to integrity and accountability. Sanctions for the violation of the Code should be clearly articulated, and all officials should be aware of the consequences of violations. The Integrity Bureau should administer an acknowledgement form annually to verify that all Government employees understand and accept their obligations under the Code.

6. **Take action to establish the Integrity Bureau as a fully operational, independent anti-corruption and integrity commission:** Restructure the Integrity Bureau to reside outside of the ministerial framework in order to remain independent. The Bureau should have a clear mandate accompanied by the requisite authority and resources, including sufficient budgetary allocations. Hire at least three seasoned, anti-corruption subject matter specialists (comprised of local and foreign personnel, as necessary) to serve as commissioners responsible for the following functions:

   - Policy development and coordination of implementation
   - Information sharing and joint risk analysis
   - Integrity pact and contractor compliance
   - Administrative fact finding investigations and compliance testing
   - Awareness and outreach
   - Education, advice, and training

The selection of commissioners should be based on clear profiles and appointment should be made by National Decree.

7. **Create an Integrity Project Management Office ("PMO") to serve under the Council of Ministers to implement the recommendations included within this Report:** The PMO function should be primarily staffed with senior officials with the requisite authority to institute implementation efforts within the Ministries. The Integrity Bureau should convene Integrity PMO meetings and should work with the PMO to create consistent implementation plans. It is imperative that some members of the PMO be Government officials to facilitate access to information and inter-ministerial cooperation. The Council of Ministers should ultimately be responsible for driving the implementation of recommendations.

8. **Establish a universal, cross-Ministerial, anonymous complaint hotline administered by a third-party vendor. Clearly define reporting mechanisms within the Government for civil servants to file complaints regarding suspected integrity breaches. The Government should visibly support this complaint mechanism and encourage the public and civil servants to report wrongdoings as active participants in the Fight Against Corruption:** Complainants should be able to file complaints about integrity breaches of all kinds including allegations of waste and abuse, regardless of whether the complainant is directly involved with the matter or not. This complaint mechanism should not be administered by Government employees or entities - a third-party complaints handling service is strongly recommended.

9. **Administer timely disciplinary sanctions on employees who engage in integrity breaches and prioritize closing out the backlog of existing cases and take appropriate disciplinary action:** Communicate and publicize sanctions, consistent with privacy laws, in order to serve as a deterrent.

10. **Establish an independent gaming board with a financial oversight mechanism for casinos:** This board should be staffed with financial and money laundering experts who have experience identifying and investigating illicit economic activity. The GoSM should establish this gaming control board aligned with leading practices and global standards from recognized leaders in the gaming industry. The gaming board will not only help to reduce the risk of money laundering but also identify the appropriate amount of revenue subject to taxes. The selection of candidates for the gaming board should be based on clear profiles and appointment should be made by National Decree.

Phase II: Strengthen preventative measures

Phase II should be comprised of reviewing the existing regulatory framework to:

- Address gaps in the regulatory framework by developing new regulations in line with global integrity standards; and/or
- Amend existing regulation to clarify implementation procedures and sanctions for non-compliance.

New and amended regulation should immediately be enforced by Ministries with support from the commissioner overseeing administrative fact finding investigations of the Integrity Bureau, and the National Detective and Prosecutor's Office.

11. **Following guidance from global standards and leading practices, revise or amend the following to strengthen the existing regulatory framework for integrity:**

- **Enforce penal provisions against Ministers who knowingly submit false asset declarations and/or who are in non-compliance with the provisions in the National Ordinance Promotion of Integrity of Ministers. Publish redacted incoming and exit declarations on the Fight Against Corruption website. Consider amending existing legislation to require other senior officials to submit asset declarations as well:** Adjust the declaration form to align with global standards and leading practices. Asset declarations from Ministers who knowingly submitted incorrect information should be subject to penal provisions which are appropriately and timely enforced. Declarations should be submitted and reviewed by the Integrity Bureau according to the proposed structure, rather than through the PM.
- **Amend regulations to allow inspector/controller teams to directly issue administrative fines without having to go through the Prosecutor's Office to encourage compliance by business owners:** Labor and immigration inspectors in particular should be granted power to administer fines to businesses upon discovery of illegal immigrants. An independent body such as the General Audit Chamber should provide oversight over administrative fines including an annual review to measure compliance with rules and regulations.
- **Introduce and enforce a Government-wide conflict of interest law aligned to leading practices and global standards. Require immediate reporting of a potential conflict of interest and require annual conflict of interest declarations:** The policy should contain clear procedures for identifying, managing and resolving conflicts of interests, and provide illustrations of common conflicts. Define specific protocol and provide training on conflict of interest guidelines to prevent real or perceived conflicts from emerging in the judicial system. Conflict of interest declarations should be collected, analyzed, and monitored by the Integrity Bureau, and specifically the commissioner overseeing policy. A cost-effective, third-party vendor could be selected to assist with deploying online declarations to all officials, regardless of rank.
- **Create a gift acceptance and reporting policy aligned to global standards and leading practices with provisions on accepting and giving gifts. Clear guidelines and disciplinary sanctions should be established for violation of the policy:** Provide a clear definition of what constitutes a gift, including permissible gift thresholds, and include what gifts are deemed "reportable gifts" for both the acceptance and giving of gifts.
- **Pass a National Decree containing general measures on public procurement and clarify the appropriate circumstances for public tender exemptions:** A well designed National Decree containing general measures on Public Procurement would be expected to contain a default requirement for public tenders within the bounds of established thresholds and with exceptions for certain circumstances that are carefully defined by regulation. The National Decree containing general measures should prohibit "splitting" or prolongation of contracts to circumvent the public tender requirement, and, where applicable, reference the use of internationally recognized standard contracts for large public works (e.g., the International Federation of Consulting Engineers has created templates that can be used for infrastructure projects). The UNCITRAL Model Law on Public Procurement can provide a

useful starting point and accelerator for the development of Sint Maarten's National Decree containing general measures on Public Procurement.

- **Create a National Decree outlining a Minister's authority in lifting moratoriums, and require all subsequent licenses to be awarded according to a queue.**

12. **Develop effective, interactive, and standardized integrity trainings across the Government and mandate managers and senior leadership to attend all trainings:** Trainings should be organized by the Integrity Bureau – specifically the commissioner overseeing education, advice, and training – and should be taught by experienced anti-corruption practitioners (internal and external). Training should be focused on integrity-related policies, detecting corruption, and consequences for integrity breaches within the Government. Trainings should also cover hypothetical situations that Government officials could face and instruction on how to handle these situations. All trainings administered should be followed by a test, and all trainings should be auditable. Perform regular, specific integrity trainings for Ministers and members of parliament; these trainings should also be mandated and followed with a test. Individuals should be required to retake the test until it is passed.

Phase III: Increase enforcement capacity, improve institutional framework, and introduce preventative controls to enable compliance

Phase III should focus on new resources, institutions, and systems to enhance compliance and enforcement. The following should be prioritized:

- Law enforcement resources and training
- Corruption-focused task force for law enforcement
- Immigration control
- Commercial sex industry oversight
- Information sharing and automated systems

13. **Establish a specialized Anti-Corruption/Organized Crime Task Force within the Prosecutor's Office:** This task force should include the head of the National Detectives, Attorney General, and Chief of Police and coordinate closely with the head of MOT. The primary objective of this task force should be to facilitate closer relationships among the different law enforcement and justice departments by serving as a coordinating body for anti-corruption investigations and prosecutions.

14. **Increase skilled staff in National Detectives in line with mandate provided by the Minister of Justice:** The limited availability of skilled forensic investigators within the National Detectives poses a substantial challenge for law enforcement efforts. The Minister of Justice has authorized additional hiring (up to 20 full-time staff), and the National Detectives should expedite the search for qualified candidates, with a particular emphasis on recruiting personnel with strong Dutch language skills and experience conducting financial investigations.

15. **Improve training in specialized anti-corruption investigative techniques and other enforcement areas:** Specialized training should be offered to the National Detectives to improve their capacity to conduct integrity-related enforcement activities. Such training could take the form of ready-to-deploy training programs such as those offered by the Association of Certified Fraud Examiners and similar credentialing bodies, or customized trainings that include basic anti-

corruption and financial crimes investigative procedures highlighting issues relevant to Sint Maarten (e.g. money laundering schemes in casinos).

16. **Lengthen term of prosecutors to encourage continuity and local understanding:** Prosecutors completing short-term rotations in Sint Maarten often do not have the opportunity to build strong ties to the community, which can undermine their legitimacy and ability to win the trust and cooperation of local residents. The term should be extended to a minimum of five years to allow prosecutors to complete cases and integrate and better understand the local culture. Furthermore, efforts should be made to identify and recruit qualified prosecutors who have existing ties to the community or are able to invest in building local relationships and credibility.

17. **Create an interdisciplinary licensing authority and revise prostitution licensing policy to be consistent with domestic criminal law and with stringent new requirements for brothel owners:** The GoSM should establish a licensing authority that is responsible for administering the laws regulating prostitution with specific licensing requirements for sex workers and brothels, including prescriptions designed to prevent human trafficking, forced prostitution, and underage prostitution. The authority should develop formal guidelines for applying for a sex industry license, including screening of applicants and mandatory disclosures to help prevent industry capture by organized crime human trafficking.

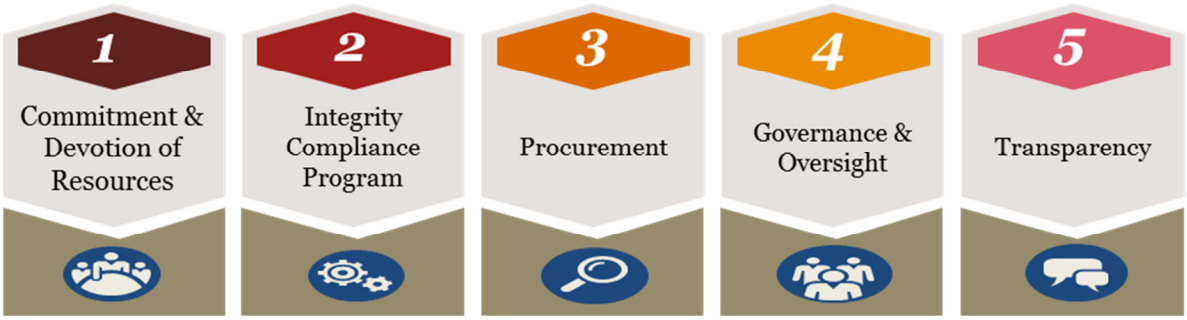
18. **Create centralized immigration database:** The GoSM should create a database shared by the Ministry of VSA, the Ministry of TEZVT, and the Ministry of Justice to facilitate oversight of the labor, director and residency permit processes. This database should be a central repository for all third country nationals ("TCN") entering the country legally or identified illegally residing on the island. Sharing this data will allow each Ministry to have essential information regarding all TCNs, including date of birth, passport number, nationality, occupation, valid permit dates, and prior immigration transgressions. Real-time information sharing using a common IT platform will facilitate stronger oversight and allow for proactive integrity risk management (e.g. inspectors will know when licenses/permits are scheduled to expire and can allocate resources accordingly).

19. **Increase number and quality of resources to effectively combat potential human trafficking:** Allocate additional resources to allow police and prosecutors to initiate investigations against suspected traffickers. The Ministry of Justice should also provide training to police regarding the investigation of human trafficking crimes. The GoSM should work to align its anti-human trafficking framework to the TVPA's Minimum Standards for the Elimination of Trafficking.

20. **Increase discipline of permit and license processing through automated application management system:** A key vulnerability in permit and license processing is the lack of a clear timeline for issuing or rejecting applications. This introduces the opportunity for public officials to solicit, or applicants to offer, facilitation payments to expedite processing. In order to address this vulnerability, the permitting and licensing process should be governed by an automated application management system, and legislation should be amended as applicable, that requires Government employees to issue or reject a permit within a specified number of days from receipt of an application. In addition to reducing the opportunity for integrity breaches, an automated process that imposes a strict timeline for issuing or rejecting permit and license applications will help allow the Government to start collecting associated fees in a timely manner and will reduce the number of unlicensed and unsanctioned activities.

2.4. State-owned companies integrity architecture

The following graphic outlines the five elements constituting the SoC integrity architecture assessment framework used by the Inquiry team:



Each element is designed to aggregate a wide range of leading practices distilled from global standards such as OECD's Principles for Corporate Governance and Transparency International's Transparency of State-owned Enterprises, among other relevant benchmarks. The Inquiry team used the five elements above to evaluate the SoCs' current integrity compliance and governance framework.

Grounded in the observations under each element, a "maturity finding" of "low," "medium," or "high" was assigned based on the sophistication of the SoCs integrity compliance programs, policies, procedures, and practices in relation to the global benchmarks captured in each element:

SoC Integrity Architecture Element	Current Maturity Based on Global Standards		
	Low	Medium	High
Commitment and Devotion of Resources	●		
Integrity Compliance Program	●		
Procurement	●		
Governance and Oversight		●	
Transparency	●		

Based on observations included in this Report and taking into consideration the individual maturity findings in each element of the integrity architecture assessment framework, the overall integrity architecture maturity finding for the four SoCs assessed is "low."

2.4.1. State-owned companies key observations

Sint Maarten's SoCs are key contributors to the stability of the local economy and public infrastructure. The Inquiry team identified gaps in the integrity architecture of four SoCs related to each of the five integrity elements underlying the assessment. Three themes that emerged through the analysis and research conducted by the Inquiry team are:

- A lack of compliance with existing regulatory and corporate governance requirements
- A lack a well-functioning integrity compliance programs, which are attributable to a lack of policies, procedures, transparency, and commitment from senior management
- An overall lack of transparency and reporting mechanisms

The Inquiry team made the following key integrity observations regarding Sint Maarten's SoCs.

Room for improvement with regulatory and governance compliance

The SoCs were observed to be in non-compliance with certain aspects of Sint Maarten's regulatory and governance framework. A lack of control and oversight of the SoCs by the GoSM was observed as it appeared several of the SoCs operated freely without intervention or regulation by the GoSM. Several of the SoCs do not appear to adhere to the same laws governing the operations of private companies. Further, instances of non-compliance with Sint Maarten's current corporate governance framework were also identified.

Corporate governance

The GoSM has established a corporate governance framework consisting of a centralized oversight body and a series of regulatory requirements, though compliance with this framework may be uneven for the majority of SoCs. Examples of observed non-compliance include avoidance of corporate governance rules by subsidiaries of SoCs, no profiles for Supervisory Board members, and an absence of the required interaction with the Corporate Governance Council ("CGC"), Sint Maarten's SoC governance oversight body.

<u>Supervisory Board independence and profiles</u>

Several Supervisory Boards of the GoSM's SoCs included senior GoSM officials which may impair their ability to provide independent and objective supervisory oversight. Additionally, this lack of independence may allow for perceived or real excessive intervention by the GoSM into matters or decisions that the SoC should govern.[4]

<u>SoC regulating and competing in same industry</u>

The SMHHC appears to both regulate and operate within the commercial marine industry through several wholly-owned subsidiaries including the Simpson Bay Lagoon Authority Corporation N.V. ("SLAC"). This SoC competes with local marinas through the rental of slip space and fuel sales, while simultaneously regulating entrance fees to the Simpson Bay Lagoon, where many non-Government commercial marinas are located. This appears to create a conflict of interest for the SoC as it may distort market competition and create an un-level playing field.[5]

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[4] *OECD Guidelines on Corporate Governance of State-owned Enterprises;* Organisation for Economic Cooperation and Development; http://www.oecd.org/corporate/ca/corporategovernanceofstate-ownedenterprises/34803211.pdf

[5] *Id.*

Lack of effective integrity compliance programs

Based on the analysis conducted, the SoCs do not adequately implement many of the elements required for a well-functioning integrity compliance program. The establishment and implementation of these elements is the responsibility of senior management and the Supervisory Board of Directors, and the program's success will require buy-in at all levels of the company.[6] Missing components included, but were not limited to, Codes of Conduct, anti-corruption policies, and adequate and documented procurement, payment and whistleblower policies. A Code of Conduct for all personnel, as an example, is a critical and fundamental element of an integrity compliance program as it mandates employees to operate in an ethical manner, and imposes consequences for deviations from the requirements set forth within. It is noted that several of the SoCs do possess a few of these elements, while others appeared to be in the process of implementing additional measures. However, overall program implementation progress appeared to be low.

The Inquiry team met with senior officials from each SoC, and the majority of these individuals reported to the Inquiry team that each entity has adopted a strong stance against corruption. However, the Inquiry team did not observe a visible commitment to integrity in terms of frequent communications to staff, devotion of resources to ethics, and established anti-corruption policies. The success of an integrity program depends on strong and visible support from the Supervisory Board of Directors and company management who need to establish a proper "tone at the top" that unambiguously expresses the organization's rejection of corrupt behavior and commitment to punishing misconduct.[7]

Overall lack of transparency to SoC stakeholders

The SoCs are largely not transparent to their stakeholders, including the GoSM, third parties, and the general public. Only one SoC was observed to disclose its financial results and company objectives in an annual report posted on the entity's website. The Inquiry team was unable to locate disclosures of financial results, company objectives or other recommended reporting requirements such as remuneration of executive management and Supervisory Board members, related party transactions, risk factors, and commitment to an effective anti-corruption compliance program from any of the other SoCs.[8] Limited disclosures by SoCs can give rise to a public perception of corruption, as was observed in Sint Maarten through interviews and research of open sources. Interviewees frequently noted the lack of disclosure of several large infrastructure projects completed by the SoCs, mainly related to bidding and award procedures. Limited reporting decreases accountability of SoCs to their stakeholders, and contributes to the perception of corruption among the organizations.

2.4.2. State-owned companies priority recommendations

Building on the maturity findings for each element, the Inquiry team identified key priority recommendations for SoCs, which are sequentially represented as a roadmap for strengthening public integrity in Sint Maarten. These recommendations are placed in a sequence as a guideline for implementation. Some recommendations may be implemented out of sequence for reasons such as budgeting and human resource availability. Recommendations that can be implemented should not be

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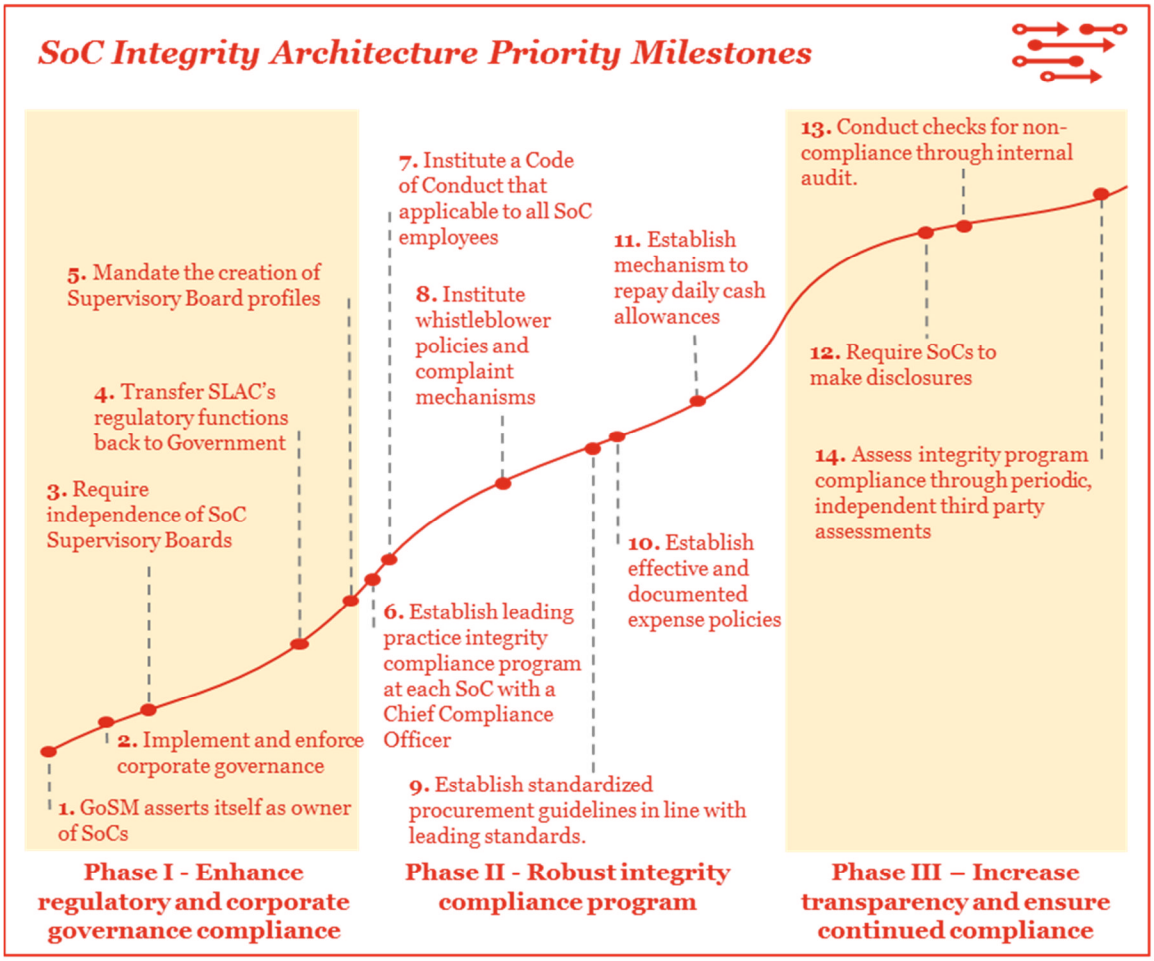
[6] *ICC Rules on Combating Corruption*, International Chamber of Commerce; http://www.iccwbo.org/Advocacy-Codes-and-Rules/Document-centre/2011/ICC-Rules-on-Combating-Corruption/

[7] *Id.*

[8] *Transparency of State-owned Enterprises,* Transparency International, http://www.transparency.org/whatwedo/answer/transparency_of_state_owned_enterprises

delayed because others sequenced earlier cannot be implemented. In that regard, these recommendations should be viewed with some flexibility as to sequencing.



As a first step in order to help deliver objective implementation of recommendations included in this Report,

0. **The Integrity Project Management Office ("PMO") function should also oversee, in conjunction with the newly established Office of Chief Compliance Officer ("CCO"), implementation of recommendations for the SoCs.**

Phase I: Enhance regulatory and corporate governance compliance to increase accountability

Phase I should focus on enhancing compliance with the GoSM's existing regulatory and corporate governance framework in order to improve the public perception of integrity and increase accountability of the SoCs to both local and international stakeholders. The following should be prioritized:

- The GoSM asserting itself in its role as owner of each SoC
- SoC compliance with regulatory requirements for private companies
- SoC compliance with corporate governance legal requirements
- Visible initiative to enforce the current corporate governance framework

1. **The GoSM should assert itself as sole shareholder and enforce SoC compliance with laws governing private companies:** It appeared during the Inquiry that some SoCs operate with no accountability to their sole shareholder, the GoSM. The GoSM should assert itself as the sole owner of the SoCs and demand that they comply with all regulatory and governance laws, as well as requests for information from inquiries, investigations, and other Government-sanctioned initiatives. The SoCs are limited liability companies ("N.V.") and therefore the GoSM should ensure that they abide by the same rules and regulations as other private companies, including those governing competition, taxes and permits.
2. **Implement and enforce corporate governance rules:** The GoSM should enforce, and each SoC should implement, Sint Maarten's corporate governance requirements for SoCs set forth within the Corporate Governance Code. A key piece to governance compliance is the required interaction between the SoCs and the CGC. The GoSM should ensure that the CGC is adequately supported and provided the necessary resources to effectively carry out its mandate. Amendments should also be made to the Corporate Governance Code to explicitly state that the Code also applies to wholly owned subsidiaries of the SoCs.
3. **Independence of SoC Supervisory Boards of Directors should be required:** The Supervisory Boards of all SoCs should be free of GoSM officials to allow boards to exercise judgment without Government influence. Promoting Supervisory Board independence will also help reduce public perception of the GoSM's influence on SoC operations. The Civil Code articles 2:139 through 2:144 contain guidelines to enhance Supervisory Board independence which should be considered by each SoC and enforced by the GoSM. Independence of the Supervisory Boards of Directors would be strengthened if these Boards were qualified as Independent Boards in accordance with the articles stated above which contain measures, for example, on the minimum amount of Directors, length of appointments, voting, and suspension and termination.[9]
4. **Transfer SLAC's regulatory functions back to Government:** A complete separation of ownership and market regulation responsibilities is required to create a level playing field for SoCs and the private sector. SoCs should not be regulating the industries in which they also compete.
5. **Mandate SoCs to formulate profiles for Supervisory Boards of Directors:** The GoSM should require the SoCs to formulate, review and approve profiles in accordance with the National Ordinance Corporate Governance for positions on the Supervisory Board of Directors through a

[9] Burgerlijk Wetboek

systematic evaluation process. Formal board profiles will promote SoC board professionalism and assist in securing a wide range of necessary competencies among board members.

Phase II: Begin the establishment of integrity program and demonstrate immediate commitment to transparency and accountability

Phase II should focus on the establishment of an integrity compliance program within each SoC and an immediate and visible commitment by SoC leadership to transparency and accountability. The following should be prioritized:

- Establishment of an integrity compliance program according to leading practices and a Chief Compliance Officer, or similar function
- Establishment of a centralized procurement office for SoCs and initiate reviews of large procurements, including large infrastructure works
- Establish and/or enhance strict expense policies to govern SoC staff expenditures and prevent duplication

6. **Establish leading practice integrity compliance program at each SoC beginning with installing a Chief Compliance Officer (or similar role):** Each SoC should establish a leading practice-based integrity compliance program with a strong commitment from management and centralized ownership of the program within a regulatory compliance office or by a Chief Compliance Officer ("CCO"), as well as a collection of policies that promote and provide guidance around the SoC program. The CCO should champion integrity program establishment and operation. The CCO should work with the PMO mentioned above in order to implement the recommendations set forth within this report. The CCO will be responsible for oversight, management, and implementation of the integrity compliance and should have the appropriate autonomy, authority, and resources to effectively implement the program.
7. **Institute a Code of Conduct that is applicable to all SoC employees. Enforce sanctions against employees who violate the Code of conduct in a timely manner:** The Code of Conduct should clearly articulate the obligations and expectations for integrity applicable to all SoC employees and be based on the principle that public officials are responsible stewards of the public interest. The Code should specify that public officials must at all times observe the highest standards of ethics and professional conduct. Violations of the code (including by senior leadership) should prompt swift and appropriate disciplinary action. Sanctions for the violation of the Code should be clearly articulated, and all employees should be aware of the consequences of violations. Each SoC should administer an acknowledgement form annually to verify that all employees understand and accept their obligations under the Code.
8. **Institute whistleblower policies and complaint mechanisms:** SoCs should institute policies and procedures for employees and third parties to make complaints and allow for protection of whistleblowers. Each SoC should launch an internal whistleblowing hotline administered by an external third party. The internal hotline should be focused on protecting the anonymity of whistleblowers, which can be compromised by making complaints in-person. Each SoC should also set up an Executive Committee to triage allegations. The Executive Committee should utilize a strategic selection process to identify the merits of allegations to focus on plausible claims.

A risk assessment should be conducted on those claims to determine the parameters (e.g., timing, team composition, locations of relevant information, etc.) of investigation. Investigative teams, based on parameters identified by the Executive Committee, should prepare an investigative plan, consistent with leading practices, and perform the investigation. Action taken against employees as a result of the complaints filed should be publicized internally, consistent with privacy laws, to serve as a deterrent. All allegations should be tracked, and periodic reporting of allegations and their disposition should be escalated to the Supervisory Board of Directors.

9. **Establish standardized procurement guidelines in line with leading standards:** The GoSM should consider the establishment of standardized procurement guidelines that each SoC can adapt and tailor to their specific needs. The guidelines should provide an objective assessment of bid documents and vendor selection. Each SoC should clearly document their own procurement policies and procedures to increase accountability and make it difficult for staff to deviate from these policies and procedures.

10. **Establish strict and explicit expense policies at SoCs:** SoCs should adjust their expense policies and procedures to prohibit employees, management and Supervisory Board members from receiving meals on top of their daily allowance. Expense policies should also govern ethical entertainment expenses, especially considering that these companies are owned by the GoSM. SoC staff should, in general, avoid lavish expenditures using Government funds.

11. **Establish an internal mechanism to prevent duplicate expenses and for personnel to repay unused allowances:** Policies and procedures should be updated to include an analysis of the business purposes of company travel to determine whether employees require daily cash allowances. In instances where allowances are not required (i.e. for a board meeting during which meals will be provided) cash allowances should be reduced or eliminated. Each SoC should also establish an internal mechanism for staff to pay back unused daily cash allowances.

Phase III: Increase transparency and ensure continued compliance through internal audit and independent assessments

Phase III should focus on the disclosure of important information by SoCs to their stakeholders, including the Government, the general public and the international community. The following should be prioritized:

- Institution of a transparency and reporting program for each SoC
- Continued compliance through SoCs' internal audit functions
- Periodic external assessments completed by an independent third party

12. **Require SoCs to make disclosures:** SoCs should have reporting requirements in order to increase accountability to stakeholders, including the GoSM and the general public. SoCs should be required to disclose financial and operating results; company objectives, regarding their commercial activities as well as environmental and social policies; remuneration policy for the management board and supervisory boards of directors; selection processes, qualifications and independence of supervisory board members; identified risks; and governance structure and policies. The websites of the SoCs should be utilized to centralize and disclose information to its stakeholders including, but not limited to, financial results, codes of conduct, annual reports, and

interested-party relationships. Third-party contracts that SoCs have entered into should also be published on the website, along with bid and award documentation.

13. **Conduct checks for non-compliance through internal audit:** SoC internal audit functions should support management efforts to implement integrity compliance programs and ensure implementation is carried out consistently and effectively. The support from internal auditors will also promote management's visible and active commitment to the implementation of each program. Internal audits should include, but not be limited to, third-party payments, expenditures made by SoC management, Supervisory Board members and employees, and adherence to SoC policies and procedures to identify instances of non-compliance. Internal auditors should report to senior management and the Supervisory Board of Directors for follow-up, including investigations and enforcement if necessary.

    Internal audit staff should review large procurements to determine whether procurement policies and procedures were followed. A report should be made on deviations from the process and provided to senior management and the Supervisory Board of Directors. The SoCs should strive to abide by its procurement rules and justify in writing any deviations from its policies. If integrity breaches are identified, internal audit staff, in cooperation with the CCO, should make a report to the relevant Minister shareholder representative. Disciplinary measures should be taken against any employees, including senior leadership, identified to be involved in integrity breaches.

14. **Assess compliance through periodic, independent external assessments:** Once integrity compliance programs are in place, the GoSM should require each SoC to procure a periodic, independent external assessment of each program to promote continuous improvement. A qualified third party should be hired to assess the design and operation of each integrity compliance program, including potential risks against leading integrity compliance frameworks (e.g., the World Economic Forum's Partnering Against Corruption Initiative Principles for Countering Bribery). The assessment should provide observations around compliance gaps and recommendations to remediate such gaps.

2.5. Areas for future analysis

The Report concludes with a number of additional areas susceptible to integrity breaches that were not included within this report due to time, budget, and scope limitations but are critical to address in order to successfully improve the integrity architecture across the Government.

3. Report structure

This Report is structured to provide both summary analysis and detailed observations and recommendations based on the Inquiry of the GoSM. Section 4, ***Scope and approach***, discusses in detail the team's scope and approach to this Inquiry including highlighting global standards and leading practices that served as a foundation for the Inquiry and were relied upon by the team in comparing the GoSM's progress against accepted practices in the global community. Also included is information related to the desk and field research conducted, as well as outlining any obstacles the team experienced during the course of the Inquiry.

Section 5, ***Definition of integrity***, sets forth descriptions of rule of law and good governance. Of course, when analyzing any country against international standards and leading practices, there needs to be keen understanding of the political, constitutional, social, economic and cultural norms of a country; that ***Local context*** is described in section 6.

The main body of this Report includes the ***Assessment of the integrity architecture of the Government of Sint Maarten*** contained in section 7, structured to align our observations and recommendations in conformity with governance and integrity practices against a thorough public integrity framework which includes the following seven elements: leadership, commitment, and devotion of resources; regulatory framework; investigations and enforcement; procurement; transparency and strategic communications; personnel management; and systems and information sharing. In section 7 the global standards and leading practices within each element are described so that readers will understand the foundation for discussing and analyzing the GoSM's progress against the integrity framework. With those particular governance principles in mind, section 7 of the Report is structured to address each element and identify particular examples and observations that were discovered to pose potential integrity risks. At the end of each observation, our Report sets forth recommendations tailored to the environment in Sint Maarten.

The Report also analyzes the governance and integrity architecture of the GoSM, the Report also analyzes the governance and integrity practices of four of Sint Maarten's SoCs in ***Assessment of the integrity architecture of state-owned companies***. This analysis and corresponding recommendations are contained in Section 8 of the Report.

The Report concludes with a sequencing of ***Priority recommendations*** (section 9) for the GoSM and SoCs to focus on in order to increase the level of maturity of the integrity architecture. Section 10 contains ***Areas for future analysis*** which includes areas that warrant further review by the GoSM. The main body of the Report is summarized in Section 11, the ***Conclusion***.

The appendices of the Report contain detailed information supporting the Report. ***Appendix A*** consists of a glossary of terms and acronyms used throughout the Report. ***Appendix B*** includes key global standards that were referred to in formulating recommendations throughout the Report. ***Appendix C*** contains research findings from existing integrity and other pertinent external assessments of relevant topics. Findings from open source research, including media and social media sources, that were reviewed during the desk research phase of the engagement are included in ***Appendix D***. ***Appendix E*** contains a detailed framework gap analysis which compares Sint Maarten's current proposed Code of Conduct to leading practices.

4. Scope and approach

4.1. Scope

The scope of the Inquiry, as set forth in the Contract Documents, covers the time period after October 10, 2010 ("10/10/10"), and therefore does not focus, in particular, on the GoSM's current administration. According to the Contract Documents, the scope *"encompasses the examination and evaluation of Sint Maarten's public administration performance against best practices standards for integrity and good governance and the provision of recommendations to address areas of concerns. Pursuant to the Kingdom decree the areas of priority for the inquiry of the integrity and proper functioning of the public administration are:*[10]

- *vulnerable sectors such as: prostitution, gambling and immigration; and*
- *vulnerable activities; permits for and the execution of infrastructural/construction works and (other) large tenders."*

The Steering Committee presented to the Integrity Inquiry team ("Inquiry team") the following SoCs to be included in the Inquiry due to their economic importance:[11]

- Sint Maarten Harbour Holding Company N.V. ("SMHHC" or the "Harbour")
- N.V. Gemeenschappelijk Electriciteitsbedrijf Bovenwindse Eilanden ("GEBE")
- Princess Juliana International Airport Operating Company N.V. ("PJIAE" or "Airport")[12]
- Sint Maarten Telecommunication Holding Company N.V. ("Telem")

Other SoCs and foundations were not included within the scope. The Steering Committee also requested the Inquiry team to explore other integrity issues beyond the SoCs and the vulnerable sectors and activities. The Inquiry team was permitted by the Steering Committee to choose those areas of further inquiry. As such, based on availability of information and time and budget allocations, the Inquiry team explored certain integrity issues within the Government beyond the vulnerable sectors/activities and SoCs. The assessment conducted by the Inquiry team included interviews of officials within the GoSM's seven Ministries:

- Ministry of General Affairs ("General Affairs")
- Ministry of Finance ("Finance")
- Ministry of Justice ("Justice")
- Ministry of Education, Culture, Youth and Sports ("OCJS")
- Ministry of Public Health, Social Development and Labor ("VSA")
- Ministry of Tourism, Economic Affairs, Traffic and Telecommunication ("TEZVT")
- Ministry of Public Housing, Spatial Planning, Environment and Infrastructure ("VROMI")

[10] According to the Contract Documents, public administration is defined as "the Ministers, the persons working for the Ministries as well as the state owned companies."

[11] According to the Contract Documents, state owned companies are defined as "legal entities incorporated by or on behalf of the government via private or public law as well as subsidiaries thereof."

[12] It is noted that the business operations of the airport take place in PJIAE, which is a wholly-owned subsidiary of the Airport's holding company, of which the GoSM is the sole shareholder. As a result the Inquiry regarding the airport primarily covered PJIAE; certain aspects of the holding company in relation to governance are discussed below.

The scope of the Inquiry did not include the integrity and proper functioning of Parliament, the Judiciary (the joint Court of Justice), Stichting Overheids Accountants Bureau ("SOAB"), the High Councils of State (Council of Advice, General Audit Chamber, and the Ombudsman) or other Governmental functions not explicitly referred to in this Report. Any references to these entities and institutions in this Report should not be construed as an assessment of integrity and proper functioning.

The Report reflects the Inquiry team's work that was performed within the scope, budget, and time limitations specified by the Steering Committee. ***Areas for future analysis*** highlights areas that the Inquiry team recommends for further review, but which were not covered in this Report due to scope, budget, and time limitations.

Finally, this Inquiry is separate from penal investigations carried out by the Office of the Public Prosecutor, and our observations and recommendations should not be viewed as legally or forensically admissible evidence. Whatever follow-on actions the GoSM decides to take with the information contained in this Report is entirely at the discretion of the GoSM.

4.2. Approach

4.2.1. Desk research conducted

The Inquiry team connected with a range of sources to obtain relevant information and documentation for the Inquiry including the seven Ministries of the GoSM, four SoCs, former Government officials, industry, media as well as public and open sources.[13] The Inquiry team also made document requests from each Ministry and SoC and supplemented this data with documentation requested "on-the-spot" during interviews. In addition, the Inquiry team utilized its Corporate Intelligence Center of Excellence (a group of interdisciplinary research professionals based in Washington, DC) to obtain documents in multiple languages through research of syndicated and open source databases. The Inquiry team also leveraged our Center of Excellence to perform research of syndicated media databases and open sources in order to identify public perceptions of integrity, background information and a number of laws and regulations.

The Inquiry team collected documentation relating to integrity and good governance legislation, regulations, policies and plans, and past integrity assessments that have taken place in Sint Maarten. A review was conducted of publicly available, relevant reports from the Council of Advice, Ombudsman, General Audit Chamber, Social Economic Council, and Law Enforcement Council including the following:

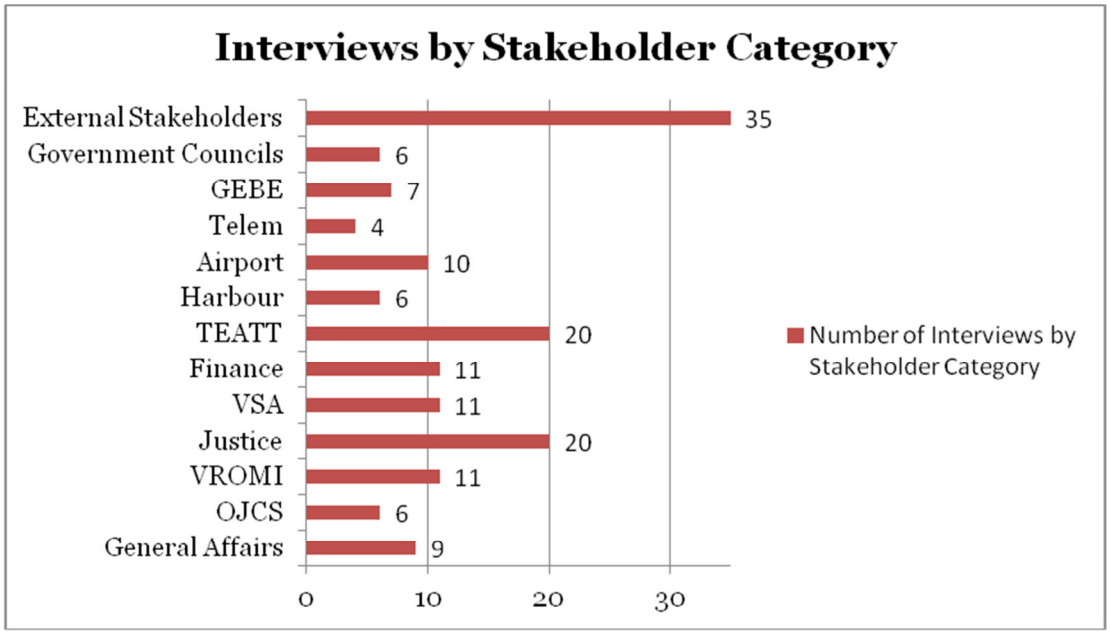
- General Audit Chamber's Baseline Study of Institutional Integrity Management in Sint Maarten
- Criminaliteitsbeeldanalyse - Sint Maarten Crime Pattern Analysis
- Detentiecapaciteit – Sint Maarten Detention Capacity Report
- United States' Department of State's Trafficking in Persons Report
- Caribbean Financial Action Task Force ("CFATF"): Mutual Evaluation Report
- Third Report of Findings: Public Expenditure and Financial Accountability ("PEFA") Stocktaking Financial Management Sint Maarten
- General Audit Chamber's Sint Maarten Financial Compliance 2012 Report and selected GoSM Financial Statements

[13] The Inquiry team used established and proven research and analytic methodologies to properly characterize numerous sources and to properly categorize and characterize verbal, digital and written information. The assessment cites the sources that were the basis for individual judgments or observations to the highest degree possible while maintaining the integrity and confidentiality of the individuals with whom the Inquiry team held interviews.

Summaries of some of the key publicly available reports reviewed by the Inquiry team during the desk research portion of the Inquiry are included in ***Appendix C***. The Inquiry team also requested several SOAB reports produced since 10/10/10 from pertinent Ministries; however, it is noted that not all of the reports requested by the Inquiry team were provided by the Ministries. In addition, comprehensive document requests were submitted to all seven Ministries, Bureau Telecommunication & Post ("BTP") and the four SoCs as well as to some interviewees on an individual basis; however, varying responses to requests occurred, and documents requested were not always provided in a timely manner, or at all. The lack of access to information may impact some of the observations or recommendations.

4.2.2. Interviews conducted

The Inquiry team conducted 156 interviews with current and former public officials, SoC representatives and knowledgeable individuals within industry, trade associations, and the private sector.[14] The Inquiry team also met with other Governmental groups including the Council of Advice, Social Economic Council, Ombudsman's Office, Corporate Governance Council, and Law Enforcement Council. The General Audit Chamber chose not to meet with the Inquiry team. The Inquiry team conducted interviews during five deployments to Sint Maarten between February 26 and July 24 in 2014 and also conducted a few video and teleconference discussions from the United States. The graphic below shows the number of discussions the Inquiry team held with each stakeholder category:



4.2.3. Transaction analysis

As part of field research, the Inquiry team analyzed documentation for a judgmental sample of transactions including, but not limited to, payments made by the Government and/or SoCs related to the Government, issuance of public transportation licenses, issuance of residence and work permits, and the issuance of

[14] The Inquiry team used established and proven research and analytic methodologies to properly characterize numerous sources and to properly categorize and characterize verbal, digital and written information. The assessment cites the sources that were the basis for individual judgments or observations to the highest degree possible while maintaining the integrity and confidentiality of the individuals with whom the Inquiry team held interviews.

director and business licenses to assess compliance with the existing regulatory framework.[15] In addition, the Inquiry team assessed procurement processes and analyzed controls for the payment of services and goods to assess potential vulnerabilities that may exist within these operational activities.

4.3. Limitations

GoSM employees in large part were very receptive to sharing information concerning integrity issues. The multiple ongoing integrity inquiries, including a concurrent integrity inquiry called for by the Prime Minister ("PM"), as well as an assessment by Transparency International, contribute to the heightened awareness of integrity issues on-the-ground. Many of the individuals stated a wide variety of concerns to the Inquiry team about various issues surrounding governance and transparency of the GoSM. The Inquiry team was also, in some instances, contacted by stakeholders who, unsolicited wished to share what they perceived to be integrity issues involving Government and SoC officials.

Several individuals, however, expressed hesitation to provide certain types of information, and many reported to the Inquiry team that they feared reprisal from their supervisors and that they believed that it would be impossible to ensure anonymity of their statements. The Inquiry team repeatedly heard statements such as, "this is a small island. I can't say anything because everyone will know it came from me," and "they may not be able to fire me, but they can make my life miserable and I need to be careful of that." This fear of reprisal likely reduced the availability of data interviewees were willing to share with the Inquiry team.

Some interviewees also reported confusion and frustration about the many ongoing integrity assessments in Sint Maarten and for having to "say the same thing" to multiple assessment teams. Some interviewees made statements such as "I don't know which team is the one to trust."

Also cited in interviews was confusion over the PM reportedly stating the GoSM civil service would not cooperate with this Inquiry, according to an open source press report dated October 3, 2013.[16] It is noted, however, that on January 31, 2014, a Sint Maarten news outlet reported that "the government still disagrees with the way the Kingdom Council of Ministers [initiated the] integrity investigation in St. Maarten, but the threat that civil servants would refuse to cooperate with the Governor's committee is off the table."[17] Some interviewees asked the Inquiry team if they were allowed to speak with this Inquiry team as they did not know if it was authorized by the PM.

[15] A judgmental sample is a non-probability sampling technique where the researcher selects units to be sampled based on experience and interests in a particular set of data.

[16] "St. Maarten prime Minister: civil service will not cooperate with any Dutch instruction," *BearingPoint Caribbean*, October 3, 2013; http://www.bearingpointcaribbean.com/st-maarten-prime-Minister-civil-service-will-not-cooperate-with-any-dutch-instruction

[17] "Wescot-Williams about integrity investigations: 'Let them get it out of the way'," *Today*, January 31, 2014; http://www.todaysxm.com/2014/01/31/wescot-williams-about-integrity-investigations-let-them-get-it-out-of-the-way

4.4. Summary of cooperation

The following table represents a summary of cooperation with the Inquiry by the GoSM Ministries and SoCs. Cooperation includes both interviews and access to documents.

Entity	Full Cooperation	Moderate Cooperation	Limited Cooperation
Ministries			
General Affairs		x	
OCJS	x		
Justice	x		
Finance		x	
VROMI	x		
VSA		x	
TEZVT		x	
BTP			x
SoCs			
PJIAE		x	
GEBE		x	
SMHHC			x
Telem	x		
Stakeholders			
Chamber of Commerce			x

5. *Definition of integrity for purposes of this Report*

Integrity in the context of public administration is often defined in the negative, with an emphasis on the *absence* of corruption. While this narrow concept of integrity may be appropriate in certain circumstances, it fails to fully address the purpose of a well-functioning government, which is ultimately to act as a faithful steward of public resources and provide for the needs of a governed population. This Report approaches integrity from a broader perspective that is embedded in the notion of how a government *should function with integrity*, and is closely aligned with global integrity standards and tailored to address the specific integrity dimensions that have been highlighted by the Kingdom of the Netherlands as relevant for Sint Maarten.

Specifically, this Report will characterize government integrity as (1) consistent compliance with all relevant integrity related laws, regulations, and policies, (2) the proper functioning of controls to mitigate the risk of corruption, and (3) adherence to the principles of the rule of law. The criteria for integrity are represented in the global standards referenced in ***Appendix B*** and will form the basis for the following assessment of the GoSM.

Consistent compliance with laws, regulations, and policies

This Report assesses the quality of existing anti-corruption and transparency laws, regulations, and policies, in addition to internal controls and accountability mechanisms bearing on public integrity. Emphasis will be placed on the regulation of vulnerable sectors, including gambling, prostitution, and immigration, as well as vulnerable activities such as permitting and licensing of large infrastructure projects and other public works. The Report will also identify relevant gaps in the public integrity legislative framework and provide recommendations for improvements.

Proper functioning of controls to mitigate the risk of corruption

Corruption is often defined as the abuse of public authority for private gain and is incompatible with contemporary notions of public integrity. This Report will assess the framework in place for preventing, detecting, integrating and remediating corruption in public administration, including, but not limited to:

- Bribery
- Nepotism
- Cronyism
- Kickbacks
- Fraud and theft
- Trading in influence
- Inappropriate gifts and promises
- Conflicts of interest
- Misuse and manipulation of information
- Abuse of authority

Adherence to the principles of the rule of law

The rule of law is a principle of governance that revolves around the supremacy of the law. Every individual, institution, and entity--including the government--is held accountable to public laws that are applied equally to all, regardless of social, economic, or political standing.[18] A holistic approach to public integrity encompasses this bedrock principle of the subordination of political power to the rule of law, and relies upon the proper functioning of institutional checks and balances to constrain government authority.

The four principles commonly identified as characteristic of societies governed by the rule of law are:[19]

1. The government and its officials, as well as public and private entities, are accountable under the law
2. Laws are clear, public, consistent, and just, and are applied equally to all in a manner that protects fundamental rights
3. The process through which laws are made, administered, and enforced is fair and efficient
4. Justice is delivered in a timely manner by a competent, ethical, and independent body that is reflective of the community which it serves

A key factor in assessing a country's adherence to the rule of law is the degree to which constraints on government power are respected and implemented through effective institutional checks and balances.[20] The unchecked exercise of discretion by public officials who are subject to little, if any, accountability is incompatible with a society governed by the rule of law.

[18] *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, United Nations, S/2004/616; http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/395/29/PDF/N0439529.pdf?OpenElement

[19] *What is the Rule of Law?,* World Justice Project; http://worldjusticeproject.org/what-rule-law

[20] *Rule of Law Index,* World Justice Project; http://www.worldjusticeproject.org/factors/constraints-government-power

6. Local context

6.1. Sint Maarten constitutional background

The current administrative and governance structures in place in Sint Maarten were formally institutionalized during the process for a more autonomous status that transformed the island from a part of the Netherlands Antilles into a country within the Kingdom of the Netherlands.

This process started in June 2000 when Sint Maarten held a constitutional referendum in accordance with the right of self-determination of peoples in which the inhabitants of Sint Maarten voted to become an autonomous country within the Kingdom of the Netherlands.[21] As part of this process, in 2005, Sint Maarten agreed to cooperate with The Netherlands in performing an analysis of government finances and outstanding debt and committed to an improvement program related to good governance and integrity which included the creation of a Code of Conduct for civil servants and Ministers.[22]

As a consequence of the dissolution of the Netherlands Antilles, Sint Maarten established several new Government institutions. Many of the former National Ordinances and National Decrees containing general measures of the Netherlands Antilles were accepted by the new autonomous country and were also supplemented by new island ordinances and decrees that were adopted in 10/10/10.[23] Today, Sint Maarten has autonomy over internal affairs, though it continues to be a part of the Kingdom of the Netherlands, with the Kingdom Government maintaining responsibility for, amongst others, defense and foreign relations.[24]

6.2. Structure of the Government of Sint Maarten

Sint Maarten was governed by the Island Regulation of the Netherlands Antilles as an island territory prior to 10/10/10. After achieving autonomy, Sint Maarten adopted a Constitution and established its own governance structure, with a Governor as Head of the Government, a Parliament, and a Council of Ministers headed by the PM.[25]

Governor

The Governor is a representative of the King and representative of the Kingdom Government and functions as the head of the GoSM. The continuing bond between Sint Maarten and the countries of the Kingdom of the Netherlands is partly reflected in the role of the Governor as a representative of the King.[26]

Parliament

The highest legislative body of Sint Maarten is the Parliament which consists of 15 members who are elected for a four-year period. The Parliament elects a President and Deputy President from its members.[27]

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[21] *Explanatory Memorandum*, Translation of the Official Publication of Sint Maarten, AB 2010 GT no.1; http://decentrale.regelgeving.overheid.nl/cvdr/images/Sint%20Maarten/i240625.pdf

[22] Dutch Government Websites; https://zoek.officielebekendmakingen.nl/kst-30300-IV-18-b1

[23] Landsverordening overgangsbepalingen van wetgeving en bestuur

[24] Charter for the Kingdom of the Netherlands, Article 3; http://www.arubaforeignaffairs.com/afa/readBlob.do?id=704

[25] Sint Maarten Parliament; http://www.sxmparliament.org

[26] Sint Maarten Cabinet of the Governor; http://www.kabgsxm.com

[27] Sint Maarten Parliament ; http://www.sxmparliament.org

The Council of Ministers

The Council of Ministers is led by the PM and consists of six additional Ministers. Each Minister heads one of seven Ministries which are established by National Ordinance. The Council of Ministers determines the policy of the GoSM. Each Minister is individually accountable to the Parliament. The Governor may attend meetings of the Council of Ministers in an advisory capacity. In practice, the Governor attends meetings of the Council of Ministers every three months. The PM and other Ministers are appointed and dismissed by National Decree, signed by the Governor and the PM, and remain in office as long as they have not resigned or maintain the confidence of the Parliament. In addition, Sint Maarten has a Minister Plenipotentiary who serves as a representative of the GoSM on the Kingdom Council of Ministers, which meets in The Hague, the Netherlands. The Minister Plenipotentiary maintains a permanent office in the Netherlands.[28]

According to the National Ordinance Structure and Organisation of National Government, each Ministry has a cabinet of the Minister which supports and provides political advice to the Minister.[29] The day-to-day management of the Ministry is the responsibility of the secretary general ("SG") who furthermore oversees the operations and results of each of the Ministries' departments. The SG is supported by, and is responsible for, the Executive Office which consists of the controller, the policy secretary and the financial policy positions. Each department within the Ministry is managed by a department head who is responsible for the performance of the department and reports directly to the SG. The Ministry furthermore contains executing agencies that are responsible for implementing the policies as determined by the Minister. Some Ministries contain inspectorate departments that are responsible for supervision of compliance with regulations.

6.2.1. Political and socioeconomic characteristics

Political characteristics

Sint Maarten has not held an election since it became an autonomous state, but the first election is scheduled for August 29, 2014.The three main current political ruling parties in Sint Maarten are the Democratic Party ("DP"); National Alliance ("NA") and the United People's party ("UP").[30] However, the ruling coalition has shifted two times since 2010, which has resulted in turnover among the Ministers on two different occasions in the past four years.[31]

Socioeconomic characteristics

Economy

Until the 1950s, the economy of Sint Maarten was consisted mostly of two industries: farming and the exploitation of salt pans. The first colonists cultivated food crops but quickly transitioned to developing trade plantations for tobacco, indigo, cotton and sugar cane. The salt deposits found in Sint Maarten fuelled an export industry for many years that supplied salt to Europe and North America. By the mid-20th century, however, the operations of the salt pans had become unprofitable and this ceased to be an industry

[28] Sint Maarten Parliament; http://www.sxmparliament.org

[29] Landsverordening inrichting organisatie landsoverheid

[30] Sint Maarten Parliament; http://www.sxmparliament.org

[31] "Kabinet op Sint Maarten gevalle," *Nederlandse Omroep Stichting*, May 6, 2013; http:// www.nos.nl/artikel/503770-kabinet-op-sintmaarten-gevallen.html; "Drie jaar na 10-10-10: Vellen en Opstaan op Sint Maarten," *Caribisch Netwerk*, October 9, 2013; http://caribischnetwerk.ntr.nl/2013/10/09/drie-jaar-na-10-10-10-vallen-en-opstaan-op-sint-maarten

on the island.[32] By the early 1980s, tourism had taken over as the main source of revenue for the country, and currently, around 80% of the economy is related to tourism. [33] [34]

Culture

The range of cultural influences in Sint Maarten is reflected in the number of languages spoken and the many different nationalities present on the island. The official language of Sint Maarten is both Dutch and English, though Spanish, French, Creole, Papiamento language and other languages are also spoken. Although Dutch is one of the official languages, it is not widely spoken and primarily used in official documents. It is estimated that there are over 90 different nationalities represented in Sint Maarten.[35]

Many students in Sint Maarten choose to study abroad in the Netherlands and the United States, though some opt to travel to surrounding islands and other nearby countries. There is an apparent "brain drain" of educated youth who do not return to Sint Maarten to work after studying abroad.[36]

Close intersection between business, citizens and the public sector

Sint Maarten is characterized by closely-knit social networks that play an important role in the island's economic and political affairs, according to reports made to the Inquiry team. Despite the political transformations associated with obtaining autonomous status, the political culture in Sint Maarten remains deeply embedded in a tradition of local island politics. The small size of the island has allowed a culture of patronage politics to persist, and politicians actively interact amongst themselves, business owners and civil society. It is not uncommon for citizens to call members of parliament, Ministers, and other officials directly, and they will frequently stop them on the street to express concerns, displeasure or request favors. The political culture of the island is also influenced by prominent families that are well-connected to the Government – often through social and familial ties. Such an intertwined and interactive political culture often emerges in microstates like Sint Maarten with small territories (approximately 16 square miles) and modest populations (approximately 40,000 inhabitants).[37]

It is not uncommon for individuals in business and Government circles to be inter-connected through one or more social or familial networks, and actions by civil servants or elected officials often impact family members or close friends. For example, Government officials in charge of overseeing public procurements may have personal relationships with many of the vendors seeking to win a contract. Furthermore, the limited size of the working population results in a limited pool of skilled resources which adversely affects the competition.

The tight-knit community in Sint Maarten also facilitates the rapid dissemination of information through informal channels, and many details about Government officials and public proceedings spread quickly verbally and through blogs and other social media venues.

It is this close interconnection between the public and private sector that creates a heightened risk of conflicts of interest, abuse of office, and unethical practices, as well as a range of procurement fraud,

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[32] "St. Maarten Yesterday," *St. Maarten the Friendly Island*; http://www.stmartinisland.org/destination-st-martin/st-martin-history.html

[33] *Id.*

[34] *Country Report Sint Maarten,* Rabobank Economic Research Department; https://economics.rabobank.com/publications/2013/september/country-report-sint-maarten/

[35] "Preliminary Results Census 2011 – Thirty Percent Population Born in St. Maarten," *Today*, October 15, 1012; http://www.todaysxm.com/2012/10/15/preliminary-results-census-2011-thirty-percent-population-was-born-in-st-maarten/

[36] *The Situation of Children and Adolescents in Sint* Maarten, UNICEF; http://www.unicef.nl/media/1359112/sint_maarten_sitan_public_version__28english_29.pdf

[37] *Sint Maarten Country Profile,* CIA Fact Book; https://www.cia.gov/library/publications/the-world-factbook/geos/sk.html

corruption and other forms of misconduct - all of which undermine public trust and confidence in Government. In fact, nothing can be more corrosive to the support that civil society has in Government institutions than integrity breaches. The correlation is clear - the lower a country's maturity level in integrity, the less attractive it is to investors. Accordingly, it is the local context of Sint Maarten, with its dense social, economic, and political interconnectivity that is characteristic of a "microstate" that places a premium on the needs for a robust integrity architecture - which is precisely the underlying rationale for this current Inquiry.

7. Assessment of the integrity architecture of the Government of Sint Maarten

7.1. Global standards and leading practices

The Inquiry team conducted a broad survey of global public integrity standards and leading governance practices utilized in the international community to develop a set of relevant benchmarks for the Inquiry. The Inquiry team relied on these benchmarks to guide their research and inform the findings and recommendations that are offered throughout the Report. The global standards and leading practices referred to by the Inquiry team reflect the established legal and policy frameworks at the forefront of public and private sector efforts to strengthen governance and enhance public integrity around the globe. Collectively, they serve as a framework through which countries, international organizations, the business community, and civil society coordinate and advance an agenda of good governance under the rule of law.

Foremost among these global standards is the United Nations Convention Against Corruption ("UNCAC" or "Convention"), which entered into force in 2005 and represents a watershed in the development of a global consensus on public integrity. With 171 state parties, UNCAC is the most widely subscribed to anti-corruption and public integrity standard, and establishes an international benchmark for the actions nation states must take to combat public corruption and enhance integrity and efficiency in public administration.

The Convention outlines a series of mandatory, strongly encouraged, and optional measures to prevent, deter, punish, and mitigate the harm caused by corruption. The provisions outlined in the Convention are intended to be implemented in accordance with the principles of a state's domestic law, and therefore parties generally have some flexibility to interpret obligations within the context of their national legal system.[38]

A number of the provisions in UNCAC focus on preventative measures, including institutional structures, policies, and procedures that countries should put in place to mitigate the risk of corruption. For example, under Chapter II of the Convention, countries are required to implement:

> *"Preventive policies, such as the establishment of anticorruption bodies and enhanced transparency in the financing of election campaigns and political parties. States must endeavor to ensure that their public services are subject to safeguards that promote efficiency, transparency and recruitment based on merit. Once recruited, public servants should be subject to codes of conduct, requirements for financial and other disclosures, and appropriate disciplinary measures. Transparency and accountability in matters of public finance must also be promoted, and specific requirements are established for the prevention of corruption, in the particularly critical areas of the public sector, such as the judiciary and public procurement. Those who use public services must expect a high standard of conduct from their public servants. Preventing public corruption also requires an effort from all members of society at large. For these*

[38] *United Nations Convention Against Corruption*, United Nations Office on Drugs and Crime; http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

reasons, the Convention calls on countries to promote actively the involvement of non-governmental and community-based organizations, as well as other elements of civil society, and to raise public awareness of corruption and what can be done about it."

The provisions described in Chapter II of UNCAC are the focus, although not exclusively, of the Inquiry, with supplementary reference as needed to other chapters of the Convention that deal with criminalization of integrity-related offenses, international cooperation, and asset recovery.

The development of UNCAC is the result of a progression of international instruments and standards that emerged over the last 20 years which sought to address specific aspects of public integrity and anti-corruption regulation. Recognizing the complexity of the challenge, and the need to involve all sectors of society, these instruments and standards offer guidance and establish requirements for national and transnational government authorities, private sector entities, and civil society stakeholders. In addition to UNCAC, the Inquiry team consulted a number of other global standards and leading practices of particular relevance to the governance challenges facing Sint Maarten such as the United Nations Commission on International Trade Law ("UNCITRAL") Model Law on Procurement of Goods, Construction and Services with Guide to Enactment, International Organization of Supreme Audit Institutions INTOSAI 9100 Guidelines for Internal Control Standards for the Public Sector, Open Government Partnership, OECD Guidelines for Managing Conflicts of Interest in the Public Sector, Nevada Gaming Control Board, WEF PACI Principles for Countering Bribery, OECD Guidelines on Corporate Governance of State-owned Enterprises, and many more. These are just a sampling of the types of instruments referenced by the Inquiry team, and a more complete listing can be found in ***Appendix B***. Principles and guidance from each of these targeted instruments are integrated into the assessment conducted by the Inquiry team, and observations and recommendations related to these vulnerable sectors are embedded within the relevant element of the integrity architecture assessment framework.

The following graphic outlines the seven elements of a strong integrity architecture constituting the public integrity architecture assessment framework used by the Inquiry team in agreement with the Steering Committee:

Each element is designed to aggregate a broad range of leading practices distilled from the variety of standards noted above including UNCAC and other more targeted standards related to specific issues such as public procurement, transparency, conflicts of interest, enforcement, and more. While strengthening public integrity may be considered an important goal in and of itself, a strong integrity architecture can assist a country in achieving the following practical objectives:

- **Improve the economic and developmental condition for the people of Sint Maarten:** Ensuring that public funds are used for their intended purposes is a core and central responsibility of government in the advancement of the public interest and is the most important overriding reason for advancing the integrity agenda in Sint Maarten. Governments, including the GoSM, administer public funds for a broad range of interests including education, health care, agriculture, environmental protection, public safety and a range of government service delivery. The

government's stewardship of public funds has a direct and material impact on its citizens' health, welfare, and development. Corruption and lack of integrity in the administration of funds is a cancer that plagues governments around the world, and is widely acknowledged as a major impediment to development effectiveness. It is this recognition that has lead not only to global support for combatting corruption, but the development of international standards on what steps a government must take to strengthen integrity. These standards form the basis for this current Inquiry and the foundation for the various procedural, regulatory and legal changes recommended in this Report.[39]

- **Strengthen domestic political support:** A strong public integrity framework that is aligned with the seven elements above can help improve public service delivery and raise public trust in government, which is often closely correlated with heightened domestic political support. For example, an effective procurement and financial management system can improve the efficiency and quality of public procurements, which in turn improves the delivery of public services. Appropriate transparency and public communications procedures can also help strengthen public trust in government and contribute to greater domestic political support and stronger democratic institutions.

- **Improve international reputation**: A number of global corruption indices exist that rank countries on their level of perceived corruption and good governance. These indices affect the international reputation of a country and may deter growth and investment into a market. While Sint Maarten is not yet rated on the Transparency International's Corruption Perception Index ("CPI"), this index is a globally-recognized tool for benchmarking a country's reputation for integrity. The Inquiry team's assessment framework used in conducting this work addresses many of the factors that can influence a country's CPI score, and indeed countries that perform well on the CPI index are generally those that demonstrate strong performance across the seven integrity pillars outlined above. Although the CPI index is only one measurement of public integrity, it plays an important role in shaping the public narrative around a country's reputation for integrity - both domestically and internationally. The Inquiry team uses the importance of the underlying CPI factors as a proxy for the GoSM given the CPI's worldwide acceptance.

  Another key reference point is the World Bank's Ease of Doing Business Index. Although the World Bank does not currently score Sint Maarten in the Ease of Doing Business Index, the country is listed in the database and it is expected that both the CPI and the Ease of Doing Business Index will contain ratings for the Sint Maarten in the future. Accordingly, it is critically important for the GoSM to understand that governance indices will, in the future, have a significant impact on the international reputation and standing of the GoSM in the global community.

- **Attract foreign investment:** Heightened global anti-corruption enforcement by national and international regulators has put substantial pressure on companies to avoid entering markets that are perceived to be prone to corruption. Multi-national companies have become very sophisticated in making market entry investment decisions, and will often base investment decisions on factors that are closely aligned with the elements contained in the integrity assessment framework, including, for example, a country's regulatory framework and enforcement apparatus. Countries with policies, procedures, and practices in line with the seven elements above will often present a more favorable investment environment for companies seeking to expand their operations.

[39] "Corruption major impediment to advancing development, warn UN officials," *UN News Centre*; December 9, 2009; http://www.un.org/apps/news/story.asp?NewsID=33190#.U9mci_ldV1Y

The integrity architecture assessment framework used by the Inquiry team recognizes that improving public integrity is a context-specific exercise that varies according to the historical, social, economic, and political dynamics in a country. As such, the Inquiry team has tailored its approach to respond to the specific aspects of integrity highlighted in the Invitation to Tender issued by the Governor of Sint Maarten on December 20, 2013. The following analysis uses the integrity architecture assessment framework outlined above to identify gaps in the GoSM integrity architecture and articulates relevant recommendations to align Sint Maarten practices with international expectations, and thereby position the GoSM to improve its international reputation, attract foreign investment, and strengthen domestic political support.

7.2. Leadership, commitment, and devotion of resources

7.2.1. Description aligned to global standards and leading practices[40]

As recognized and affirmed by leading conventions and treaties noted in this Report, leadership, commitment, and devotion of resources deals specifically with the strategic vision, tone at the top, dedication of staff/government entities, and overall organizational structure within a government. Integrity initiatives should be part of the government's strategic plan, and goals should be communicated by the highest levels of leadership to all relevant agencies and departments. Integrity and anti-corruption strategies are unlikely to succeed without an unwavering demonstration of principles of integrity by the highest levels of leadership on down. Furthermore, public integrity initiatives are most successful when a government has dedicated anti-corruption specialists whose specific mission is to combat corruption and increase integrity, *and* the specialists have adequate tools, resources, authority, independence, and access within the government to effectively pursue their mission. Anti-corruption specialists and other employees in a leadership position should work together to:

- At the highest levels of government, consistently and continuously promote and demonstrate principles of integrity, transparency, and anti-corruption in accordance with anti-corruption laws, executive orders, and international standards.
- Allocate sufficient resources to effectively combat corruption within all relevant agencies and departments.
- Adopt an unequivocal stance against corruption within the government, and reinforce this position through internal and external communications.
- Implement and promote controls to combat corruption.
- Disseminate relevant information on the government's strategic vision, goals, policies and procedures, requirements of existing laws, executive orders, international standards/treaties, and anti-corruption data.
- Remain focused on, and communicate the importance of, training and education that is appropriately tailored to different government functions.
- Allow for transparent information sharing between all agencies and departments to leverage anti-corruption resources and facilitate the prevention and detection of corrupt activities.
- Pursue fair action against corrupt actors and enforce accountability throughout the government.
- Instill pride in civil servants and foster an environment with high morale.

[40] The key features related to ***Leadership, commitment, and devotion of resources*** that are highlighted in this section represent an aggregation of relevant guidance contained in the leading global standards and practices referenced in ***Appendix B***.

7.2.2. Observations and recommendations

In any country, integrity and anti-corruption strategies are less likely to succeed without demonstrated leadership at the highest levels of government. Senior public officials throughout the GoSM, including some Ministers, have failed to consistently set a "tone at the top" that exemplifies the highest standards of personal and professional integrity. While initial steps taken to create an Integrity Bureau are promising, the overall lack of sufficient resources dedicated to this and the visible lapses of integrity of senior level officials within the GoSM contribute to an overall finding of low maturity for this element as compared to global benchmarks.

The following were identified as the key observations affecting the leadership, commitment, and devotion of resources within the GoSM, according to interviews conducted and documents analyzed by the Inquiry team:

- **Inappropriate use of ministerial discretion and inconsistent demonstration of integrity**: Many civil servants and those outside Government do not appear to have confidence in the integrity of their elected leaders, according to interviews and research of open sources. This lack of confidence often stems from apparent inappropriate interference by Ministers with the routine duties of civil servants or widely reported allegations of corruption that have not resulted in enforcement action, according to reports made by interviewees to the Inquiry team and open source information.
- **Limited operational capacity of the Integrity Bureau:** The GoSM has made strides to form an Integrity Bureau ("Bureau" or "BISM") which is a positive step towards better governance; however the Bureau should be restructured to promote independence and effectiveness.
- **No anonymous, administrative whistleblower provisions:** Although reporting mechanisms exist, provisions to ensure anonymity of complainants do not appear to be present within the GoSM, which may deter complainants from reporting integrity breaches.
- **Excessive discretion in lifting moratoriums on economic licenses and in amending policy:** At times, analysis suggests that certain Ministers act in a manner which appears to place personal or political interests ahead of the interests of the people, particularly in lifting moratoriums and amending policy.
- **Low level of commitment to administration of asset declarations for Ministers**: Asset declarations are not consistently administered according to the National Ordinance Promotion to the Integrity of Ministers ("Integrity Ordinance"). Limited checks on declarations appear to be conducted and sanctions do not appear to be enforced for inaccurate declarations, according to documents analyzed and interviewees.

Leadership, commitment, and devotion of resources Inappropriate use of ministerial discretion and inconsistent demonstration of integrity	
Observations	Ministers should be expected to exercise their discretion in accordance with their public duties and obligations and refrain from using their influence and authority to further private interests. However, it appears that at times some Ministers in the GoSM act according to their private interests, and integrity does not always appear to be demonstrated at the highest levels of Government. Several interviewees reported to the Inquiry team that they believed leadership is the main offender

when it comes to integrity breaches and frequently cited publicly known incidents involving former Ministers and parliament members allegedly engaging in misconduct with apparent impunity while in office. According to interviewees across Ministries, there is a perception that certain Ministers act with certain disregard for regulation and procedures which may reduce morale throughout Ministries.

Sint Maarten is a small country, and Ministers and other political leadership interact more frequently with the community compared to other, larger countries. In this setting, it was reported to the Inquiry team by interviewees that it is highly likely for a family member or a friend of a Minister to call the Minister with a complaint or request. The Minister may leverage their influence to interfere with and disrupt the daily activities of their departments in order to satisfy the friend or family member. A Minister noted the level of influence to the Inquiry team by stating, "I scare myself every day when I realize the power I have – it's not normal and it's not good."

Many examples of alleged integrity breaches by senior officials were provided to the Inquiry team. Select examples are included below that were used as a basis by the interviewee to demonstrate the perceived lack of integrity at the top of the organization. The Inquiry team did not forensically test or investigate these allegations. However, whether true or not, the perception of a weak tone at the top can have a deleterious impact on the effectiveness of a Government-wide integrity program, and the Government should take action to reverse this perception.

Subjective treatment of Advices

A Minister has the power to decide how to sign off on an Advice, an official document that records the decision of Government leadership. The individual who drafts the Advice as well as others required to sign off incorporate their proposed action, and according to interviewees, the Minister has ultimate authority whether to approve or deny the Advice.

Many employees reported that the authority of a Minister to ignore Advices for extended periods of time or to act on Advices in a seemingly subjective manner negatively impacts the quality of work performed within the Ministry. A Ministry of Justice official noted the perceived lack of ability to complete their function effectively by stating, "I make decisions but I'm really a puppet in between. I'm not able to do what I want to do. They wilfully keep us lame – we are just there but we have no power. I know I can never advance because I say too much." Similarly, a Ministry Controller stated, "controllers have no say – we have no say. The Minister can just pull [an Advice] out and sign off on it and then we have to pull money from other budgeted programs to pay for it." A department head stated, "it is difficult to work if you always have to wonder if [the] Minister is going to raise an issue."

Negative Advices issued based on lack of existing budget, lack of required approvals to execute large infrastructure projects without public tender, and deviations from policy are frequently overruled, according to interviewees in various Ministries.

While Ministers hold decision-making authority for their Ministry, one Minister

instructed their Ministry not to issue negative Advices without first discussing it with the Minister, according to interviewees. This was reported by three officials within that Ministry who said that the Minister issued this rule to the entire Ministry. One of those officials stated to the Inquiry team that this appears to be an attempt to avoid negative Advices being documented. When asked why an employee would not issue the negative Advice, the official stated to the Inquiry team, "we can't really get fired, but they can make your life miserable. It's not a written policy but [the Minister] told the Ministry across the board [so I have to comply]…I'm just sick of getting threatened." For more information on Advices, see ***Systems and information sharing***.

Potential abuse of power

Based on interviews conducted, Ministers may exert their influence and disrupt daily activities of Government departments, at times hindering these departments from effectively carrying out their functions.

Inspections/controls

Many inspections/controls team members stated to the Inquiry team that senior officials such as Ministers, cabinet members, and SGs often interfered when inspections/controls were conducted on prominent businesses or businesses tied to prominent politicians or Government employees. An inspections/controls team member stated to the Inquiry team,

> *"the biggest challenge in doing day to day job is politicians. This year, it's even worse than the other three years because it is elections this year. Ministers get involved in day to day operations and you can't perform what you want to do. It hurts you to know that as a citizen and Government worker you are out there for the interest of the Government, and if you can only give fines to middle class people, it's not fair. All big fish get away and do what they want. This is big obstacle in the department, the guys are very upset about it, but at the end of the day the Minister is the boss."*

Examples provided to the Inquiry team of senior level interference are detailed below:

- A Government official provided a firsthand account of an incident that occurred on the day of a nightclub opening. Labor, fire, and food safety inspections needed to be completed, and over 800 people were expected to attend, according to the official. Following the inspection/control, the team was inclined to "close it down" as the proper fire extinguishers were not in place and no emergency exit existed which was a major concern as so many people were expected. Individuals were also identified working at the nightclub without work permits. The official recounted to the Inquiry team that a representative of the business stated, "we paid the Minister so much…you can't close us down." The official told the Inquiry team that as a result, rather than closing down the nightclub and stopping the opening, quick fixes had to be made so that the opening could proceed as planned.

- A Government official provided the Inquiry team with a firsthand account of an incident regarding a vessel that had expired permits. An inspector was called by a former Commissioner directing the inspection to stop since the former Commissioner was in "Puerto Rico with the owner of that vessel." Based on another firsthand account by a member of an inspections/controls team, a cabinet member called the team member to stop an inspection/control on a foundation that has a well-known member of the community on its Board of Directors. The foundation was identified to be operating without the necessary permits. The board member reportedly called the Cabinet Member who called the Control team and told them to stop the inspection/control and to call the board member to apologize, according to the team member.
- A former immigration officer stated that they would often get calls from senior officials to "let people go" upon identification of individuals who did not possess the required residency permits. According to the official, those individuals would "suddenly" receive the required permits.
- Another inspector explained that during election time the requests from Ministers increase, "lately I'm getting a lot of cases dropped off by the Minister. Complaints reach [the Minister] by supporters and [the Minister] wants something to be done…[the Minister] is using the inspectorate to get people to like [the Minister]. Apparently it is normal on the island."
- An official stated that inspections were conducted which led to the identification of illegal construction in two instances since 2013. The Inquiry team obtained demolition orders that were approved and signed off on for these two instances in May and November 2013. According to a firsthand account, both demolitions were stopped by the Minister on the day of execution as there was "no political appetite for the demolishing of the building(s) sections(s) in question."
- An official provided a firsthand account about an inspection/control conducted in a restaurant where the kitchen was not sufficiently clean and overall hygiene was an issue. Furthermore, the restaurant was selling liquor without a liquor license. The official stated to the Inquiry team that the multidisciplinary taskforce present was going to "shut down" the restaurant. The team spoke with the owner and explained that they needed to close the restaurant, and shortly after the supervisor of the team received a call from a high official in the Ministry saying "you need to stop and leave that alone." The official stated that they were personally aware of situations where an SG or Minister told the inspections/controls teams to stop sanctions "more than ten times" this year.
- An official provided a firsthand account of a control conducted on a restaurant operating in a parking lot. The inspector asked to see the license and the owner presented a business license and an operational license for a different location than the restaurant. The owner stated that they had changed addresses but the inspector explained that a new application needed to be submitted for an operational license as fire, safety, building, and other checks

needed to be re-done on the new location. The next morning, the official stated that a memo was provided to the inspector saying that the business owner had complained of harassment. The inspector reportedly provided eight witnesses from the multidisciplinary inspection team who had a different account. Ultimately, the official stated that the same high official referenced above told the inspector to "not go too far" on issuing a report on the illegal operation of the restaurant. The official stated that the high official and the business owner were known friends on the island, and therefore, the inspections/control team could not effectively enforce.

- According to three department heads/former department heads, an employee within the GoSM had a vending license that expired in 2007. The license was originally issued before the employee became a civil servant. These three officials confirmed that the employee continues to work in the Ministry while maintaining the vending business with an expired license. To date, no action appears to have been taken by the GoSM and specifically inspections/controls teams have not closed down the business despite an expired license for seven years as well as a problematic secondary activity and a potential conflict of interest.
- An inspector described a firsthand account of a control at a hotel. According to the inspector, on the way to the hotel, a senior official called the hotel owner to tell them the team was on their way. The inspector stated to the Inquiry team that it appeared that the senior official was giving the business an unfair warning of the control.
- A restaurant owned by a close relative of a Minister was inspected in February 2013. According to the Inspection report review by the inquiry team, the business owner was suspected of, "violation of the National Decree Foreigner Labor article 2 paragraph 1, Labor Regulation article 9 paragraph 1a and National Decree Registration of Labor Force article 28 paragraph 1 and 29."[41]

  The report stated that the inspector witnessed eight people working in the restaurant, four of whom did not have valid work permits. The report details the personal information for each of these four individuals, all four of whom were French nationals. The inspector also asked the business owner for their business registration, work roster and personnel list as required by National Decree Registration of Labor Force. The business owner was unable to produce these documents, according to the report. The owner stated that they were waiting for an operational license in order to register the business with Labor Affairs. The owner stated in writing on the report that they had been waiting for the license since March 2012 and were told that "several departments did not complete its part." The owner wrote that they had been in operation for two months.[42]

  According to a firsthand account, the Minister made a call the next day to an

[41] Labor Inspections Report, February 2013
[42] *Id.*

official stating, "why are you harassing my [close relative]?" and the Minister reportedly indicated that the inspection should be terminated. When the Inquiry team asked the official if the Minister normally gets involved in inspections that do not deal with their relatives, the official said no. A VSA official who had direct knowledge of the inspection stated that the business received its operational license and was then able to obtain work permits for the four French nationals who all "received work permits very quickly." The National Ordinance Labor of Foreigners articles 2 and 19 states that an employer is not allowed to employ a person for which he or she does not have a work permit. Any violations are punishable with three month's imprisonment or a fine of ANG 100.000.[43] No sanctions were placed on the business or business owner, according to VSA officials.

License/permit requests

Based on interviews conducted, without needing to provide justification, Ministers are able to push through licenses/permits quickly, disregarding the existing queue of applications. A department head stated that in their experience, "all expedited processes come through from the Minister. If the Minister puts pressure on the staff, the staff will make it go through faster." Another department head stated that regarding their department, instructions from Ministers happen "more than we would like." Another department head said, "we get requests from Ministers or Cabinets to push through requests faster. A lot of department heads or directors are scared." A fourth department head stated to the Inquiry team that they frequently get calls from the Minister to expedite activities based on calls the Minister received from the local population making it difficult for the department to be efficient. The department head stated, "it's people within organization that are creating a system that basically make integrity issues acceptable to a large group, they do not see it anymore, and it's common."

The Inquiry team was also provided firsthand accounts of other high officials putting pressure on departments and exerting their influence to go against the regular process. According to a firsthand account from a Government official, an individual came to a civil servant to register jet skis without having the proper documentation. The civil servant refused, and the individual called a high official in front of the civil servant who was reportedly a "close friend." The high official proceeded to come to meet the civil servant and demand that the jet skis be registered, according to the civil servant.

During an interview with the Inquiry team and during the work day on a weekday, a business owner received a call from the secretary/personal assistant of a Minister's office calling on behalf of the Minister asking for a political donation for their party. While the Inquiry team was sitting with the business owner, the business owner stated, "the check is ready." Following the call, the business owner stated to the Inquiry team that they did not support the party of the person who called. When the Inquiry team asked the business owner why they would provide a

[43] Landsverordening Arbeid Vreemdelingen

donation to a party they did not support they stated, "the fear is that next time you need a permit or cooperation, you won't get it. Something in the future will be withheld."

Exemption letters

Based on interviews and documents obtained, Ministers circumvent policy by issuing "comfort letters" or "exemption letters" which reportedly permit businesses, buildings, or boats to operate in the absence of necessary licenses/permits. Interviewees stated that laws and regulations remain vague concerning this practice, and it is unclear as to whether or not the Minister has the authority to issue such exemptions.

Four examples of exemption letters, were obtained by the Inquiry team dated between 2012 and 2013. These letters were signed by a former Minister for various businesses offering four months to "remain operational pending the issuance of the required license(s)." The letters indicate that the businesses were already operational despite lacking the required licenses. Once this was discovered, it does not appear that any sanction was placed on the business for operating without a license, but rather the exemption letter was issued, legalizing operations. The justification provided in the letters about the issuance of exemptions reads as follows:

1. *"That you have already applied for the necessary license(s)*
2. *That the likelihood of your license(s) being issued at the end of the application process is high*
3. *That you will immediately take necessary action to ensure that you comply with all requirements of the license(s)*
4. *That your sole proprietorship is the main source of income and thus support for you and your family, the closure of which would result in severe financial hardship for your family*
5. *That we recognize the challenging economic circumstances that our island is presently experiencing, the result of which could possibly result in job creation, wherever possible*
6. *That closure of your business at this critical stage, and the resultant financial setbacks, could potentially destroy your ability to resume/reopen your business in the future when the required license(s) have been issued."*[44]

Based on interviews with TEZVT officials, it appears that many businesses that would be eligible for exemption letters under the criteria above do not receive exemption letters. Due to the absence of published and authorized criteria around selecting which businesses may receive exemption letters, it appears that Ministers may choose to issue exemption letters for businesses at their discretion.

[44] Four exemption letters dated between 2012 and 2013

The criteria above stipulate that an exemption letter can be issued if the likelihood of the license being issued is "high", but instances were cited to the Inquiry team of this requirement being deviated from. A former Minister issued exemption letters to roadside vendors to allow them to operate without the appropriate business license as the processing of the license was taking a long time, according to a firsthand account from an official. For vendors to operate, checks also need to be completed by Fire, Health, and VROMI and none of these checks had occurred, yet the Minister still provided them with the letter to operate their businesses, according to the official. The official also stated that one of the requirements for a vending license is Dutch citizenship and many of these roadside owners did not have Dutch citizenship so a license could not be granted.[45] There was an expiration date on the letter, but upon expiration, the department head stated to the Inquiry team that nothing was done to shut down the vendors even though they did not obtain a valid business license.

Similarly, another official stated to the Inquiry team that exemption letters were issued to businesses for dredging permits, and due to this exemption letter most of the big marinas do not have the necessary dredging permits needed. This official, who provided a firsthand account of this incident, stated that initial inspections had not occurred to see if these marinas could obtain the permit so the likelihood that the permit would be granted was unclear at the time the exemption letters were issued.

Low levels of public trust

Interviewees stated to the Inquiry team that they were frustrated because many assessments of the Government have occurred in the past and – in their opinion – no action was taken to implement recommendations from previous reports. Many interviewees made statements to the Inquiry team to the effect of, "your report will end up in a drawer like the others." In light of this, multiple interviewees stated that they did not want to disclose information to the Inquiry team because they thought, "it won't go anywhere." Many interviewees stated to the Inquiry team that they hoped the report would be made public so that society could hold the Government accountable to the recommendations issued.

Many civil servants interviewed reported not having confidence in Government decision makers and do not believe that decision makers consistently act with integrity. Due to this, many employees reported to the Inquiry team that they do not need to carry out their functions with integrity if their leadership chooses not to do so themselves.

Interviewees stated to the Inquiry team that a series of public scandals involving Ministers and parliamentarians (some of which are further detailed in ***Appendix D)*** have caused many to question the integrity of their leadership.

A TEZVT official stated, "there are a lot of people out there breaking the law and

[45] *Vending and Events Licenses*, Ministry of TEZVT; http://www.sintmaartengov.org/government/TEZVT/Department-of-Economic-Licenses/Pages/Vending-and-Events-Licenses.aspx

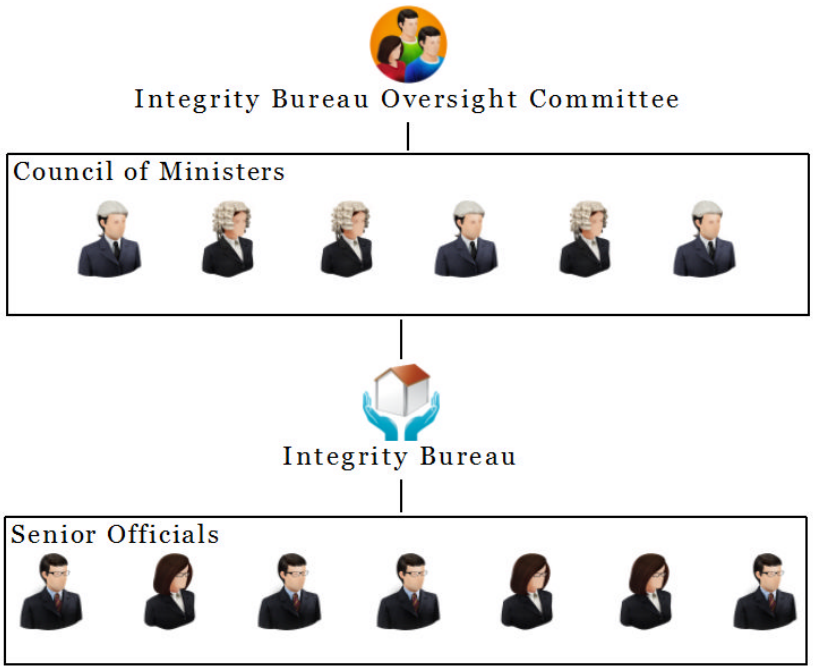
[they] will continue breaking the law because no incentive to stop." The lack of action taken against these leaders risks demonstrating to employees that integrity breaches are acceptable. These widely-known scandals were mentioned in the majority of interviews conducted by the Inquiry team, and many department heads stated to the Inquiry team that even if they wanted to create a department that had zero tolerance for corruption, they believed they would receive little support from Ministry leadership – and in some cases, opposition. Furthermore, many interviewees across Ministries stated that they believed the GoSM was not committed to enforcement and that they did not receive communications from the Government that action was being taken to resolve widely speculated integrity breaches. While the investigation of these cases was outside the mandate of the Inquiry team, the frequency of mentions of these cases in interviews underscore the serious lack of support that the political leadership has around the issue of integrity and tone at the top.

Recommendations

Commit to demonstrating integrity at the highest levels of leadership and promoting accountability for misconduct regardless of political standing. In order to demonstrate this commitment, transform the existing integrity initiative into an official "Fight Against Corruption" campaign focused on increasing enforcement activities. As a first indication of commitment to fighting corruption, adhere to the principles of UNCAC and publicly commit to the implementation of the principles and procedures of UNCAC: The Government should make every effort to improve its public perception and demonstrate its commitment to fighting corruption. Once the Government declares its intention to pursue an integrity initiative, it must follow up on its commitments and demonstrate progress. Bold statements without concrete actions will undermine public trust. Hold Ministers to a standard of objectivity. Procedures should be in place for an employee of a Ministry to complain if they believe a Minister is abusing his or her discretion in the performance of their duty, circumventing approved procedures or unreasonable interference with the duties of a civil servant. Gross deviations should be grounds for dismissal or public censure. Training on these procedures should be part of the annual ethics training program.

Create an Integrity Project Management Office ("PMO") to serve under the Council of Ministers to implement the recommendations included within this Report: The PMO should be primarily staffed with senior officials with the requisite authority to institute implementation efforts within the Ministries. The Integrity Bureau should convene Integrity PMO meetings and should work with the PMO to create consistent implementation plans. It is imperative that some members of the PMO be Government officials to facilitate access to information and inter-ministerial cooperation. The Council of Ministers should ultimately be responsible for driving the implementation of recommendations.

Integrity Project Management Office



The Integrity Bureau Oversight Committee (described below) should oversee and monitor progress of the Integrity PMO in implementing recommendations in this Report. The Council of Ministers should submit and publish quarterly progress updates and the Oversight Committee should submit and publish quarterly responses to the updates.

Engage external, independent companies to administer surveys assessing public sentiment, level of corruption within the Government, and effectiveness of integrity and anti-corruption initiatives: Capture public sentiment through externally-administered surveys and media/social media monitoring to evaluate the current baseline sentiment. Identify key integrity issues based on public perception and devise strategies for targeted action to address the concerns identified. Integrate these strategies into the GoSM's Fight Against Corruption. Publish these strategies and information on the findings of the surveys and pulse monitoring on the Fight Against Corruption website. The Government should not conduct surveys to assess the level of corruption within the Government on its own behalf but rather work with external, independent companies to administer surveys to accurately assess public sentiment and the perceived level of integrity within the Government and SoCs. Surveys should be administered for personnel, the public, civil society, and the private sector to identify issues of concern across stakeholders.

The Government should engage an outside firm to perform ongoing sentiment analysis and media/social media monitoring on key areas of concern that the Government should target to aid in the Fight Against Corruption and to increase overall public perception. Similarly, the Government should continue to

systematically monitor public perception, consider trends, judge how messages are received, and gauge improvements in perception over time in order to measure the effectiveness of the Fight Against Corruption.

Leadership, commitment, and devotion of resources
Limited operational capacity of the Integrity Bureau

Observations

The Integrity Bureau is currently in the process of being established through the Ministry of General Affairs. According to information received from the Integrity Bureau, their function will be the following:

> *"BISM is an Integrity expertise center and managing entity which will be in charge of Integrity- Reports Handling, Integrity Risk assessments, Integrity trends analysis, Advice, Integrity Training and promoting Integrity Awareness and – Education for the public service of Sint Maarten. The Organizational structure for BISM is presented as an independent bureau with its own duties directly under the Minister responsible for Integrity. This positioning guarantees a specialized and dedicated approach, which otherwise would be diminished if approached as a combined/additional task and ensures its independence and the carrying out of its functions with the necessary resources and autonomy. Secretaries General and Department Heads continue to play an important role in Integrity management within the Ministries, but get support from the independent Integrity Bureau.*
>
> *The department will function independently, directly under the Minister of General Affairs. This structure will ensure that this entity is truly of an independent nature. The Department Head will report directly to the Minister responsible for Integrity Policy, which is the Minister of General Affairs. Ultimately checks and balances for the Bureau can occur via the High Councils of State, in particular the Ombudsman and General Audit Chamber. Complaints about the Bureau or the outcome of investigations related to Integrity violations can also be directed to the Bureau of the Ombudsman; after the terms of all internal procedures (e.g. appeals via civil servants court or court of first instance) have been met. The Chamber is authorized to carry out certain audits on its own initiative, including investigation of matters of integrity of political functionaries or civil servants (art. 33 Lvo AR)."*[46]

Anyone (including civilians) can file a complaint against a civil servant to the Integrity Bureau but no complaints can be made against the SoCs, according to an interview with a Ministry of General Affairs official. The official stated that currently no legislation exists to support the establishment of the Integrity Bureau,

[46] Sint Maarten Integrity Bureau, Government of Sint Maarten; http://integritysxmgov.org/index.php/about-integrity-sint-maarten

but legislation is in the process of being amended. Despite no apparent legislation to support the enactment of the Integrity Bureau, it currently has a location which it is renting, a job search is being conducted for a department head and a researcher, and activities to set up the Bureau appear to be continuing under the Ministry of General Affairs and the Department of Interior and Kingdom Relations ("BAK") department. Government officials stated that they believed that while the Bureau claims to be "truly" independent, it does not appear that the Integrity Bureau would be able to be independent as it falls under the Minister of General Affairs.

The project originally began with funding from the Netherlands Antilles Development Foundation ("USONA"), and the Netherlands Integrity Bureau was reportedly involved in the process; however USONA funding is ending soon, according to a Ministry of General Affairs official. When asked if the GoSM plans to fund the initiative going forward, the official responded, "well, it was put on the budget for the Ministry of General Affairs twice and it was taken off two years in row. I don't think it was because people don't want it to go on but they didn't understand the importance."

The official stated to the Inquiry team that in terms of investigative powers, the Bureau does have the power to start up an investigation on its own. Following the investigation, they would give an Advice to the Minister and the Minister could decide how they would like to act on the Advice. When the Inquiry team asked about when the complaint concerned the Minister, the official stated that the "legislation, even the new one, doesn't provide for that but they can go to the Ombudsman…or Parliament [in cases involving Ministers]."

Uncertainty around Persons of Confidence

The Government has also appointed two persons of confidence from each Ministry that individuals may turn to for advice. These individuals maintain their roles within the Ministry and act as Persons of Confidence as a "voluntary" position, according to a General Affairs official. The official stated to the Inquiry team that persons of confidence "are independent and not attached to any Ministry in the sense that they don't have a Minister presiding over them as a whole." These persons of confidence were appointed according to a job profile and the Personnel & Organization ("P&O") department nominated individuals for consideration. When asked what authority the Persons of Confidence have, the Inquiry team was told that Persons of Confidence only provide "guidance" and that they do not have authority to handle complaints. The official stated, "the only person who can officially handle complaints currently is the department head," as the Integrity Bureau has not been legally established.

The Persons of Confidence are supposed to protect confidentiality and the amendments to the existing legislation provide for that, according to the General Affairs official.

Many interviewees stated that they would not turn to the Persons of Confidence as a mechanism to resolve complaints and reported that they lacked trust that a Person of Confidence would maintain their confidentiality which could lead to their

job being threatened.

A department head stated,

> *"what sense does it make to establish and appoint these persons of integrity and not have any legislation to support the people in these functions? The trajectory to get this approved is a minimum of 2 years and that is fast track and basically you are fooling me if you are appointing these people – we are basically pretending. There is no framework for what you keep to yourself and what you report as a Person of Confidence. If you are training these people on integrity – what are they being trained in? Why is there no transparency? I want to know what they are being trained, and I feel I have a right to know. There is no framework to protect whistleblowers and no framework on what to report, so why would you say anything?"*

Many interviewees stated to the Inquiry team that it was not clear to them how and under what criteria the Persons of Confidence were appointed. The interviews reported to the Inquiry team that this lack of transparency and established criteria were factors that reduced their confidence in disclosing sensitive information around integrity issues.

Confusion around reporting mechanisms for integrity breaches

The standard protocol around reporting mechanisms does not appear to be clearly defined for civil servants. The Inquiry team received different answers from Government employees about whom they could turn to if they wanted to report an integrity issue. Some said, upon identification of an integrity breach, that they could report it to the department head or SG, some said the Minister directly, some said Parliament, some said the Ombudsman, some said the National Detectives, and some noted the Integrity Bureau. Two interviewees told the Inquiry team about specific issues that they felt were integrity breaches and asked the Inquiry team to whom within the Government they should report it to, as they stated that they did not know. Other interviewees also stated that an individual was not allowed to report to the Ombudsman unless it was the "last resort." One interviewee stated to the Inquiry team that they were told by a supervisor not to report an issue to the Ombudsman as it would "not look good." A Person of Confidence stated to the Inquiry team that complaints made to the Ombudsman were anonymous, whereas the Ombudsman's website states that a complaint must contain the name and address of the complainant.

People may report integrity breaches to the Integrity Bureau or the Ombudsman but neither allows for anonymous reporting nor for protection of whistleblowers when they report misconduct, according to civil servants directly involved with both bodies.[47] Based on interviews and documentation reviewed by the Inquiry team, the Ombudsman and Integrity Bureau appear to be mechanisms to only report personal complaints. For example, no mechanism appears to exist to report

[47] Sint Maarten Ombudsman Office, Government of Sint Maarten; http://www.ombudsmansxm.com/page.php?page=2

the integrity breach of waste, as waste would not directly affect someone personally. Civil servants might not report that they believe there is misconduct occurring in their department if it does not personally affect them, according to a Ministry of Justice official.

Recommendations

Take action to establish the Integrity Bureau as a fully operational, independent anti-corruption and integrity commission: Restructure the Bureau to reside outside of the ministerial framework in order to remain independent. The Bureau should have a clear mandate accompanied by the requisite authority and resources, including sufficient budgetary allocations. Hire at least three seasoned, anti-corruption subject matter specialists (comprised of local and foreign personnel as necessary) to serve as a commissioners responsible for the following functions:

- **Policy development and coordination of implementation** to include the development of comprehensive integrity and anti-corruption policies; and coordination activities across Ministries to implement and comply with those policies.
- **Information sharing and joint risk analysis** to include exploring opportunities across departments to leverage data collection and shared information platforms to jointly prevent and detect corruption and other integrity breaches; and coordination activities to create specialized task forces geared to prevent corruption.
- **Integrity pact and contractor compliance** to include prior to contract execution with third parties, administering integrity pacts for all contractors of the Government and SoCs to sign acknowledging that they will uphold standards of integrity in the carrying out of the contract. This function would also be responsible for reviewing and maintaining due diligence screening results of all third-party contractors for the Government and SoCs. Companies found to be unethical should be rendered ineligible to do business with the GoSM, and those companies doing business with the GoSM who are found to be irresponsible will be debarred from further business with the Government until they reform their business practices to comply with global standards.
- **Administrative fact finding investigations and compliance testing** to include conducting fact finding investigations into integrity breaches related to Government and SoCs reported through the whistleblower hotline managed by a third-party provider. Where appropriate, this body will refer information for prosecution. The function should also have administrative fact finding authority to monitor the implementation of the Integrity Pacts and Contractor Licensing Program and to debar companies found to have violated their obligations under these programs. The function should include conducting planned and random compliance testing of vulnerable Government and SoC activities in order to monitor performance and detect insufficient controls and non-compliance with policies that have led or could lead to integrity breaches; public reporting of findings and recommendations; coordination activities to implement stronger controls and increase compliance across Ministries and

SoCs.)

- **Awareness and outreach** to include local and international stakeholder outreach and communications with civil society, private sector, and global standard setting bodies; internal messaging and communications; internal and public awareness campaigns; conducting research on anti-corruption global trends; conducting public sentiment analysis; website maintenance, media, and public reporting.
- **Education, advice, and training** to include creation and dissemination of integrity trainings for all staff levels including senior leadership on compliance with integrity policies and procedures; providing advice and help for GoSM officials who are confronting ethical challenges, disseminating training on how to effectively share information, how to conduct risk analysis with the intention of preventing and detecting integrity breaches, specialized anti-corruption training, specialized supervisor leadership training, forged document training; hosting integrity-related events, speaker series and workshops; hosting public education events on integrity laws and regulations and society's role; and coordination activities with departments on their integrity training and education needs.

The selection of commissioners should be based on clear profiles and appointment should be made by National Decree. Job profiles for the commissioners should call for highly qualified experts with strong technical capability in the commissioner field (i.e. education and training) as well as extensive experience working in the anti-corruption and integrity space. Equally qualified staff should be hired under each function to assist commissioners in executing their tasks. No department head should be hired, but rather commissioners should work in a collaborative manner. The SG of each Ministry should act as the liaison with the Integrity Bureau for implementation activities, and the Bureau should have a SoC liaison, such as a Chief Compliance Officer, who will be in charge of implementing strong integrity programs within SoCs.

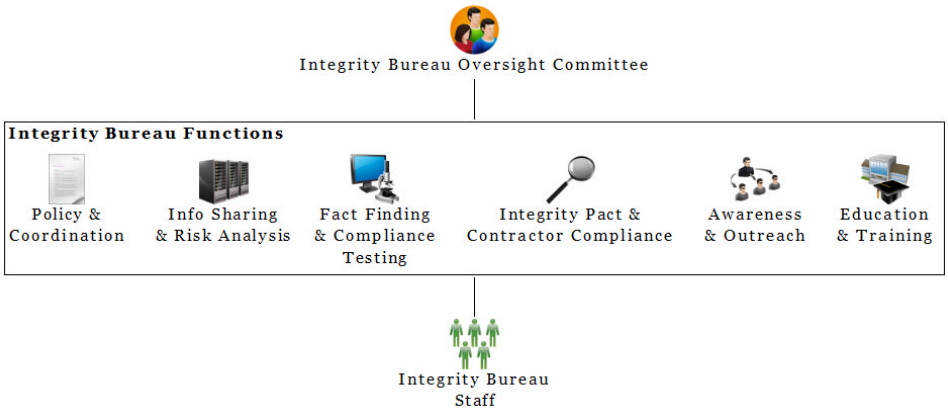
Create an independent Integrity Bureau Oversight Committee to monitor progress of the Integrity Bureau in fulfilling its mandate: This Committee's function will be to reduce the risk of integrity breaches inside the Integrity Bureau and to monitor the progress made by the Integrity Bureau in strengthening the integrity architecture within the Government. The Oversight Committee should be comprised of individuals independent of Government with international credentials of integrity. The selection of candidates should be based on clear profiles and appointment should be made by National Decree.

The Integrity Bureau should be required to submit and publish quarterly progress updates of activities performed and progress made to strengthen the integrity architecture of the Government. The Oversight Committee should be required to submit and publish responses on reported progress of the Integrity Bureau.

The Oversight Committee should initiate compliance testing activities to test new controls and verify progress reported by the Integrity Bureau. Appropriately redacted results of compliance testing initiatives should be documented and

published on the Fight Against Corruption website. Appropriate enforcement action should be taken in a timely manner against any employees engaged in integrity breaches that were discovered during a compliance test. The organizational structure of the Integrity Bureau and the Oversight Committee should be as follows:

Integrity Bureau Oversight Committee



Clearly define reporting mechanisms within the Government for civil servants to file complaints on suspected integrity breaches: Information on who to turn to in order to report integrity breaches should be clear and be widely publicized both within the Government and to the public. Feature information on reporting mechanisms and reporting protocol on the Fight Against Corruption website. Create an internal messaging campaign to encourage individuals to report suspected integrity breaches and to help remove negative associations around filing a complaint.

Leadership, commitment, and devotion of resources

No anonymous, administrative whistleblower provisions

Observations

No anonymous administrative reporting mechanisms exist within the GoSM. The Inquiry team could not locate a Government hotline, helpline or other website for civil servants or the public to report integrity breaches, and interviewees stated that this reporting mechanism does not exist within the GoSM. According to an official in General Affairs, a complaint website was previously discussed but it was never launched. Complaint websites are in the process of being launched in the Ministry of VSA and VROMI but according to officials in those Ministries, neither deal with integrity breaches and allegations of corruption, obstruction, collusion, fraud, waste, or abuse. According to interviews with officials directly involved in the launching of these websites, both systems are primarily targeted to the public and are aimed at making service delivery complaints about the associated Ministry. No protection is offered to citizens filing a complaint, and the complaint system is not designed to report criminal activity, according to interviews. When the Inquiry team asked how citizens may report being asked to pay a bribe, an interviewee from VSA responded that they would file it under “service-related complaints.”

When the Inquiry team asked a VROMI official if it was possible to file an

anonymous complaint, the official said "yes." When asked if contact information for individuals complaining needed to be provided, they said "yes." When the Inquiry team asked who had access to the system, the official said "the [Minister] or the SG."

Interviewees reported to the Inquiry team that the lack of an anonymous reporting mechanism was the reason they chose not to report. A former department head stated, "within Government there are a lot of people who want to report issues but they don't know where to go to, who to trust. Everyone has families to feed. We do not want to get fired." A culture of fear exists within the Government, and the Inquiry team saw this firsthand from SGs on down. Many people were scared to share sensitive information with the Inquiry team as they felt they would "get in trouble" for sharing. Many stated that due to the island being so small, they knew that any information they provided to the Inquiry team could be "traced back" to them, and as such, they did not want to share information on integrity breaches that they claimed to know of. Overall, raising concerns upon identification of wrongdoings does not appear to be encouraged within the Government based on information shared in multiple interviews. Firsthand accounts were shared with the Inquiry team of people being sent home or "physically pushed out" after disagreeing with a Minister for activities not being within policy or not signing off on documents. A few weeks later, interviewees stated that they received letters that they were "reinstated." In order to maintain the confidentiality of these employees, details around their suspensions/dismissal are not included. A civil servant stated, "when you say no, they send you home. And it is hard to say no then." A leader of a union explained that, based on their experience with civil servants, there is a "major culture of fear, if you speak up you are victimized. There are no places to help civil servants." A department head explained that they knew of civil servants that "went against the Minister" and they "got dragged through the mud so badly."

Many interviewees reported to the Inquiry team that there was no one to report incidents to as many of the problems are with leadership. A department head stated,

> *"personally, the whole integrity issue has to start up there. They are our bosses, [employees] will do what they have to do to maintain personal integrity, but when it comes from the head. They feel they may be fired if they don't obey ministerial orders."*

A Ministry of Justice official noted this fear of reprisal to the Inquiry team by stating, "I do have examples of bribery but I can't share. I've only been here three years or four years – why should I share and ruin my career? While the department heads all know. Everyone knows and does nothing, so why should I share?"

Recommendations

Establish a universal, cross-Ministerial, anonymous complaint hotline administered by a third-party vendor. Clearly define reporting mechanisms within the Government for civil servants to file complaints regarding suspected integrity breaches. The Government should visibly support this complaint mechanism and encourage the public and civil servants to report wrongdoings as active participants

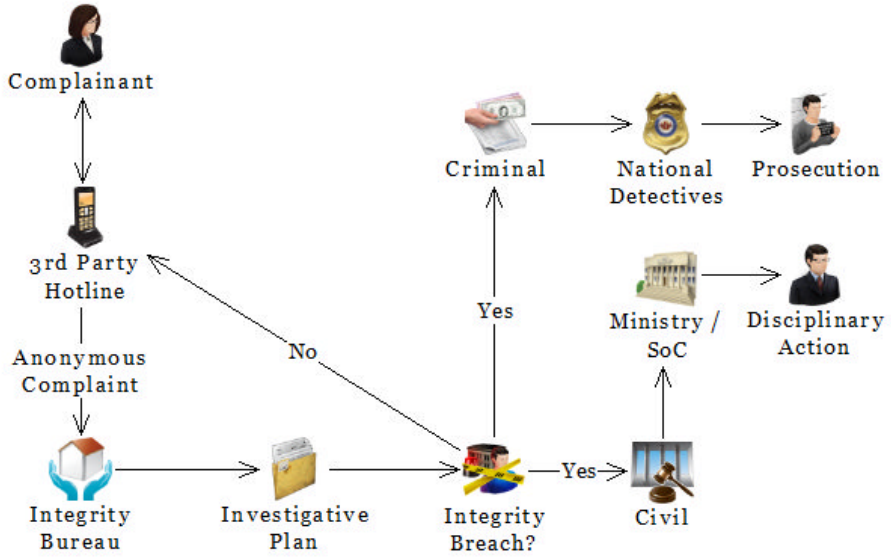
in the Fight Against Corruption: A universal and anonymous administrative complaint mechanism should be implemented for use across the GoSM. Oftentimes this can be accomplished through an independently staffed and resourced hotline where Government employees can submit information regarding suspected wrongdoing to a cost-effective third-party complaints handling vendor. This complaint mechanism should *not* be administered by Government employees, but rather should be implemented by a vendor not located in Sint Maarten in order to create anonymous reporting provisions, encourage more frequent reporting, and reduce the existing fear of reprisal.

Complainants should be able to file complaints about integrity breaches of all kinds including allegations of waste and abuse, regardless of whether the complainant is directly involved with the matter. Complainants should be able to file complaints about SoCs as well.

When a complaint is received it should be handled according to a standardized procedure:

- Complaint is filed with the third-party hotline and submitted to the Integrity Bureau by the hotline administrator.
- Complaint is reviewed jointly by the Integrity Bureau and triaged according to the severity and credibility of the information presented.
- If the complaint is not credible or otherwise insufficiently supported it should be recorded, closed, and information should be reported back to the complainant by the third-party vendor on status.
- If the complaint warrants further investigation it should be assessed based on the nature of the alleged misconduct, the individuals and departments involved, and the location and accessibility of relevant information. The administrative fact finding investigative team should develop a detailed investigative plan and conduct the necessary inquiries in line with leading practices and in accordance with the timelines established in the plan. The investigative team should conduct inquiries with due attention managing unique sensitivities associated with internal investigations.
- If the complaint is substantiated through the investigation it should be addressed promptly through the relevant disciplinary and administrative mechanisms by Ministries or SoCs. Any findings that may require criminal proceedings should be turned over to the National Detectives.
- The occurrence of disciplinary or other administrative action taken against an official based on a complaint filed with the hotline should be widely publicized, according to privacy laws, across agencies and departments, as well as reported through public media. This will help serve as a deterrent to future misconduct and will encourage individuals to report wrongdoing.
- Aggregate data regarding the number of complaints received and basic information about the status of investigations and resolutions should be publicly available.

Whistleblower Anonymous Complaint Mechanism



Leadership, commitment, and devotion of resources

Excessive discretion in lifting moratoriums on economic licenses and amending policy

Observations

Certain licenses currently have moratoriums which prohibit the issuance of any new licenses covered by the moratorium. Moratoriums on economic licenses appear to be lifted often by Ministers in a subjective manner, and the lifting of the moratorium does not always appear to benefit the public.

Adjusting policy/lifting moratoriums without strong justification

According to a TEZVT official, in order to lift a moratorium, the Advice should be signed off by the associated policy department to provide the justification for the lift, and moratoriums are reportedly able to be lifted if a business need is demonstrated. The justification provided for lifting a moratorium often appears to be lacking. For example, in February 2014 a moratorium on bars and restaurants was lifted and the reason provided in a document on the GoSM website was "that the Government wants to stimulate entrepreneurship and the economic growth of Sint Maarten."[48]

The Inquiry team obtained and analyzed email correspondence from June 2014 between a member of a Minister's cabinet in which they stated that

> *"the cabinet of our Minister would like to adjust/amend the Casino Policy, in the way it would be possible to establish a Casino in a restricted area (e.g. at the Airport after the clearance area), where only travelers can enter the casino and not the people that are not traveling… Could you please draft*

[48] *Policy: Lifting of Moratorium on Bar & Restaurants*, Ministry of TEZVT; http://www.sintmaartengov.org/Policy and Reports/Policy Lifting of Moratorium on Bar and Restaurant.pdf

an amended policy that we can discuss tomorrow Friday with our Minister?"[49]

Based on the correspondence, it appears that policy amendments may be "instructed" rather than consulting the policy department for their opinion – showing the high level of influence the Minister holds and the ease with which existing policy may be adjusted to fit a Minister's preference.

The justification for more casinos does not seem apparent within the emails analyzed, and a senior official indicated during interviews that the adjustment to allow casinos at the Airport or other restricted areas such as the Harbour would likely increase competition for existing casinos on the island. A Ministry of Finance official reported to the Inquiry team that "all the casinos have losses." In terms of the amount of money owed by casinos, the Inquiry team received varying responses and the total amount appears to be unclear. However, one senior Ministry of Finance official mentioned to the Inquiry team that casinos owe close to ANG 20 million in fees/taxes to the Government.

Lifting moratoriums despite safety concerns

In some cases, even if there is strong support not to lift the moratorium, the Minister may choose to do so. Watersports licenses at a beach were capped at five licenses, and two years ago a Minister lifted the moratorium for two more business licenses, according to multiple officials directly involved in the case. Three officials reported to the Inquiry team that negative Advices were issued on the lifting of this moratorium due to safety concerns of having too many jet skis on the water. Reports were made that accidents went from three to four accidents in a year to three to four accidents in a week, and concern was expressed regarding two more companies gaining licenses as each license allows for operation of five jet skis, which would lead to the operation of 40 jet skis at that beach, according to an official who provided a firsthand account of the case. Despite the negative Advices, the Minister signed the Advice granting the licenses allegedly as "gifts" to an individual "who had helped campaign for the Minister," according the official. The official also reported that the individual who received the license also received a copy of the Advice from the Minister and was notified they would receive the license before the department heads were notified that the Minister had decided to grant the license.

Awarding licenses to friends and family

When a moratorium is lifted, it needs to become public indicating that the public may apply for the additional licenses. An official stated, "people start coming in and requesting applications, but the Minister usually already has instructed who the additional licenses go to." Moratoriums may be lifted to accommodate friends and family. It appears that an existing queue is not consulted in the awarding of licenses during the lifting of a moratorium and once the moratorium is lifted the public is not given fair opportunity to apply for the new, open licenses, but rather the new licenses are often awarded at the Minister's discretion.

[49] Email correspondence reviewed by the Inquiry team

According to an official with direct knowledge of this case and who provided this information to the Inquiry team, the Minister lifted the moratorium to request two additional licenses to operate brothels and instructed to whom the licenses should go. One reportedly went to a close relative. Multiple sources, including Government officials and brothel owners confirmed to the Inquiry team that the Minister granted a license for a brothel to their close relative when the moratorium was lifted. The other license that was granted went to a company that is allegedly affiliated with a former Minister, according to a Ministry of Justice official and open source media reports.

Excessive influence over public transportation licenses

The Minister of TEZVT appears to have significant influence on the process for administering public transportation licenses.

Interviewees from the Ministry of TEZVT stated to the Inquiry team that public transportation licenses are administered based on the Minister's instruction and not awarded through a normal queue of applicants. No publicly available criteria on what order to award public transportation licenses was identified by the Inquiry team. According to a Ministry of TEZVT official, applicants may not be granted a public transportation license either because there is a moratorium or because they are not on the Minister's instruction list. Another Ministry of TEZVT official stated, "you are not giving a fair chance to the people who did apply. There are now over 400 licenses. There are 500 pending requests. And there is no expiration on the request." Complaints have been made from individuals who applied through the official application process but whose names did not appear on a Minister instruction. The Inquiry team obtained and reviewed five examples of letters from applicants asking the Ministry of TEZVT to explain why they were not awarded licenses.[50] According to a Ministry of TEZVT official, these individuals may have been waiting for years to obtain a license and "technically meet all the requirements," but when the Minister lifts the moratorium they are able to choose to whom they would like to grant licenses.

The Ombudsman issued a report in 2012, which is available on the Ombudsman website, on a public transportation license complaint filed in 2011 concerning taxi license requests submitted in 2002 and 2009 that were not acted upon by the Public Transportation License department. In the report, the department head is quoted in the report as saying,

> "*The request of Mr… has been placed on hold as have all the other requests regarding taxi and bus permits. Up until 2010 there was a moratorium regarding the issuance of taxi and/or bus permit in place. The moratorium has since been lifted, but no concrete decision has been taken with regard to the actual issuance of additional permits due to ongoing evaluations of the sector and the overall restructuring of Public Transportation in*

[50] Letters from applicants to the Ministry of TEZVT about issuance of public transportation licenses.

general."

At the time the report was issued on June 18, 2012 no decision regarding the awarding of this public transportation license had been issued. [51]

Based on documents obtained by the Inquiry team, Ministers issued at least four memos to SGs between May 2012 and May 2013 asking for 161 taxi permits and 52 bus permits to be processed for specific individuals.[52] The memos do not appear to be an official Advice, but rather an "instruction." One memo from 2013 reads,

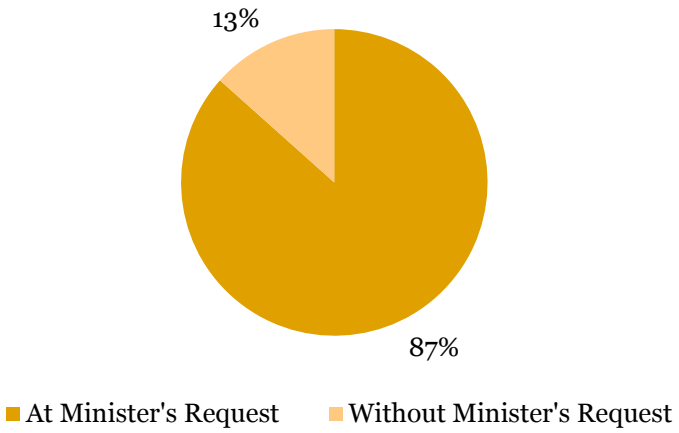
"Dear [X], Herewith, you are kindly informed to proceed with the processing of the attached 'revised' list of taxi and bus permit requests."[53]

The Inquiry team requested all memos or instructions issued by Ministers related to public transportation licenses since 10/10/10 but only received four memos issued between May 2012 and May 2013. According to a list of active public transportation licenses provided by the Ministry, 142 taxi licenses and 53 bus permits were issued between May 2012 and August 2013. It is noted that the public transportation records obtained by the Inquiry team from the Ministry of TEZVT appear to contain typographical errors (e.g., misspelled names, inverted first and last names). Where appropriate, the Inquiry team attempted to reconcile names that appeared to be similar to those contained in the Minister's memos and official records. Additionally, neither the memos issued by Ministers nor the records maintained by the Ministry provided sufficient biographical identifiers to determine if a name appearing on both a Minister's memo and the official records of active public transportation licenses referred to the same individual.

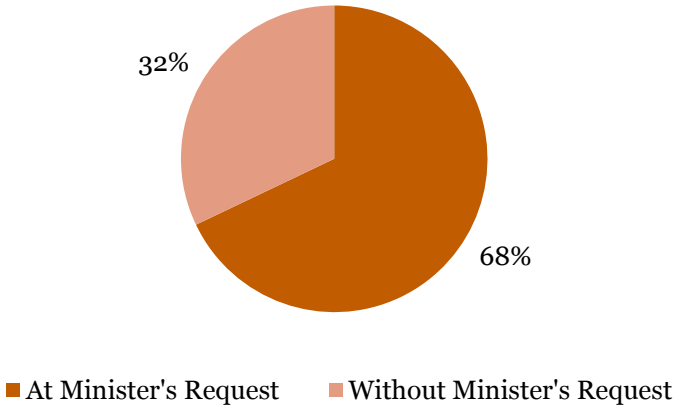
Approximately 87% of the taxi licenses were awarded to names contained within the four memos the Inquiry team obtained. Similarly, approximately 68% of the bus licenses issued were awarded to individuals named in the memos obtained by the Inquiry team.[54]

[51] *Taxi Permit Request Ombudsman Report 2012*, Sint Maarten Ombudsman Office, Government of Sint Maarten
[52] Memos issued by Ministers for the issuance of public transportation licenses between May 8, 2012-May 21, 2013
[53] Minister Memo January 28, 2013
[54] Based on active public transportation licenses from Ministry of TEZVT and four memos issued by Ministers

Taxi Licenses Issued Between May 2012 and August 2013



Bus Licenses Issued Between May 2012 and November 2013



According to a Ministry of TEZVT official, there also appears to be an issue around awarding licenses for "help drivers," individuals that are granted a temporary license to assist the license holder in the event they become ill. The official stated to the Inquiry team that abuse occurs in the issuance of help driver licenses as they are granted even when it is clear that the license holder is not ill. As part of the application process for a help driver the official license holder must submit an "original Dr. letter."[55] The Inquiry team obtained and reviewed an example of an

[55] Checklist for Help Driver Application

application containing a doctor's note saying the license holder was in a "good state of health" with "good hearing and vision to drive a taxi."[56] The letter from the license holder asking for the help driver to be approved was stamped as received by GoSM's Records and Information Management department ("DIV") on August 19, 2013, according to the documents obtained. The help driver license was granted on May 6, 2014.[57]

While Sint Maarten is only 16 square miles, there is no maximum number of public transportation licenses that can be issued, according to TEZVT officials. A department head and other civil servants stated to the Inquiry team that there were many reports and complaints on the level of traffic on Sint Maarten and that more taxi and bus licenses would perpetuate that problem.

A Ministry of Justice official stated to the Inquiry team,

> *"if you want a taxi license you submit request. At the end of the Government term, all of the requests are signed and issued, it's not illegal, but it's very strange that at the last minute so many licenses are being issued. At the end of each term they are issued by the tens. Makes you wonder what is happening."*

A number of interviewees stated that they believed public transportation licenses were being issued by the Minister to gain a political advantage. A former law enforcement official stated, "knowing the ceiling has already been reached," these licenses are being given out as "a political tool to obtain votes."

Many interviewees also stated that they believed that even though public transportation licenses are supposed to be awarded to individuals who will use them as a primary source of income, many individuals who have other jobs receive them.

Recommendations

Create a National Decree outlining a Minister's authority in lifting moratoriums and require all subsequent licenses to be awarded according to a queue: Moratoriums should only be lifted if there is public need and if the lift will benefit the common good. Ministers should exercise their authority to lift moratoriums in an objective manner, and Parliament should hold Ministers accountable to acting objectively. A policy outlining the Minister's authority in this space should be implemented which highlights that if a moratorium is lifted, licenses should be granted according to a queue and not to specific entities/individuals instructed by the Minister. Policy should not be amended by Minister "instruction", and all policy departments should be encouraged to objectively evaluate the need to amend policy and include their opinion (positive or negative) in an Advice. In instances where safety concerns are raised in an Advice to lift a moratorium, if the Minister still decides to continue with the lift, the Minister should be required to provide written justification to the relevant departments. Specifically for public transportation licenses, the Ministry of TEZVT should clearly articulate a policy that requires bus and public

[56] Documentation and license for an individual who received a help driver permit
[57] *Id.*

transportation licenses to be issued in line with queue priority. Any licenses granted to individuals outside the established queue should also require a written justification by the authorizing Minister. The rationale for granting a license on an exceptional basis should be recorded alongside the recipient in the public roster of licensees and subject to public scrutiny.

Publish roster of bus and public transportation licenses and other economic licenses: The improper granting of bus and public transportation licenses has undermined the purpose of the licensing system and eroded public confidence in Government integrity. Increasing transparency around the licensing process could mitigate this problem in a number of ways. A public roster of licensees would prevent a single person from holding multiple licenses, and it would make it more difficult for Ministers to distribute licenses as personal favors or political tools. A public roster would also increase the likelihood that licenses are granted to the intended recipients (i.e. individuals who will rely on the license for their primary source of income).

Leadership, commitment, and devotion of resources

Low level of commitment to administration of asset declarations for Ministers

Observations

Under the Integrity Ordinance, Ministers are obliged to submit a written declaration to the PM within 30 days of appointment.[58]

Article 2 states, "The Minister guarantees the reliability of the information in the declaration." Ministers and their spouses or partners are obliged to declare the following:

> *"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."*[59]

Article 3 states that the PM,

> *"shall decide which commercial interests, secondary positions*

[58] Landsverordening Integriteitbevordering Ministers

[59] *Id.*

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."

Article 3 also includes provisions for the PM to obtain advice from the Council of Advice and the General Audit Chamber. The General Audit Chamber's Baseline Study Sint Maarten: State of Affairs Institutional Integrity Management 2014 notes that the PM has not obtained advice as "no situation has presented itself requiring such advice."[60]

The Integrity Ordinance states that Ministers are also required to submit a declaration within 30 days of leaving office.[61] The General Audit Chamber's Study revealed that this measure in the Integrity Ordinance has not been complied with and states that the General Audit Chamber was "unable to identify if the former Ministers are aware that failure to comply with this regulation can be subject to a penalty (prison term of up to 3 years)." This penal provision is stated in Article 16 of the Integrity Ordinance. The Integrity Ordinance apparently omits penal provisions for current Ministers who do not submit their declarations in time. Moreover, limited, if any, action appears to be taken against Ministers who purposely do not disclose information or hide information.

The General Audit Chamber's Study points out that members of the most recent administration submitted their declarations once in office but noted that the submissions were not issued within 30 days of appointment.

Unclear guidelines around 2014 declarations

Despite requesting all declarations of current Ministers, only five declarations were obtained by the Inquiry team from the Ministry of General Affairs. It is unclear if the rest of the Ministers submitted declarations. Following the findings from the General Audit Chamber's Study, it appears at least two former Ministers submitted declarations, which were also obtained by the Inquiry team.

All of the seven declarations reviewed provide very little detail on any assets or business interests. The lack of information included indicates the level of seriousness with which this declaration is administered. It is noted that one declaration was blank.[62] One Minister's signed declaration from September 2013 is blank in the section on business interests of the Minister's children.[63] Many interviewees noted that this Minister's child owns at least one business in Sint Maarten. It is unclear why this was not disclosed.

One Minister answered the question "the Minister or his spouse or partner holds other positions yes/no" with "private."[64] One former Minister submitted a

[60] *Baseline Study Sint Maarten: State of Affairs Institutional Integrity Management 2014* ,General Audit Chamber, Government of Sint Maarten

[61] Landsverordening Integriteitbevordering Ministers

[62] Minister Declaration, August 2013

[63] Minister Declaration, September 2013 #1

[64] Minister Declaration, September 2013 #2

declaration in May 2014. Numerous media reports have identified this Minister in connection with different businesses in Sint Maarten. In an interview, the former Minister confirmed to be part of a law firm. No business interests were noted on the signed declaration form of this former Minister, as provided by the Ministry of General Affairs. The declaration also had an accompanying letter submitted on a letterhead from the former Minister's law firm to the PM stating that the former Minister held no business interests.[65]

Recommendations

Enforce penal provisions against Ministers who knowingly submit false declarations and/or who are in non-compliance with the provisions in the Integrity Ordinance. Publish appropriately redacted incoming and exit declarations on the Fight Against Corruption website. Consider amending existing legislation to require other senior officials to submit asset declarations: According to Transparency International,

> *"An asset declaration is a person's balance sheet and should cover assets, from all homes, valuables and financial portfolios, to liabilities, such as debts and mortgages, and all sources of income from directorships and investments to consulting contracts. It should also include gifts and sponsorship deals and any potential conflicts of interest such as unpaid employment contracts and participation in non-governmental organizations."*[66]

Adjust the declaration form to be align with global standards and leading practices. Asset declarations from Ministers who knowingly submitted incorrect information should be subject to penal provisions. Declarations should be submitted and reviewed by the Integrity Bureau according to the proposed structure, rather than through the PM.

Asset declarations from officials who knowingly submitted incorrect information should be subject to penal provisions. The Government should take the administration of asset declarations seriously and under the Inquiry team's proposed revised structure, the Integrity Bureau should review declarations and take appropriate measures based on information provided. Appropriately redacted declarations should be made public to encourage transparency and accountability. If Government officials do not declare within the allotted time prescribed by the Integrity Ordinance, sanctions should be taken and information should be published on the Fight Against Corruption website that that particular Government official did not declare in time.

[65] Minister Declaration and accompanying letter, May 2014

[66] *Best Practice for Asset Declarations,* Transparency International; http://www.transparency.org/news/feature/holding_politicians_to_account_asset_declarations

7.3. Regulatory framework

7.3.1. Description aligned to global standards and leading practices[67]

The regulatory framework refers to the legislative and normative (i.e., policy) structure within which government functions are carried out. This would include laws, orders, policies, procedures and international standards/treaties that bind government agencies and departments. The regulatory framework should be aligned to global standards and leading practices, which encourage:

- Sufficient legislation to effectively prohibit foreign and domestic bribery, money-laundering, embezzlement, diversion of public funds, and other forms of economic crime. Leading regulatory frameworks also address conflicts of interest, financial disclosures of public officials, illicit enrichment, and other ethical guidelines that are relevant to maintaining the highest standards of integrity in public administration.
- Regulations and guidance on accounting and auditing standards and procedures to prevent off-the-book transactions, inaccurate recording of transactions, and other activities designed to conceal misconduct.
- Organizational structures are designed to improve integrity within an organization or promote requirements of legislation.
- Appropriate policies, procedures, and regulations to provide the necessary guidance and rule framework for enforcing anti-corruption laws and ensuring compliance with public integrity initiatives and international standards.
- Updating government policies, procedures, and regulations in response to changes in national laws or international standards and leading practices.
- Ensuring that the requirements of the regulatory framework are accessible and understandable to all government employees, which may require periodic trainings.
- Developing agency and departmental Codes of Conduct that require the highest level of honesty and integrity in the performance of public functions in line with relevant Model Codes of Conduct (e.g., UN, Council of Europe). These Codes of Conduct should be acknowledged in writing by all civil servants, and reinforced through regular trainings. Non-compliance should be quickly and transparently addressed.
- Monitoring and reporting activities to confirm that all civil servants understand their obligations under the regulatory framework and comply with the framework.

7.3.2. Observations and recommendations

The GoSM has adopted in its legislative framework some leading global practices in either final form or in draft, but there is a noticeable lack of guidance by the Government regarding key aspects of many of these policies, and violations are rarely punished. Overall, a maturity finding of medium is justified given the presence of a regulatory framework that incorporates many elements of leading practices, though the lack of consistent implementation, in addition to some notable gaps (e.g. conflict of interest prohibitions and casino regulation), indicate that much work remains to bring the GoSM in line with global regulatory benchmarks.

[67] The key features related to ***Regulatory framework*** that are highlighted in this section represent an aggregation of relevant guidance contained in the leading global standards and practices referenced in ***Appendix B***.

The following were identified as the key observations affecting the regulatory framework within the GoSM, according to interviews conducted and documents analyzed by the Inquiry team:

- **No Code of Conduct**: The GoSM does not currently have a Code of Conduct for civil servants, which is essential for good governance practices. The GoSM draft Code of Conduct has identifiable gaps when compared with international standards which are recorded in ***Appendix E***.
- **No Government-wide conflict of interest policy or law**: The GoSM does not have a Government-wide conflict of interest policy or law, which is a cornerstone of good governance. The potential for conflict of interest is high in Sint Maarten and no controls exist to avoid and resolve these conflicts.
- **Vague gift policy**: Although the GoSM has a gift policy, it is imprecise and does not appear to be properly monitored or enforced.
- **Lack of guidance around policies and procedures:** In some areas throughout Government, policies are unclear, outdated, or conflict each other. Examples include the sick leave policy, public transportation regulation, or study finance regulation. This policy confusion impacts the GoSM's ability to institute clear and effective good governance practices.
- **Unclear and limited sanctioning authority of inspections/controls teams:** Inspections/controls teams appear to have limited authority to administer sanctions against businesses or individuals who are in violation of policies and procedures resulting in minimal incentives for businesses and individuals to comply with Government standards.
- **Lack of due diligence for licensing casinos:** The GoSM does not have any active regulatory body to oversee those that own and operate casinos. The risk of organized crime infiltration is high, especially in light of the fact that several reported organized crime figures have been linked in the media and by law enforcement to casinos in Sint Maarten.
- **No clear regulatory framework for licensing of brothel owners:** Currently, brothels are licensed under the same regulatory framework as hotels and adult entertainment establishments, which does not account for the unique integrity risks and challenges associated with the sex industry, such as organized human trafficking.
- **Opportunities to abuse residency permit process:** Possible loopholes exist in the regulatory framework that could allow sex workers to circumvent six-month temporary residency permit by applying for a Director's license.
- **Lack of financial regulations for casinos:** Sint Maarten's casinos appear to operate without any regulatory or financial oversight, creating vulnerability for money laundering and organized crime. It does not appear that the GoSM has any insight into the financial results of casinos on the island.

Regulatory framework

No Code of Conduct

Observations	No Code of Conduct for civil servants currently exists within the Government, but the Ministry of General Affairs is in the process of drafting one. A Ministry of General Affairs official provided the Inquiry team with a draft Code of Conduct that the Government is "using right now but has to be officially enacted. We need to look at it again and revise it again and then the PM will release it." The draft

Code of Conduct has a number of gaps compared to the Council of Europe Model Code of Conduct. Gaps include a lack of conflict of interest and declaration of interest provisions, code breach reporting requirements, gaining public trust, reporting of gifts, withholding of information, and harassment rules. For more information on the specific gaps, see ***Appendix D***.

Recommendations

Institute a Code of Conduct that is applicable to all Government employees. Adjust the existing draft Code of Conduct to align with the Model Codes of Conduct published by international standard setting bodies. Enforce sanctions against employees who violate the Code of Conduct in a timely manner: The Code of Conduct should clearly articulate the obligations and expectations for integrity applicable to all GoSM employees and be based in the principle that public officials are responsible stewards of the public interest. The Code should specify that public officials must at all times observe the highest standards of ethics and professional conduct. Violations of the Code (including by senior leadership) should prompt swift and appropriate disciplinary action in order to demonstrate the Government's commitment to integrity and accountability. Sanctions for the violation of the Code should be clearly articulated, and all officials should be aware of the consequences of violations.

The Government should adjust language in the Sint Maarten Code of Conduct to be inclusive of the language in the Council of Europe Model Code of Conduct in order to more comprehensively cover reporting of code breaches, supervisory accountability, integrity checks, abuse of power, and working honestly, impartially, efficiently, and effectively. In order to align with global standards, amend the Code in the following ways:[68]

- Alter the language below in the Sint Maarten Code of Conduct as the current language may insinuate that reporting integrity breaches is not encouraged:

  "you shall discuss doubts and questions about integrity in working relations and shall encourage colleagues to do the same. If this is not possible or if this does not lead to a satisfactory result, then you shall inform the supervisor or if there is one, the trusted representative. You yourself are also accountable for your actions and expressions"

  The Council of Europe Model Code of Conduct encompasses comprehensive and stringent reporting requirements articulated in Article 12:[69]

  "1. The public official who believes he or she is being required to act in a way which is unlawful, improper or unethical, which involves maladministration, or which is otherwise inconsistent with this Code, should report the matter in accordance with the law.

[68] *Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials,* Council of Europe; http://www.coe.int/t/dghl/monitoring/greco/documents/Rec(2000)10_EN.pdf

[69] *Id.*

2. The public official should, in accordance with the law, report to the competent authorities if he or she becomes aware of breaches of this Code by other public officials.

3. The public official who has reported any of the above in accordance with the law and believes that the response does not meet his or her concern may report the matter in writing to the relevant head of the public service.

4. Where a matter cannot be resolved by the procedures and appeals set out in the legislation on the public service on a basis acceptable to the public official concerned, the public official should carry out the lawful instructions he or she has been given.

5. The public official should report to the competent authorities any evidence, allegation or suspicion of unlawful or criminal activity relating to the public service coming to his or her knowledge in the course of, or arising from, his or her employment. The investigation of the reported facts shall be carried out by the competent authorities.

6. The public administration should ensure that no prejudice is caused to a public official who reports any of the above on reasonable grounds and in good faith."[70]

- Include a requirement to comply with the law and the expectation that public officials will not use their position or influence while employed by the Government to secure outside employment upon leaving office.
- Amend the Code of Conduct to align with global standards, which address the need for public officials to conduct themselves in a manner which will ensure the public trust. This should include activities that give the appearance of impropriety.
- Revise the language in the Sint Maarten Code of Conduct to align to the Council of Europe Model Code of Conduct, especially in the reporting of gifts. Language around the acceptance of gifts in the Sint Maarten Code of Conduct should be more specific.[71]
- Adopt language from a Model Code of Conduct into the Sint Maarten Code of Conduct around conflict of interest. Items addressed should include: improper use by civil servants of their position to benefit their private interest, disclosure of interests, and susceptibility to influence others.
- Adopt language from the Council of Europe Model Code of Conduct around political or public activity. Draft measures regulating the political activities of public officials; specifically the need for public officials to maintain

[70] Code of Conduct Civil Servants Sint Maarten

[71] *Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials,* Council of Europe; http://www.coe.int/t/dghl/monitoring/greco/documents/Rec(2000)10_EN.pdf

impartiality in order to avoid the appearance of impropriety and the loss of public trust.

- Adjust the Sint Maarten Code of Conduct to adopt language from the Council of Europe Model Code of Conduct around confidential information and information held by public authorities. Language in the Sint Maarten Code of Conduct should be more specific, especially around the area of withholding information.
- The Code of Conduct should be amended to include a clause regarding appropriate professional conduct. This clause should address rules regarding harassment (including sexual harassment), non-discrimination, occupational health and safety, drugs and alcohol.

The Integrity Bureau, and more specifically the commissioner overseeing policy, should administer an acknowledgement form to accompany the Code that each employee, including senior management, is required to sign upon being hired. There should be no exceptions to this rule. Records of acknowledgements should be stored electronically in a central repository and should be monitored by Integrity Bureau compliance staff. Disciplinary action should be taken against employees who do not complete the acknowledgement form on a timely basis. Acknowledgement forms should be re-administered annually.

The Code of Conduct should be published on the Government website and the P&O SharePoint site so it is easily accessible. Comprehensive, mandatory, and auditable training on the Code should occur for all new employees and should occur regularly for all existing employees. Commercial vendors can be engaged to deploy auditable training modules with relative ease and little expense. The Code should be periodically evaluated and updated. Updates should be communicated to all personnel.

Regulatory framework

No Government-wide conflict of interest policy or law

Observations

According to a Ministry of General Affairs official, no conflict of interest policy or law exists within the GoSM. The official stated that provisions around secondary activities are included in the National Ordinance on the Rights and Obligations of Civil Servants ("LMA") in Articles 51-56, but conflicts of interest are not addressed comprehensively.[72] Many officials told the Inquiry team that instituting conflict of interest regulations in Sint Maarten would be very challenging given the small size of the Island. A senior official stated,

> *"this is a small island, everyone knows everyone. So many people are related directly or indirectly. Anything could be construed as a conflict of interest. This is not a population of a million, we are very small and there are very big families, so what do you do?"*

[72] Landsverordenden Materieel Ambtenarenrecht

Recommendations

Introduce and enforce a Government-wide conflict of interest law aligned to global standards and leading practices. Require immediate reporting of a potential conflict of interest and require annual conflict of interest declarations: Create a conflict of interest law that is applicable to all personnel in the Government, and clearly define conflict of interest within the policy. All personnel should be required to fill out a conflict of interest declaration annually, with the potential exception of clerical personnel. A cost-effective, third-party vendor could be selected for dissemination assistance to deploy online declarations to all officials, regardless of rank. The law should be published on the Government website and easily accessible to all employees. The law should contain procedures for identifying, managing and resolving conflict of interest situations and Government officials should be clear on the protocol to report a potential conflict of interest. Employees should be required to fill out declarations annually but should also be required to report a potential conflict of interest immediately upon identification to a supervisor as well as the Integrity Bureau. Conflict of interest declarations should be collected, analyzed, and monitored by the Integrity Bureau, and specifically the commissioner overseeing policy. Data around the distribution and collection of conflict of interest declarations should be electronically stored in a central repository, and disciplinary action should be taken against employees who do not complete the form on a timely basis. Completion of the administration of conflict of interest declarations and the introduction of the conflict of interest law should be communicated internally and on the Fight Against Corruption website. Provide periodic training on the conflict of interest law, and identify real-life, relevant conflict of interest situations that a Government employee could be faced with and provide interactive training to all officials on how to manage and resolve those conflict of interest situations.

The Inquiry team recognizes the challenges associated with conflict of interest in a country the size of Sint Maarten – which is all the more reason for strict adherence to a conflict of interest law. While the potential for a conflict of interest may be unavoidable, there are many ways to manage the conflict appropriately to protect the integrity of the decision-making body, which should be clearly defined for Government employees. If a conflict of interest arises, disclosure should be made and the decision-making power should be transferred from the related official to an official who does not have a conflict of interest. Furthermore, the official with the conflict should be kept out of meetings, discussions, and correspondence related to the interest in order to avoid any exertion of influence over decision-making. The official with the conflict should sign an "agreement not to act" which the OECD defines as, "the individual agrees not to participate in any other action concerning the interest, e.g. signing documents that relate to the interest)."[73] In some circumstances, it may be necessary for the official with the conflict of interest to divest of the interest that is resulting in the conflict in order to maintain integrity and independent decision-making.

[73] *Managing Conflict of Interest in the Public Service*, Organisation for Economic Cooperation and Development; https://web.archive.org/web/20140730221107/http://www.oecd.org/gov/ethics/48994419.pdf

As part of corruption detection techniques, anti-corruption resources should target the identification of conflicts of interest, including the commissioner overseeing information and joint risk analysis from the Integrity Bureau. Failure of an employee to act upon a known conflict of interest should result in timely and serious disciplinary action. Sanctions related to conflict of interest should be clearly outlined in the law.

Regulatory framework
Vague gift policy

Observations

Articles 58-60 of the LMA include provisions on the acceptance of gifts.[74] The Employee Handbook states,

> *"If people offer gifts to a government employee, other than promotional gifts of little value, it is reasonable to suspect that the person expects something in return. Therefore, employees may not accept any gifts or promises, without prior permission. Furthermore, as a government employee one may not request a gift or promise.*
>
> *Additionally, exoneration of an obligation or fulfillment of an agreement is also considered a gift and commitments are considered promises. A gift or promise to your spouse, children or parents, as well as companies and businesses that you financially benefit from, are considered gifts or promises to you.*
>
> *When offered a gift or promise, you have to inform your department head immediately."*[75]

Many interviewees stated to the Inquiry team that they were unclear what a gift constituted. A senior official stated,

> *"how can you tell me that I cannot take my brother to lunch? Or that we should split the check. Or that I should split the check with an old friend of mine. That is not the culture here – it is considered very rude. How do we get around this – when you say no gifts? Is this a gift – to have a meal with someone? You need to take into consideration that many of us are close relatives or family here and we may just be with our family – is this ever allowed?"*

Many employees stated that they do often receive gifts, especially during holidays, and the general practice is to share them with the department. A Ministry of Justice official stated,

> *"the number of offers I receive to go to lunch, and gifts is very numerous…a lot of companies during Christmas times send gifts – and I share it among all workers and the next year we*

[74] Landsverordening Materieel Ambtenarenrecht

[75] *Government of Sint Maarten Employee Handbook*, Government of Sint Maarten; http://pnobeleid.sharepoint.com/Documents/111124%20Employee%20Handbook%202011.pdf

get less. If they do bring gifts, we share or give it somewhere. No one can take gifts individually."

All of these statements are common problems within governments with low maturity levels in "Code of Conflict" competence. It is essential that civil servants raise their overall level of competence on how to manage routine, recurring and basic conflict issues that arise commonly in daily relations. The questions posed are easily addressed by well-trained advisors made available to assist civil servants to advance their maturity in conflict management.

The regulations around the acceptance of gifts do not appear to be consistently enforced. A senior VSA official stated that the Ministry of VSA instituted a "no gift policy" separate, and more stringent than, the provisions in the LMA. When asked how this policy is enforced, the senior official stated, "enforcement? You cannot monitor gift policy unless have evidence that it has happened…the memo was just a no gift policy but it cannot be enforced fully."

Clear disciplinary sanctions are not articulated for those who violate the acceptance of gift provisions of the LMA.

Giving gifts and political campaign contributions

Politicians giving what could appear to be a gift was also raised in interviews. A senior official stated,

"every year I give money to my friends who have a cause because I want to help to the community. But then when elections come I keep giving them money because I have been doing so all along – but is that bribing? What's the difference? We are all one community and everyone knows each other."

Recommendations

Create a gift acceptance and reporting policy aligned to global standards and leading practices with provisions on accepting and giving gifts. Clear guidelines and disciplinary sanctions should be established for violation of the policy: Provide a clear definition of what constitutes a gift and what gift thresholds are, including what gifts are deemed "reportable gifts" for both the acceptance and giving of gifts. Reporting channels should be clearly articulated, and officials should be required to report gifts that are defined as "reportable gifts" within two weeks of receipt and should follow policy protocol on how to handle the gift. The Integrity Bureau should maintain the register of reportable gifts. Officials should also be held to strict guidelines on the giving of gifts as a means to influence the public or decisions in other parts of Government. Provide training around the gift policy including hypothetical scenarios that public officials may face regarding the acceptance and giving of gifts and hospitality and how to resolve those issues. Enforcement actions should be taken in a timely manner against employees who give or accept gifts and hospitality above the authorized threshold or who do not report gifts.

Regulatory framework

Lack of guidance around policies and procedures

Observations

Many interviewees expressed that they felt there was a lack of clarity on how to implement some regulations leading to inconsistent approaches to functions. Three potential scenarios were discussed by many interviewees which they stated lead to confusion:

1. Regulation is old and may be outdated; or
2. Policies/procedures on how to implement regulation do not exist or are not fully clarified or documented; or
3. Conflicting regulations and policies exist.

A Minister stated,

> *"Government is a continuation and you have to make decisions every day. The laws and the policies are not up to date – they were made and put in place a long time ago – maybe 60 years ago…I am the third Minister in three years which makes things very challenging."*

A Ministry of Finance official stated,

> *"you can have regulation or policy ratified by the Island Council in 2005 – should this be ratified again in 10/10/10 to make it more applicable? What if a policy was passed after 10/10/10 in conflict with the regulation passed in 2005, but the regulation in 2005 was never ratified again in 10/10/10 - which is more applicable – the ratification from 2005 or the policy from 10/10/10? It is very important to have these regulations so people know what to do on day to day basis. Laws only give a basis for what is expected, it is a general guideline, procedures and regulations go deeper into what needs to be done."*

The following specific areas were discussed in interviews.

Room for abuse of sick leave policy

Some interviewees reported confusion around the sick leave policy and the number of times a civil servant is allowed to be sick before it constitutes long term illness. According to the Employee Handbook, the sick leave policy stipulates the following:

> *"3 days or shorter - It is then agreed with the department head when one will return to work. The department head will report the illness to the SZV. If the employee is unable to return on the agreed date, he has to contact the department head again.*
>
> *Longer than 3 days - On the fourth day of illness, the employee must report to the SZV to undergo an obligatory examination by an occupational health doctor."*[76]

[76] *Id.*

A department head stated to the Inquiry team that members of their department were frequently ill for two to three days at a time and then, having returned to work, they would again report ill. The department head stated that this was suspected abuse of the system as by coming in every few days, the employee is not required by policy to report to SZV. The department head stated that there is "no limit on sick days" and there is "no policy on the frequency of calling in sick" making it difficult to enforce action against individuals who appear to be abusing the system and also causing the department to lose productivity.

Lack of clarity around study financing regulations

Many interviewees cited confusion around study financing regulations. A Minister stated,

> *"within my Ministry, I think there is a potential for us to fall short on processes and procedures. I say that because what is communicated by the person on the front line sometimes varies and we are working very hard to synchronize this so we have the same story on every issue. The place I see this as the biggest issue is study financing. It could be because a number of the people employed there are new so depending on who you meet, you could get a completely different story on what to do. It is not because there are no processes and procedures, it is because there hasn't been a big effort to train the people on the front line to have the right story and be consistent. And this can lead to people making bad decisions based on wrong information. There is a part of the [study financing] regulation that says if you arrive at the Study Financing office and 50% of documents are not [contained in the application], the [Study Financing Office is] supposed to give you three weeks to obtain those documents. And the reason for that is because some of the documents requested require information from other Ministries such as a police record etc. which can sometimes take six-eight weeks to obtain. And since I've been sitting here there have been five people who have come to me saying that they couldn't submit their application because they were told they needed to have everything [at the time they submit]. That is what I mean when I say having different stories and it leads to having integrity issues because information is incorrect. When you lead the public in a wrong way, it is an integrity issue."*

Confusion on the collection of loan repayments related to study financing was also discussed by Ministry of Finance and Ministry of OCJS officials in interviews with the Inquiry team. The Ministry of Finance and Ministry of OCJS appear to have disagreed on the correct legal basis for the collection of repayment loans which resulted in the "return of 26 Advices." A Ministry of OCJS official stated, "there is a Study Financing Ordinance from the former Netherlands Antilles but we cannot use it anymore because we are not affiliated with the Netherlands Antilles any longer. It is valid until we have a new one." Another official stated, "there is

confusion on who is accountable and who is responsible and authorized to recoup the money."

Outdated public transportation regulations

Many interviewees noted to the Inquiry team that the public transportation regulations are outdated and not completely applicable to the current state of Sint Maarten. An official stated, "the Ordinance is from 1969 for public transportation. Geographies were totally different, and it leaves a lot of room for question. It is not clear." The official cited the example of a help driver and stated that there is no maximum period for an individual to act as a help driver, even though the function is inherently temporary. Nothing also exists in the law about the time period for an individual appointed as a help driver to be treated as an actual employee driver, according to the official.

Confusion on implementation of public tenders

A lot of confusion appears to exist around when a public tender is required. When the Inquiry team asked a Ministry of OCJS official for procurement rules especially around when public tenders are required, the official stated, "I am sure there are rules on this but I don't have them. Knowing our secretary general, it is definitely on paper, [the SG] is a person who follows rules strictly."

An SG stated to the Inquiry team, "there is an ordinance that requires public tendering under specific circumstances, but there are no real criteria that says when public tendering is or is not required."

Another SG noted to the Inquiry team, "there is a law on tendering but it does not explain the process of how to tender. It is very common for us to forgo the public tender and instead go to the Governor and have him issue a public decree saying why a public tender wasn't necessary." This quote indicates there is confusion among GoSM employees regarding public tender exemptions and the role of the Governor in the exemption process. For more information on public tenders, see ***Procurement***.

Lack of formal concession fee policy for BTP payments

A BTP official and an individual with direct knowledge of BTP explained that concession fees are fixed and spectrum fees are variable. Currently, BTP pays operational costs from spectrum fees and pays all concession fees directly to Government; however, according to the interviewees this policy is not formalized, and was only articulated in correspondence with the Minister. Under Ordinance BTP, any surplus should also be paid back to Government; however, currently, no official policy or regulation states that all concession fees are paid directly to the Government, which may cause confusion and allow vulnerability for deviation.

Confusion around gifts/conflict of interest

Confusion around the rules around the acceptance of gifts and what constitutes a conflict of interest were cited frequently in interviews. For more information, see the ***No Government-wide conflict of interest policy*** and ***Vague gift policy*** sections above.

Recommendations	**Take steps to update outdated regulation, create or clarify implementing policies/procedures where necessary, and resolve conflicting regulation issues:** Specifically, create implementing policies/procedures around public tendering, civil aviation, BTP payments, and sick leave; update public transportation legislation; and clarify and adopt an official study financing regulation. Conduct an assessment across departments to identify where documented policy/procedure gaps exist or where confusion on existing regulation exist and take swift action to remedy the gaps identified in order to define clear standards under which Government employees operate. Create a website similar to the P&O website (http://pnobeleid.sharepoint.com/Pages/default.aspx) with interactive information on all GoSM policies and procedures so that standards employees are held to are easily accessible and explained clearly.

Regulatory framework

Unclear and limited sanctioning authority of inspections/controls teams

Observations

Varying amounts of sanctioning power exist across inspections/controls teams such as public health, food safety, VROMI, TEZVT and Labor.

For example, according to interviewees across Ministries, healthcare, pharmaceutical, and food safety inspectors have adequate power within legislation to administer sanctions. Labor and Economic inspectors/controllers on the other hand appear to have minimal sanctioning power. At this time, no administrative fines can be placed on businesses that are not compliant with Economic Affairs and Labor policies, and the mechanism to levy sanctions is through the Prosecutor's Office, according to interviews with VSA and TEZVT employees. By contrast, according to the National Ordinance Health Inspectorate, the Health Inspectorate can impose administrative fines.[77]

In order to issue an official report upon discovery of a violation, an inspector must be appointed as an "extraordinary police officer." Inspectors who are not extraordinary police officers may only issue a warning letter. Some inspections/controls teams are all extraordinary policeman, but the labor department only has two, one of whom is on long term sick leave. Therefore, only one labor inspector is able to issue an official report of a labor violation which affects the efficiency of the team.

Since 10/10/10, only five businesses have been fined for employing illegal workers, according to a VSA official. VSA officials cited that continuity in the Prosecutor's office made it difficult to get cases pushed through.

A senior Justice official stated,

> *"no [penalties are issued for clubs with illegal sex workers]. I don't hear that they get fined. Prosecutors never really fine anyone. There is no incentive to not have illegal workers – that is the real issue. There is no policy for shutting them down no*

[77] Landsverordening Inspectie voor de Volksgezondheid

matter how many times they have illegals."

Employees in the Prosecutor's Office also cited the lack of administrative powers of inspectors/controllers to be an issue. An employee stated that,

> *"in Holland you have a difference between administrative and criminal. And then it's possible if you have an inspection, you can handle those cases in an administrative way. But on the island the possibilities on administrative are very limited…when the extraordinary police officers send the report to us, we have to look at it in a criminal way."*

When asked if it would be a good idea to empower inspectors/controller teams with administrative sanctioning power, the employee from the Prosecutor's Office said to the Inquiry team,

> *"yes, it would make things much better. We are looking at it in a criminal way – and criminal law should only be applied when all other things have been exhausted. And it is very difficult for us to criminalize civil behavior. We have to be selective because it is really difficult to criminalize this. We believe that we shouldn't be taking these things to court."*

A TEZVT official stated to the Inquiry team that TEZVT inspectors/controllers are "supposed to be able to administer fines and fine books were issued to use three years ago but they are locked up in the safe still because the acting director says 'you cannot use them, you will damage business on the island." The official went on to say that no fines have ever been administered by TEZVT inspections/controls for businesses in violation of economic licenses. Other officials who were asked to confirm this statistic stated to the Inquiry team that they did not know if it was true or not. According to another TEZVT official, the Ministry of TEZVT is currently in the process of creating a policy to allow inspectors/controllers to issue fines on businesses found in violation.

Recommendations

Amend regulations to allow inspector/controller teams to directly issue administrative fines without having to go through the Prosecutor's Office to encourage compliance by business owners: This will help improve the effectiveness of inspections/controls teams, encourage compliance of businesses, and help the Government collect fees for violations that occur. Labor and immigration inspectors in particular should be granted power to administer fines to businesses upon discovery of illegal immigrants. An independent body such as the General Audit Chamber should provide oversight over administrative fines including an annual review to measure compliance with rules and regulations. Create an appropriate workflow around the ability to administer fines similar to what is outlined in the National Ordinance Health Inspectorate. As a way to encourage compliance with inspections/control functions, institute an automatic fee for businesses/individual to pay if, after two inspections have been completed, the business/individual is still not in compliance with the necessary requirements.

While multidisciplinary inspections/controls teams already exist, create an official policy mandating multidisciplinary teams to carry out inspections/controls together: Mandating multidisciplinary teams will encourage accountability for all team members to conduct adequate checks and help deter illegal payments to be made to an individual inspector/controller.

Regulatory framework

Lack of due diligence for licensing casinos

Observations

There have been several initiatives to regulate casinos, but presently a centralized regulatory and oversight body does not exist in Sint Maarten, according to interviews with Ministry of TEZVT officials. Currently, the GoSM has 15 casinos operating on the island (10 stand alone and five associated with hotels). According to officials in the Ministry of TEZVT, which is responsible for issuing casino licenses, licenses are valid for five years, but none have been renewed since October 10, 2010.

The GoSM's casino policy, titled Rules of the Game, was passed in June 2011, and contains measures in the application process for a "criminal and financial background check" for Directors and shareholders.[78] One license has been granted since June 2011, according to documents provided by the Ministry of TEZVT, and officials within the Ministry confirmed that screening of Directors and shareholders had not been conducted retroactively for the remaining 14 casinos.

Several interviewees and press reports indicated that there were integrity issues surrounding several individuals cited to be owners of casinos in Sint Maarten by open sources and Ministry of Justice officials. The Inquiry team conducted due diligence procedures for additional information. Many of the reported casino owners appear to be known associates or members of well-established international organized crime families, according to research of open sources and syndicated global risk and compliance ("GRC") databases. GRC databases are used as an industry standard to identify government prohibited persons and entities, terrorism, corruption, and money laundering subjects and data contained within the databases is pulled from official government records and restricted entity lists.[79] Specific findings are as follows:

- One reported owner of a casino in Sint Maarten appeared in an INTERPOL Red Notice for fraud, organized and transnational crime and was also reportedly accused of providing false declarations, embezzlement, corruption, forgery and money laundering, according to research of syndicated global risk and compliance databases.
- Another reported casino owner was apparently linked to the Italian mafia and has also been accused of money laundering.

[78] *Casino Policy: Rules of the Game,* Government of Sint Maarten; http://www.sintmaartengov.org/Policy%20and%20Reports/Rules%20of%20the%20Game%20Revised%202011.pdf

[79] There is a regulatory expectation around the globe in many jurisdictions that GRC databases should be used for regulatory compliance purposes and that positive findings from "GRC hits" be examined to determine whether any entities/individuals are involved in prohibited or at risk transactions or behavior.

- A third reported casino owner was reportedly under investigation for tax evasion, holds a tax debt of USD 40 million, and has also been accused of money laundering.

There is also no regulatory or financial oversight board operating in Sint Maarten, which creates vulnerabilities for money laundering and organized crime. This lack of financial oversight may attract illicit behavior to the island.

Recommendations

Establish a gaming oversight board to regulate the issuance of licenses and renewals: The regulation and issuance of licenses should ultimately be the responsibility of the newly established gaming oversight board.[80] The Inquiry team recommends that the gaming board in Sint Maarten be an independent body and that it be supervised by a senior and independent law enforcement official such as the Attorney General. The gaming board may consider contacting a regional or international resource, such as the International Association of Gaming Regulators or well-established gaming control boards such as the one in Nevada, to solicit guidance on complying with leading practices for casino regulation. Part of the function of the board will be to reevaluate existing licenses and examine new applications in line with international leading practices. This board can serve in many capacities but regulating who has and who receives such licenses will be a critical part of their mandate. Key criteria and common features from international leading practices to acquire a license are traditionally defined in an accreditation process and should include the following:[81]

- **Initial and ongoing due diligence of each applicant**: This screening should be conducted by appropriate law enforcement personnel under the supervision of a senior law enforcement official and independent, third-party firm.
- **Integrity of owners and management:** This integrity check on owners and management should include ethical know-how (ability to address responsible gambling and crime prevention). The Inquiry team recommends that the integrity check be based in part on a due diligence profile defined above by an independent, third-party firm.
- **Technical know-how**: Those operating the Casinos should possess and maintain expertise in the industry.
- **Due diligence/screening of the sources and origins of funding**: This analysis, concerning source and origins of funds is also best served by utilization of an independent firm which has the appropriate forensic

[80] Guidance on the regulation of gambling is available from a variety of sources, including national and sub-national regulatory authorities in North America, Europe, and elsewhere. Leading practices have also been defined by international and regional gaming associations such as the International Association of Gaming Regulators (http://iagr.org/), the North American Gaming Regulators Association (http://www.nagra.org), and the European Casino Association (http://www.europeancasinoassociation.org) which represents national associations and individual operators of licensed land-based casinos in Europe. Moreover, states such as Nevada in the United States have substantial experience with casino control boards (http://gaming.nv.gov/). In addition, the GoSM has already received a detailed consulting report about the formation of a casino control board.

[81] The above practices are principally derived from the European Casino Association (http://www.europeancasinoassociation.org)

expertise to conduct this analysis.

- **A defined deposit or security down-payment:** A deposit or down-payment for each license to become active should be required.
- **Accreditation procedures for all the gaming materiel the applicant intends to use**: This should be mandated for all gaming material including tables, slots, cylinders, software, etc.

Initiate renewal process for casinos currently operating with expired licenses. As part of renewal process, conduct criminal and financial background checks of shareholders, owners and directors without delay: The GoSM should immediately conduct appropriate due diligence to determine whether casino owners, shareholders, directors, or managers are associated with any criminal or integrity concerns. Shareholders, owners and directors identified with adverse findings, including criminal behavior, should not have their licenses renewed. Due diligence should be conducted by qualified third-party vendors that have the requisite expertise to identify reputational, legal, and commercial liabilities associated with individuals and businesses. Due diligence screening should also be conducted as part of casino license application and renewal processes.

Regulatory framework

No clear regulatory framework for licensing of brothel owners

Observations

Currently, the GoSM oversees the prostitution sector, including the issuance of licenses and work permits for commercial sex workers, through a patchwork of different policies. According to sources in the Ministry of Justice, the act of prostitution is permitted or not prohibited under domestic law but there is no legal provision that permits or regulates a person or entity to operate a brothel. There is no one specific license that allows an entity or individual to operate a brothel. Instead, brothels are permitted to operate according to an unwritten rule that requires each entity to have a set of licenses which combined, is sufficient to operate a brothel. According to interviews with Ministry of TEZVT employees, there are currently eight entities that have the set of licenses required to operate as a brothel, and there is also a moratorium on the provision of the set of licenses required to operate a brothel. It is unclear if background checks on owners and Directors were completed when the original licenses were issued.

According to Government officials and business owners that were interviewed, these entities allowed to operate as brothels typically recruit women from abroad who work at the brothels and pay the owner a fee to live there.

Recently, there have been open source reports citing a new policy changing the way the GoSM approaches both licensing and work permits for commercial sex workers. On July 11, 2014, the Ministry of VSA published a Memorandum in Regards to the Application of New Policy Processing Work Permits for Commercial Sex Workers. This Memorandum can be described as an interim measure in anticipation of a new commercial sex work policy. According to officials in the Ministry of Justice, the official Government policy on commercial sex workers has not yet been implemented.

The proposed new policy is being drafted by a commission known as the Interdepartmental Commission Commercial Sex Workers (hereinafter referred to as "Justice Sex Workers Commission") which was formed in 2012 by the former Minister of Justice. The Justice Sex Workers Commission is comprised of representatives from not only VSA, but also other concerned Ministries, including the Ministry of Justice and the Ministry of TEZVT.

According to the July 11, 2014 Memorandum, in December 2013, the Justice Sex Workers Commission issued its position in a document titled General Description of the New Commercial Sex Workers Policy Sint Maarten. That position stated that it was anticipated that within the near future that a new penal code will be implemented. That new penal code, entitled, Title XIII Crimes Against Morals, article 2:212, will state that, "He who, **without permission from the Minister of Justice,** intentionally induces or encourages sexual intercourse for payment by others with a third party, will be punished with incarceration for at a maximum four years or a fine of the fifth category."[82] According to senior Justice officials, the views stated in the General Description of the New Commercial Sex Workers Policy Sint Maarten by the Justice Sex Workers Commission have not yet been implemented nor has the new penal provision.

As set forth in the proposed legislation above, the new GoSM policy would envision permission from the Ministry of Justice for those who "encourage sexual intercourse by others with a third party." This "permission" presumably would be the granting by the Minister of Justice of an actual "brothel license." The standards for the issuance of such a license have not been determined according to the Justice officials interviewed by the Committee.

Recommendations

Create an interdisciplinary licensing authority and revise prostitution licensing policy to be consistent with domestic criminal law and with stringent new requirements for brothel owners: Despite a lack of global standards for the regulation of the prostitution business, it is possible to distill a limited set of leading practices for regulating prostitution that can be instructive for the GoSM. A number of national, municipal and state governments throughout the world permit and regulate prostitution, including the Netherlands, the state of Nevada in the United States, and the government of Queensland, Australia. Comparing the regulatory regimes that have emerged in these differing contexts reveals a few common themes that provide guidance as to the proper regulation of a sex industry. These include:

- The establishment of a licensing authority that is responsible for administering the laws regulating prostitution.
- Specific licensing requirements for sex workers and brothels, including prescriptions designed to prevent human trafficking, forced prostitution,

[82] "Notitie m.b.t. toepassing nieuwe beleidsregels bij de behandeling van aanvragen voor tewerkstellingsvergunningen voor 'commerciële seks werkers'," *National Gazette*, July 11, 2014; http://www.sintmaartengov.org/government/AZ/laws/National%20Gazettes/Landscourant%2011%20juli%202014.pdf

and underage prostitution.

- Formal guidelines for applying for a sex industry license, including screening of applicants and mandatory disclosures to help prevent industry capture by organized crime and human trafficking.[83]

The GoSM should establish a Licensing Authority consistent with the themes above. The GoSM has already begun to address licensing policy with the establishment of the Justice Sex Workers Commission but that Commission has not finalized any policy or implemented any prior recommendations from sex and human trafficking assessments. The Licensing Authority should consist of the Head of Immigration, Chief Inspector for Health, and Department and Head of Economic Licenses. This Authority should be required to consult with the Chief of Police and Chief Prosecutor before the issuance of any license for their advice and recommendation. This Authority should also be empowered to review any existing license applications for the proposed brothel licenses in Sint Maarten and conduct appropriate due diligence procedures on established brothels and new businesses that apply for brothel licenses. Further, the Authority could provide recommendations concerning future prostitution policy and appropriate legislative changes. In the event a Minister proposes to lift the moratorium on the licensing of new brothels, the Minister should be required to seek advice from the Licensing Authority regarding the economic need and public interest for an increase in brothels.

Regulatory framework

Opportunities to abuse residency permit process

Observations

It appears that immigrants may enter Sint Maarten through obtaining a Director's license from the Ministry of TEZVT instead of a work permit through the Ministry of VSA, according to VSA officials. Immigrants can use a Director's license as means of gaining entry into the country but possibly never actually perform duties for the company to which they claim to belong. Prior to 10/10/10 there was no regulation limiting the number of Directors for a limited liability company ("N.V."). The GoSM recognized this loophole in the system and limited the number of allowable foreign Directors for each company to two, according to Ministry of TEZVT officials.

Interviewees also noted to the Inquiry team, however, that the process to establish an N.V. in Sint Maarten is easy and that individuals already on the island can establish N.V.s for the sole purpose of gaining residency permits for immigrants who come in as Directors of those N.V.s.

Recommendations

Establish control mechanisms to check validity of N.V.s: As previously noted, third country nationals ("TCNs") can use the Director's licensing procedure to bypass the work permit procedure to gain residency in Sint Maarten. TCNs, including commercial sex workers, whose work permit is set to expire may also attempt to remain in the country by obtaining a Director's license.

[83] *Prostitution Licensing Authority Strategic Plan 2014-18,* Queensland Government; http://www.pla.qld.gov.au/Resources/PLA/reportsPublications/documents/strategicPlan.pdf

Currently there are no automated control mechanisms to prevent this from occurring. A comparative study should be conducted to determine how many current people who have Director's licenses were previously granted work permits for commercial sex work and other professions. These cases should be further investigated to assure that the Director license was not obtained to circumvent the residency requirement, including a review of legitimacy for the businesses linked to each license.

Regulatory framework
Lack of financial regulations for casinos

Observations

The GoSM's Rules of the Game casino policy was passed in June 2011. The policy does not include regulations for a financial oversight mechanism, but it does state that the GoSM intends to establish such a function.[84] According to interviews and documents provided to Inquiry team, no such controls have been implemented to date. This lack of financial oversight presents a high risk of money laundering and organized crime. According to senior officials in the financial intelligence unit ("MOT"), the casinos do not comply with the current MOT regulations, and one senior official noted that "their record of compliance is an F." The 2013 Caribbean Financial Action Task Force ("CFATF") report noted the following:

> *"There is no comprehensive regulatory and supervisory Anti-money Laundering ("AML")/Board of Financial Supervision ("CFT") regime in Sint Maarten for casinos; however the Examiners were advised that within the Government there has been discussion regarding the creation of a Gaming Control Board. There are no AML/CFT requirements for internet casinos. It is to be noted that threshold for casinos do not comply with the threshold set by FATF."*[85]

It is noted that the GoSM has previously hired outside consultants to evaluate the casino industry and to assess in detail different regulatory options. The findings from this outside assessment were given to the GoSM over the course of last year and this year.

Recommendations

Utilize the gaming oversight board to monitor compliance with gaming regulations and advance policies to address integrity risks associated with casino operations in Sint Maarten (e.g. money-laundering): As previously stated, the Inquiry team recommends that the gaming oversight board be an independent body that is separate from the ministerial framework of the GoSM. In addition, to its role in issuing licenses, the oversight board should monitor casino revenue in coordination with local tax authorities to identify suspected tax fraud, money laundering, and other financial crimes. Most gaming boards have as one of their primary functions an audit division to monitor and

[84] *Casino Policy: Rules of the Game,* Government of Sint Maarten; http://www.sintmaartengov.org/Policy%20and%20Reports/Rules%20of%20the%20Game%20Revised%202011.pdf

[85] *Sint Maarten 2013 Anti-Money Laundering and Combating the Financing of Terrorism Mutual Evaluation Report,* Caribbean Financial Action Task Force; https://www.cfatf-gafic.org/index.php?option=com_docman&Itemid=414&task=doc_download&gid=894&lang=en

review compliance with reporting requirements of gaming revenue. These procedures will not only help to reduce the risk of money laundering but identify the appropriate amount of revenue subject to tax.

7.4. Investigations and enforcement

7.4.1. Description aligned to global standards and leading practices[86]

A strong investigative and enforcement apparatus is an essential element of a public integrity architecture. The laws, policies, and regulations are only as effective as a government's underlying ability to hold individuals and companies accountable for transgressions. Absent enforcement, laws and regulations are merely paper tigers incapable of detecting, punishing, or deterring integrity-related misconduct. In fact, credible enforcement or the lack thereof is often highlighted in leading governance indices as a critical driver of a government's overall governance rating. For example, countries that score low on Transparency International's CPI are almost always noted for having low levels of enforcement, or enforcement actions that are captured by the political process and not independent or credible. A credible, independent and well-resourced enforcement capability cannot be emphasized enough in building a strong integrity framework in Sint Maarten – in fact, it is a metric that receives a tremendous amount of attention from external integrity rating agencies and local civil society organizations and must remain a top priority of the GoSM. An effective investigative and enforcement apparatus should feature appropriate institutional mechanisms to implement and enforce relevant laws and regulations, including:

- Specific law enforcement units that are responsible for investigating and prosecuting integrity-related misconduct
- Appropriate measures to ensure the independence and autonomy of individuals and units responsible for conducting investigations and prosecutions
- Adequate resources to allow for the thorough investigation and prosecution of integrity-related misconduct, including personnel with specialized skills associated with detecting, investigating, and prosecuting corruption and other financial crimes
- Clear guidelines and principles governing the initiation, suspension, and termination of investigations and prosecutions
- Sufficient investigative and prosecutorial discretion that allows for the pursuit of law enforcement activities without undue interference--or reliance on permission--from the executive branch.
- Ability of law enforcement authorities to obtain relevant information during an investigation, including the authority to obtain witness statements, secure access to information from financial institutions and tax authorities, and seize evidence and conduct reasonable searches (in line with applicable domestic laws).
- Procedures for tracking, monitoring, and documenting the progress of investigations to ensure efficient case management.
- Timely administrative, civil, or criminal actions undertaken in response to misconduct
- Effective communication protocols to ensure that relevant law enforcement authorities receive whistleblower complaints and other information bearing on investigations and prosecutions

[86] The key features related to ***Investigations and enforcement*** that are highlighted in this section represent an aggregation of relevant guidance contained in the leading global standards and practices referenced in ***Appendix B***.

- Adequate protections for whistleblowers and other individuals providing information bearing on investigations and prosecutions
- Policies and procedures to facilitate cooperation with foreign law enforcement authorities, including through treaties and arrangements for Mutual Legal Assistance (MLA).
- Appropriate policies and procedures to facilitate the return or repatriation of illicit proceeds that have been taken out of the country. These policies and procedures should seek to promote rapid access to financial information for asset tracing and streamlined protocols for international cooperation on financial investigations.

An important indicator of the performance of a country's enforcement apparatus is the number of investigations, prosecutions, and convictions that occur in light of the overall integrity context of the country. A lack of enforcement actions in a country that is widely perceived to be free from corruption may not be as notable as a lack of enforcement actions in a country that has witnessed numerous corruption scandals but has failed to take action. Importantly, a low frequency of enforcement actions may be criticized unless the actions undertaken are highly impactful (e.g. target misconduct in the upper echelons of the government to demonstrate the credibility and independence of enforcement authorities).

While the criteria specified above provide a framework for building an effective enforcement function, a key factor that should not be overlooked is political commitment. A robust enforcement function is often only possible with strong political support from the executive branch. Developing this political commitment is largely an endogenous process that emerges organically through the domestic political process in a country.

7.4.2. Observations and recommendations

While many of the necessary integrity enforcement institutions exist within the GoSM, including the National Detectives, Prosecutor's Office, and MOT, there is a marked lack of coordination and concerted effort dedicated to administrative, civil, and criminal enforcement actions in the wake of integrity breaches at all levels of Government. Enforcement is a highly visible element of a country's public integrity architecture, and a key way of signaling a government's commitment to proper public administration. Based on the Inquiry team's observations, the GoSM does not have sufficient capacity or depth of knowledge of the local environment. Additionally, it appears that the GoSM does not sufficiently and effectively use the enforcement tools at its disposal to hold public officials and civil servants accountable for transgressions. Therefore a finding of low maturity is warranted when compared to global benchmarks and leading practices found in the international community.

The following were identified as the key observations affecting investigations and enforcement within the GoSM, according to interviews conducted and documents analyzed by the Inquiry team:

- **Room for improvement in the National Detectives:** A number of challenges facing the National Detectives were identified by the Inquiry team. The Inquiry team noted that the National Detectives have basic detective training but may have limited capability in the area of "white collar" investigations due to a deficiency of qualified personnel with the unique skills necessary to investigate corruption related cases (e.g. forensic accounting skills). In addition, a lack of coordination between the National Detectives, Prosecutor's Office, and the Police hinder the Government's overall enforcement capability.

- **Insufficient policies and institutional arrangements to avoid conflicts of interest in enforcement functions:** The Inquiry team noted that the control framework to avoid conflicts of interest within the judicial system could be improved. Establishing clear rules to prevent conflicts of

interest is particularly important for a small, close-knit island like Sint Maarten where real or perceived bias can easily arise due to overlapping social, economic, and political relationships.

- **Continuity and performance issues at the Prosecutor's Office:** The Prosecutor's Office is comprised of prosecutors from the Netherlands who complete short-term tours of duty in Sint Maarten. The transient tenure of prosecutors often poses challenges since progress in many cases are disrupted by the turnover in personnel and a lack of continuity. In addition, the short-term tours of duty make it difficult for prosecutors to develop a strong understanding of the local culture and win the trust and cooperation of community members.
- **Inactivity of the MOT:** The MOT has not been fully integrated into the enforcement framework in the GoSM, and there is a marked lack of coordination with other enforcement bodies such as the Prosecutor's Office, National Detectives and the Police. As a result, the specialized knowledge and financial analysis capabilities of the MOT is not properly utilized in preventing and prosecuting corruption**.** Little action has been taken to address recommendations that have emerged from previous assessments, such as the 2013 CFATF Mutual Evaluation Report.
- **Lack of disciplinary action taken across departments**: Interviewees noted to the Inquiry team that internal disciplinary sanctions against employees for integrity violations were slow to be taken and not frequently imposed, despite apparent evidence of wrongdoing and support for sanctions from department heads and other senior officials.
- **Lack of enforcement for commercial sex workers' work permits**: The GoSM does not effectively monitor or oversee brothels to ensure that commercial sex workers do not overstay their six month visas. A few proposed policies to improve GoSM performance in this regard have yet to be implemented, and many sex workers continue to overstay their legal residency.
- **Lack of resources for immigration enforcement**: The GoSM estimates that there are at least 500 illegal immigrants. Although they have two mobile control units ("MCUs") to combat illegal immigration there is often inadequate cell space to house detainees and the MCUs do not have adequate equipment (e.g. vehicles).
- **Limited capacity to detect fraudulent documents**: Fraudulent documents were observed to be a common technique used by illegal immigrants to avoid detection. Although the GoSM has some capacity to identify fraudulent documentation, there is a notable lack of sophistication in the training and methodology used.
- **Lack of resources to pursue human trafficking cases**: GoSM is ranked as a tier two country on the United States Department Human Trafficking Report and as such may not fully comply with the Trafficking Victims Protection Act's. There appears to be a lack of resources directed towards efforts to combat human trafficking, especially in light of the heightened risk posed by the commercial sex industry.
- **Lack of training and technology in customs enforcement**: The Customs Department is hindered by a lack of advanced training and insufficient equipment, which compromises their ability to safeguard Sint Maarten's Harbour and Airport. Insufficient inspections may allow organized criminal activity to proceed unchecked, including narcotics and human trafficking operations.

Investigations and enforcement

Room for improvement in the National Detectives

Observations

Prior to achieving autonomy in 2010, Sint Maarten did not have a domestic investigative force that focused on public corruption. Investigations of civil servants and public officials were conducted by a detective detail based in Curacao, which was responsible for the entire Netherlands Antilles. This arrangement precluded the need for each island to develop an independent investigative capacity since detectives from Curacao would travel as needed to the various islands to conduct investigations. However, after the dissolution of the Netherlands Antilles, the GoSM decided to develop an independent investigative body, which included hiring new personnel and securing the necessary facilities and equipment.

The Sint Maarten National Detectives was established in 2011 by National Ordinance Organization, Tasks and Authorization National Detective – an important step for which the GoSM deserves credit since special investigative units are highlighted as a key feature of a strong public integrity architecture in UNCAC.[87] The original Implementation Plan for the National Detective Unit noted that the establishment of the National Detectives was considered a key component in the development of Sint Maarten as an autonomous country.[88] The Plan highlighted the heightened risk to Government integrity due to the small size of the island and the tightly-knit social, economic, and political networks, which presented numerous opportunities for the exercise of improper influence. The National Detectives were intended to address this risk by investigating corrupt activity and other criminal conduct by civil servants. The existence of this unit provides a foundation that can be significantly leveraged by the GoSM to enhance its investigative and enforcement capacity.

The National Detectives also face a number of other challenges associated with limited personnel, insufficient training, and a lack of analysis of performance.

Limited capacity

Interviews and documents obtained during the course of this Inquiry suggest that the National Detectives face capacity constraints related to a lack of qualified personnel and insufficient supplies. Senior Justice officials stated that the greatest challenge facing the National Detectives is a lack of detectives and analysts with specialized skills in financial and forensic accounting and document review.[89] These personnel constraints often prevent the National Detectives from simultaneously pursuing multiple investigations, and at times have required that an ongoing investigation be suspended when a more pressing or publicly visible issue arises. Government interviewees involved in the establishment of the National Detectives mentioned that detectives are often reassigned from important

[87] Landsbesluit organisatie, taken en bevoegdheden Landsrecherche

[88] The Implementation Plan was provided to the Inquiry team by representatives from the Ministry of Justice.

[89] Dutch language proficiency was also noted as another capacity constraint by senior Justice Officials. The Ministry of Justice maintains documents in Dutch, and there are some members of the Unit who lack proficiency in Dutch.

corruption investigations to less significant cases involving problems with the police force or other similar matters indicating that the detectives were not sufficiently insulated from political pressures in the performance of their duty.

The original plan for the National Detectives called for 16 full time equivalents ("FTEs") with the potential for 4 more FTEs (20 total).[90] Officials from the Ministry of Justice informed the Inquiry team that the National Detectives currently consists of only 11 individuals: one Department Head, five tactical detectives, two team leaders, and three support staff. Although staffing in the National Detectives remains low, the Minister of Justice has recently authorized the hiring of four FTEs before December 2014, four additional FTEs in 2015, and additional recruitment as needed thereafter until the maximum of 20 FTEs is reached.[91]

While the authorization provided by the Ministry of Justice to augment the staff of the National Detectives is a welcome development, it remains to be seen whether the National Detectives will be able to identify and recruit appropriately qualified candidates in a timely manner. Special hiring of expatriates or foreign nationals with a high level of forensics skills may be considered to augment the National Detectives as a "technical branch" that provides supporting forensic services.

In addition to a lack of qualified personnel, senior Justice officials noted that the National Detectives does not have adequate supplies such as printers and copy machines to appropriately prepare dossiers for prosecutors, which is a critical step in ensuring that a prosecution will move forward. The lack of basic computer equipment is another area that can be immediately remediated by the Government and presents an opportunity for the GoSM to demonstrate its commitment to improving its enforcement capacity.

Lack of standardized, effective anti-corruption training

A lack of standardized formal forensic training may compromise the effectiveness of the National Detectives. Senior officials from the Ministry of Justice and other agencies informed the Inquiry team that current members of the National Detectives have primarily received on-the-job training. Some of this training is augmented through guidance provided by an experienced detective from the Kingdom who visits Sint Maarten for approximately three months every year to "twin" or guide local detectives through investigative procedures. While on-the-job experience is an invaluable method for acquiring critical investigative skills, it should not be considered a substitute for a formal training program. A standardized training program tailored to the specific function of the National Detectives is critical to promote quality and consistency in the work performed by investigators. For example, foreign governments allied with Sint Maarten have exchange and training programs wherein foreign law enforcement personnel are trained at national academies of excellence. The Inquiry team was aware of at least one member of the Justice Ministry who was trained at the FBI center in Quantico,

[90] Development Plan for the National Detectives Unit

[91] Information provided to the Inquiry team by the National Detectives.

Virginia.

The Inquiry team also analyzed summary training records and training requests provided by the Ministry of Justice and noted that the formal training that is currently provided to the National Detectives is largely based on the basic detective training course. Detectives have received limited training on specific anti-corruption and financial investigative techniques. In particular, interviewees noted a lack of forensic accounting and financial analysis expertise, which may compromise the National Detectives' ability to identify corrupt financial transactions and money laundering schemes. According to senior Justice officials, another capability gap is criminal intelligence. The National Detectives does not currently appear to have adequate staff with substantial experience in gathering criminal intelligence, which is a core function of the National Detectives.

According to information provided to the Inquiry team, budgetary constraints are the primary reason for the lack of appropriate training programs. Going forward, the GoSM should carefully consider its budgetary priorities in light of the importance of developing the National Detectives as a credible and effective anti-corruption investigative body.

Inconsistent opinions of performance

Assessing the performance of the National Detectives was hindered by a lack of access to individual case files. Consequently, a detailed analysis of investigative performance could not be conducted. The following analysis presents a general overview of issues bearing on the performance of the National Detectives that were identified through interviews and aggregate statistical case information provided by the Ministry of Justice.

First, the Inquiry team noted a discrepancy of opinion regarding the performance of the National Detectives between members and senior Justice officials. According to the Justice officials contacted, case investigations are proceeding too slowly, though they acknowledged that some of the National Detectives' progress may have been hindered by the backlog of cases it inherited from its former counterpart in the Netherlands Antilles. In contrast, members of the National Detectives stated that cases are progressing at an acceptable pace, especially in light of the challenges faced in terms of limited staff, resources, and specialized training.

The Inquiry team reviewed the statistical information provided by the Ministry of Justice to attempt to gain a better understanding of the caseload and workflow of the National Detectives and found that 18 cases have been concluded, and there are 15 cases currently ongoing.[92] The Inquiry team was unable to ascertain based on the aggregate information provided what proportion of these cases were directly related to alleged corruption of public officials as opposed to other types of crimes by civil servants – information that could provide an indication of how much time and resources are being devoted to anti-corruption efforts by the National Detectives. Without access to individual case files to assess the nature

[92] Cases may include multiple suspects or indictments.

and complexity of the cases handled by the National Detectives, it was not possible to draw any conclusions as to whether the performance of the National Detectives was in line with what would be expected of a similarly situated investigative team.

Second, the Inquiry team noted the lack of a comprehensive strategy document that articulates short or long-term goals or enforcement priorities for the National Detectives. Consequently, it appears that the National Detectives is a reactionary force responding to information and complaints as they arise and does not currently have a plan to prioritize or strategically allocate resources to certain high-risk areas. The lack of an overarching enforcement strategy could undermine the effectiveness of the National Detectives, particularly in light of the resource constraints discussed in the previous section.

Third, the Inquiry team observed a lack of coordination between the National Detectives and the Public Prosecutor's Office in basic case management. The National Detectives informed the Inquiry team that over 80% of corruption cases are completed and ready for prosecution, while the Public Prosecutor's Office indicated to the Inquiry team that many of these same cases were not ready for presentation in Court and much work remained to be done. According to interviews with senior Justice officials, the Prosecutor's Office does not always coordinate closely with the National Detectives, and at times discounts information provided by the National Detectives. The lack of coordination and cooperation between the National Detectives and the Prosecutor's Office could have a significant impact on the performance of the National Detectives going forward and is an issue that should be addressed at the operational level by encouraging informal communications between detectives and prosecutors.

Fourth, the Inquiry team noted that many investigations may be hindered by the reluctance of key witnesses to cooperate with the National Detectives due to a lack of anonymity protections. According to senior Justice officials, witnesses are hesitant to "officially" cooperate with the National Detectives upon realizing that their identity would be revealed during the course of a criminal investigation. The Inquiry team was informed by senior Justice officials that the fear of retaliation in the workplace may prevent many witnesses from providing information to the National Detectives. This difficulty in securing witness cooperation could substantially slow the progress of investigations and even lead to otherwise valid cases being dropped.

Recommendations

Increase skilled staff in National Detectives in line with mandate provided by the Minister of Justice: The limited availability of skilled forensic investigators within the National Detectives poses a substantial challenge for law enforcement efforts. Bottlenecks in the workflow of the National Detectives are not infrequent due to staffing issues, and the capacity of the unit to conduct multiple investigations simultaneously is fairly limited. The Minister of Justice has authorized additional hiring (up to 20 full-time staff), and the National Detectives should expedite the search for qualified candidates, with a particular emphasis on recruiting personnel with strong Dutch language skills and experience conducting financial investigations.

Improve training in specialized anti-corruption investigative techniques: Specialized training should be offered to the National Detectives to improve their capacity to conduct integrity-related enforcement activities. Such training could take the form of ready-to-deploy training programs such as those offered by the Association of Certified Fraud Examiners and similar credentialing bodies, or customized trainings that include basic anti-corruption and financial crimes investigative procedures highlighting issues relevant to Sint Maarten (e.g. money laundering schemes in casinos). Because of the advancement of the anti-corruption movement over the last decade there is a plethora of training aids, tools and methodologies that can boost the capability of the National Detectives. By taking advantage of this or other similar ready-to-deploy training programs the GoSM can signal its commitment to strengthening its integrity-related enforcement function, enhance its capability, increase its detection rates and drive higher enforcement statistics.

Members of the Prosecutor's Office should be involved in the trainings to strengthen ties between the National Detectives and prosecutors.

Consider implementing a specialized case intake triage system so that corruption allegations involving senior Government officials are prioritized: A single high profile investigation can have an asymmetrical impact in improving the perception of civil society regarding the GoSM's commitment to combatting corruption. Case intake procedures should be designed to identify high-profile integrity-related cases and ensure that appropriate resources are dedicated to proper investigation.

Investigations and enforcement

Insufficient policies and institutional arrangements to avoid conflicts of interest in enforcement functions

Observations

The Inquiry team solicited assistance form the Ministry of Justice to identify and locate formal guidelines governing conflict of interest in investigations and cases but were informed that there are no formal procedures. This apparent lack of formal conflict of interest guidelines and mandatory recusal procedures for justice officials presents a notable integrity risk.[93] Having well-defined and publicized conflict of interest guidelines are particularly important in small countries like Sint Maarten where tightly-knit social, economic, and political networks can easily cause real or perceived bias in the justice system.

A good illustration of the need for clear conflict of interest policies emerges from a situation related to the Inquiry team by a senior Justice sources indicated that, the National Detectives concluded a fact-finding investigation in May 2012 into alleged misconduct by a public official and recommended that a criminal investigation be initiated. However, the Inquiry team was informed by senior Justice officials that a criminal investigation has yet to be opened despite the fact that more than two years have passed since the National Detectives made their recommendation.

[93] The Inquiry team was informed by senior Justice officials that recusals do occur on a voluntary basis, but there is no mandatory requirement, and no recusals have occurred in high profile corruption cases since 10/10/10.

According to interviews conducted by the Inquiry team with Ministry of Justice officials and civil society stakeholders, there is a perception that the delay in opening a criminal investigation may be due to the relationship that a senior Justice official has with the family of the individual who would be the subject of the investigation – a relationship the official acknowledged.[94] Whether or not this relationship has had a material impact on the decision to launch a criminal investigation is largely irrelevant and not the focus of our Inquiry. The key issue is that in a society as closely connected as Sint Maarten, the perception of bias can easily arise and is just as damaging to public trust in Government as actual bias. Establishing, and enforcing, clear conflict of interest guidelines that would, in this instance, require the senior Justice official to relinquish their role in an investigation involving a personal contact could mitigate the perception of bias that was expressed by the Justice officials interviewed.

Recommendations

Develop clear conflict of interest guidelines to prevent real or perceived conflicts from emerging in the judicial system: The apparent lack of formal conflict of interest guidelines and recusal procedures for justice officials presents a notable integrity risk. Such conflict of interest guidelines are particularly important in small countries like Sint Maarten where tightly-knit social, economic, and political networks can easily interfere with the independence of justice officials. Guidelines should require a conflict of interest analysis to identify potential conflicts or bias and deploy special external (i.e. off-island) prosecutors when needed to manage investigations that cannot be credibly conducted by local personnel.[95]

Investigations and enforcement

Continuity and performance issues at the Prosecutor's Office

Observations

The Public Prosecutor's Office is the organization that brings suspects to the criminal court. The Public Prosecutor's role is to assure that criminal offenses are investigated and prosecuted.[96] The proper exercise of prosecutorial discretion often requires the consideration of a broad range of factors, including local context and culture. The decision to allocate scarce resources to prosecute one case over another may hinge on subtle policy issues, such as the relative priority of addressing one type of misconduct over another within a community. Not all communities will have the same priorities or needs, and it is important that prosecutors have a strong understanding of the community in which they operate.

While many of the individuals in the Public Prosecutor's Office have adequate experience--most prosecutors have between two and ten years of relevant experience in the Netherlands--there did not appear according to senior law enforcement authorities interviewed by the Inquiry team, to be very strong ties between prosecutors and the local community. According to officials in the

[94] The senior official acknowledged a relationship with the family in an interview with the Inquiry team, however indicated that it has not affected any decisions in the case.

[95] The importance of independent special prosecutors is highlighted in Article 36 of the United Nations Convention Against Corruption.

[96] Openbaar Ministerie; http://www.openbaarministerie.org/en/

Ministry of Justice, prosecutors in Sint Maarten generally serve short-term tours of duty (usually three to five years) before returning to the Netherlands.

This practice was the subject of criticism by senior Justice officials who were interviewed by the Inquiry team. The first concern expressed was that the constant turnover of prosecutors disrupts the efficient handling of cases. According to the Justice officials interviewed, it is not unusual for prosecutors to finish a tour of duty before their cases are closed, which delays the resolution of many cases. The second concern expressed was that the temporary residency of prosecutors prevents them from developing strong ties to the local community and acquiring an understanding of the local culture. Specifically, Justice officials interviewed stated that the transient nature of prosecutorial tours of duty is not conducive to developing trust with local law enforcement authorities and community members, which could impact the performance of prosecutors, particularly with respect to acquiring information from witnesses and other community members.

Inconsistent reports on performance

The Inquiry team noted concern regarding the pace at which corruption cases are being prosecuted. According to senior Justice officials interviewed by the Inquiry team, it has taken "too much time" to investigate and prosecute high profile cases and that there are still "a lot more cases to investigate and be brought to Court." A senior Justice official has indicated to the Inquiry team that they are in the process of developing a plan to address the future workflow of the Public Prosecutor's Office and the National Detectives, which could help accelerate some of these cases.

Another issue that warrants further scrutiny is of convictions in corruption cases. According to information received from the Public Prosecutor's Office, there have been seven cases of corruption involving public officials that have gone to court since 2010. Of these cases only one resulted in a conviction according to information provided to the Inquiry team. The low conviction rate may be attributable to a lack of specific experience in trying corruption cases. According to the Public Prosecutor's Office none of the current prosecutors are devoted solely to anti-corruption matters.

Other case related issues

As noted previously, Government officials informed the Inquiry team that cooperation between relevant stakeholders in the investigative process could be improved and also indicated that there is an interest and willingness to work on this by all the relevant stakeholders in the criminal justice system.

Another issue raised by some senior Justice officials to the Inquiry team was the burden imposed by National Ordinance Prosecution of Political Authorities preventing the prosecution of a political official suspected of a crime until a

prosecution order is issued by the Court, which in turn relies on a requisition of the Attorney General.[97] According to senior Justice officials this process delays law enforcement officials from gathering information through search warrants and wiretaps until such an order can be obtained from a Court, which often may result in notice being given to a suspect.

Overall, the Inquiry team noted that all the relevant stakeholders consulted during the course of the Inquiry recognized the need for quicker resolution of cases and expressed their interest in finding ways to improve the current process. This included the willingness by some of those interviewed to open their investigative files to external review to determine if all possible steps were being taken to bring those accused to justice.

Recommendations

Deploy and launch a special investigative and prosecutor task force with cooperation from the Netherlands to help clear the backlog of widely-known corruption cases. The task force's focus should be to process the backlog of corruption cases and demonstrate the commitment by the GoSM to resolving these public scandals: Seek to enhance GoSM's credibility to actively prosecute existing cases thereby reinforcing the earlier recommendation to promote the Fight Against Corruption campaign.

Lengthen term of prosecutors to encourage continuity and local understanding: Prosecutors completing two year rotations in Sint Maarten often do not have the opportunity to build strong ties to the community, which can undermine their legitimacy and ability to win the trust and cooperation of local residents. The term should be extended to five years to allow prosecutors to complete cases and integrate and better understand the local culture. Furthermore, efforts should be made to identify and recruit qualified prosecutors who have existing ties to the community or are able to invest in building local relationships and credibility.

Establish a specialized Anti-Corruption/Organized Crime Task Force within the Prosecutor's Office: This task force should include the head of the National Detectives, Attorney General, and Chief of Police and coordinate closely with the head of MOT. The primary objective of this task force should be to facilitate closer relationships among the different law enforcement and justice departments by serving as a coordinating body for anti-corruption investigations and prosecutions.

Institute independent file reviews and specialized support of corruption and complex cases with an experienced cadre of prosecutors: Due to the unique characteristics of Sint Maarten and the high risk of conflicts of interest, the Attorney General in conjunction with the Minister of Justice should identify and maintain experienced regional and international prosecutors familiar with the Dutch legal system who are available to provide specialized support and file reviews of high profile and complex corruption cases.

[97] Landsverordening Vervolging Politieke Gezagdragers

In addition to case file review and expertise, these experienced prosecutors can recommend any enabling legislation to improve corruption prosecutions.

Investigations and enforcement

Inactivity of the MOT

Observations

The MOT is housed within the Ministry of Justice.[98] The MOT recently became a member of the Egmont Group and participates in both the Financial Action Task Force on Money Laundering ("FATF") and the Caribbean Financial Action Task Force ("CFATF").[99] [100] [101]

According to senior Justice officials interviewed by the Inquiry team , there are currently nine employees including two supervisors, two legal advisors and two administrative workers in the MOT. The MOT's formation plan allows for a total of 17 employees. According to the most recent detailed study of the MOT conducted by the CFATF:

> *"The MOT lacks staff to adequately perform its functions and the necessary analytical tools such as Analyst Notebook to assist in the analysis of UTRs. The staff of the MOT and some of the law enforcement do not have adequate and relevant training for combating [money laundering and terrorist financing]."*

In its overall assessment of the MOT, CFATF noted that:

> *" The aforementioned characteristics, such as geographical location, tourism, relative easy logistical accessibility, high mobility of goods and services, pose threats in terms of illegal activities like drug trafficking, human trafficking and [money laundering]."*[102]

Despite these risks, the MOT "has lots of challenges" according to Justice officials familiar with the unit and interviewed by the Inquiry team. These officials further indicated that the unit does not adequately interact with banks, businesses and financial institutions to determine if they are making appropriate disclosures. Also, information obtained from interviews with Justice officials suggest that there is little cooperation with the police to reconcile individuals in the police registry with those in the MOT database who are associated with suspicious transactions. Although the MOT reported that it handled around 8,000 suspicious activity reports in 2012, there does not seem to be any meaningful sharing of information with either the Prosecutor's Office or the police. Currently, the Police nor Prosecutors' Office have adequate access to the MOT information, according to

[98] Landsverordening Inrichting en Organisatie Landsoverheid

[99] "Frequently Asked Questions," Financial Action Task Force; http://www.fatf-gafi.org/pages/faq/membercountriesandobservers/

[100] The Egmont Group of Financial Intelligence Units; https://www.egmontgroup.org

[101] "Jamaica and St. Maarten Financial Intelligence Units Join Egmont and FIU Head of Bermuda Reappointed as the Americas Region Representative," Caribbean Financial Action Task Force; https://www.cfatf-gafic.org/index.php?option=com_content&view=article&id=1668%3Arecent-news-caribbean-financial-action-task-force-cfatf&lang=en

[102] *Sint Maarten 2013 Anti-Money Laundering and Combating the Financing of Terrorism Mutual Evaluation Report,* Caribbean Financial Action Task Force; https://www.cfatf-gafic.org/index.php?option=com_docman&Itemid=414&task=doc_download&gid=894&lang=en

interviewees.

Another key finding of the CFATF report is related to casinos, one of the vulnerable industries in Sint Maarten. The report states:

> *"There is no comprehensive regulatory and supervisory AML/CFT regime in Sint Maarten for casinos; however the Examiners were advised that within the Government there has been discussion regarding the creation of a Gaming Control Board. There are no AML/CFT requirements for internet casinos. It is to be noted that thresholds for casinos do not comply with the thresholds set by FATF."*[103]

Recommendations

Address the recommendations contained in the 2013 CFATF Mutual Evaluation Report on Sint Maarten: The report prepared by CFATF provided a summary of key recommendations to strengthen the AML/CFT framework in Sint Maarten, which were developed in line with leading global standards. The Inquiry team endorses the findings in the 2013 CFATF report and urges the Government to implement the recommendations contained therein.

Facilitate greater coordination between the Police, Prosecutor's Office, and the MOT by including MOT personnel in regularly scheduled joint meetings: Successful investigations and prosecutions of financial crimes require close cooperation between intelligence gathering and law enforcement functions. The MOT should be seamlessly integrated into the workflow of the National Detectives, Police and Prosecutor's Office when needed. Efforts should be made to promote formal and informal links between MOT personnel and law enforcement personnel, including through regular meetings.

Investigations and enforcement

Lack of disciplinary action taken across departments

Observations

Based on interviews and documents obtained, disciplinary sanctions are not imposed in an efficient manner in cases involving dereliction of duty. According to a senior Ministry of General Affairs official,

> *"Decisions are not taken when disciplinary measures have to be taken. I think the reason for this is that the Minister does not want to be placed in a negative light, if you put your foot down, reprimand someone for doing something wrong, you are a bad guy, you get less votes."*

A senior official at VSA stated to the Inquiry team, "you cannot get rid of someone who is a civil servant, forget it."

The authority to impose disciplinary sanctions is regulated in Article 86 of the LMA as follows:

1. *"The competent authority may impose disciplinary sanctions on a civil servant who fails to comply with the obligations imposed*

[103] *Id.*

on him or neglects his duties in other ways.

2. *Neglect of duty covers both the infringement of any rules and action or omissions that a good civil servant should not take or make in similar circumstances.*

3. *Criminal prosecution for an offence that includes neglect of duty shall not rule out disciplinary sanctions for the same offence.*[104]

Article 87 of the LMA describes the sanctions that can be imposed:

1. *The disciplinary sanctions that can be applied are:*

a. *"a written rebuke;*
b. *special service on days other than Sundays and the religious holidays applying for the civil servant, without the award of the remuneration for overtime pursuant to Article 26 or for lower remuneration than this;*
c. *financial penalty;*
d. *full or partial deduction of income;*
e. *classification in a lower remuneration grade;*
f. *exclusion from promotion;*
g. *a reduction in rank, for a specified period or otherwise, with or without a reduction in remuneration;*
h. *suspension for a specified period, with full or partial deduction of income; and*
i. *dismissal."*[105]

Article 89 of the LMA stipulates that a sanction may not be imposed until the civil servant has been given an opportunity to account for their actions within seven days. Civil servants may only be dismissed by National Decree which is signed by the Governor and relevant Minister who is, according to the constitutional system of Sint Maarten, politically responsible for the decision (only the Governor – who is the competent authority to hire a civil servant – may dismiss a civil servant by decree.)[106] The LMA is applicable to all civil servants.

The Employee Handbook further outlines "dereliction of duty" which is subject to disciplinary measures in cases when "employees do not live up to their obligations." Dereliction of duty also includes violating regulations or doing or refraining from things that an employee is supposed to refrain from or should be doing under those circumstances. The Employee Handbook also states that the department or service head with the SG initiates the disciplinary sanction by "sending a report to the Minister via P&O."

To illustrate the inefficiencies and reluctance to impose disciplinary sanctions, the Inquiry team was provided several examples. First, a senior official reported a firsthand account of an employee at the Airport who was letting people through

[104] Landsverorderdening Materieel Ambtenarenrecht

[105] *Id.*

[106] *Government of Sint Maarten Employee Handbook*, Government of Sint Maarten; http://pnobeleid.sharepoint.com/Documents/111124%20Employee%20Handbook%202011.pdf; Landsverordening Materieel Ambtenarenrecht

without stamping their passport for a fee. The senior official stated to the Inquiry team that they began the case for dismissal by issuing letters to the employee, and notifying the Minister and the SG. The employee has not yet been terminated (as of March 2014). According to the senior official, the employee is still on the payroll of their department. The senior official stated that there are three people on their department's payroll who they had not seen "since [they] started" and four people on the department's payroll that work elsewhere including the cabinet of the Minister. When asked how this was possible the senior official stated, "I don't make ultimate decision on this – it is the Minister and cabinet of advisors."

A former department head reported direct knowledge of inspectors receiving gifts or being taken out to lunch or "receiving money from people to do an inspection faster or pass the inspection." In those cases, no disciplinary action was taken against these staff members, according to the official. The official did state to the Inquiry team that as a result of this incident, the inspections/controls department implemented follow-up checks, where a second inspections team is sent in to verify the findings of an initial inspection. The official was unsure if the implementation of follow-up checks still exists and whether or not it improved the level of integrity.

Another instance cited by multiple officials was an account of an inspector who was videotaped accepting bribes in a supermarket prior to carrying out the inspection. The inspector was terminated, according to officials who were directly involved in the dismissal of this employee. An official stated that they felt this inspector was terminated because the inspector in this instance was videotaped and could not deny the claims.

Finally, an official reported direct knowledge of a case involving an inspector who was identified to be performing work as a consultant for the same company they were inspecting and was reported to be billing the company for the consulting work while carrying out inspections. This inspector was reported by the official to still currently be on GoSM payroll but has not been working since "June of last year."

Documentation regarding four disciplinary action cases involving integrity breaches was provided to the Inquiry team by civil servants directly involved in each case. Dismissal or severe disciplinary action is still pending in all four cases, according to interviewees.

Disciplinary action case example #1[107]

<u>November 2011: Customer Complaint</u>

A warning letter was issued to an employee in November 2011 stating that a customer complaint had been filed citing an incident of sexual harassment between the employee and a client who visited the Government department. The warning letter states that the customer's complaint was shared with the employee in a meeting which they had with Ministry employees including the department

[107] Based on documents provided by various Ministries

head and a member of P&O. According to the warning letter, the employee stated during that meeting that "on occasions [the employee] would question female clients at the front office of the department about their seriousness to seek viable employment, and casual[ly] refer them to the local brothels." The letter states that this activity is "completely inappropriate, and goes against every principle of good customer service." The activities are also found the employee to be in violation of "LMA Article 44 and Article 45" as well as not complying with "competencies" of being "client friendly" and "service minded" that were articulated in a Planning Interview from April 15, 2011. The warning letter ends by saying to "consider this a written warning to be cited to your personnel file."

August 2012: Customer Complaint

Later in August 2012 another complaint was filed by a female employee against the employee. This one was submitted to the department head and stated the following,

> *"Today…[the employee] called my extension and asked me 'are you in your booth' which I answered 'yes.' I proceeded to ask [the employee] if there 'is there is a client outside waiting for me' [the employee] answered me 'no,' I asked [the employee] 'why are you calling me' it is at that point [the employee] told me that 'I will put some whip cream on my toes and lick it off of them' I said to [the employee] those remarks are 'borderline sexual harassment'."*

August 2012: Notification of Investigation and Formal Disciplinary Procedure

As a result of this latest incident, the employee received a letter which stated that the allegations of sexual harassment and gross misconduct were escalated to Management and that the employee's actions were a "serious infraction and breach of LMA Article 44 and Article 45". In addition to the complaint made above, the letter states that the department was also aware of "several incidents which occurred with customers…with one particular case of a customer being told by [the employee] 'I can do with some nice breast-milk now.'" The employee was notified of an official investigation and formal disciplinary procedure commencing and notified that an opportunity would be provided to defend the allegations against them.

October 2012: Absenteeism

Email correspondence between the department head and members of P&O was obtained by the Inquiry team citing that the employee had been out of the office for four days "with no indications of [their] whereabouts". The letter requests disciplinary action to be taken in the form of:

1. *"Enforcement of the 'no work, no pay principle' (as per article 24 LMA)*
2. *Furthermore, absenteeism without a valid reason is considered a dereliction of duty and is subject to disciplinary measures. [The department head is] requesting that this employee be considered for dismissal, or be placed in another position more suitable to his skill set."*

September 2012: Disciplinary Advice

A disciplinary action Advice was issued by the Ministry regarding the employee in late September 2012. The employee was accused of sexual harassment against a coworker and a statement from them was included that indicated that their actions were meant as a joke. The document cites two previous cases of similar activity against two female coworkers. The Advice for punishment of one week without pay is approved by the Minister.

February 2013: Planning Interview

Documentation from an Individual Performance Contract Planning Interview from February 2013 cites information that the employee shared with their department head their plans for bringing in 'girls' for several clubs on the island, primarily from Venezuela and Dominican Republic. According to the Planning Interview document, the employee gave extensive information on this, including the transport of girls via Anguilla and also indicated that other clubs sign for these girls and they end up at a different club when they are 'ill-treated'. The employee was advised that this matter would be escalated to P&O for further investigation, with an indication that this was not approved in the past or currently. The document was signed by the employee, section head, and head of department.

February 2013: Letter to the Governor

A letter from the Minister was issued to the Governor of Sint Maarten in February 2013. The letter charged the employee with sexual harassment against a coworker, following a complaint and recommends the disciplinary punishment of withholding a week of salary. The letter also stated that the punishment will not come into effect until the employee has the opportunity to formally respond to the charge.

March 2013: Disciplinary Action Advice

An Advice for disciplinary action to be taken against the employee is issued by the Ministry in March 2013. The employee was accused of the following actions and recommended for termination:

- September 2011 – reportedly told a client she looked good and ask if she was interested to work in a brothel.
- August 2012 – reportedly told a coworker that they wanted to put whipped cream on her toes and lick it off.
- Planning discussion 2013 – reportedly admitted that in addition to their official work as an administrative employee, the employee was engaged in secondary activities as a liaison for an unregistered brothel in the Dutch Quarter that were not approved and likely illegal.

The letter states that the National Detectives will perform an investigation into the possible illegal activities surrounding the brothel.

March 2013: Letter from the Governor to the Employee

A letter from the Governor to the employee is issued in March 2013. The letter acknowledges the charges brought by the Ministry and states that disciplinary action will not be administered until the official has the opportunity to respond within seven days in writing to the charges.

May 16, 2013: National Decree from the Governor

The Governor informed the employee that they were to stop working and performing their duties until further notice.

August 2013: Hearing

A hearing occurred with the employee, in which they denied all allegations.

Although the employee's suspension was upheld, according to officials in General Affairs and the related Ministry, the employee is still on payroll. The Inquiry team confirmed this through payroll documentation from March 2014 provided by the Ministry of General Affairs. An official from the related Ministry stated that a replacement was not able to be hired because the employee was still on payroll.

Disciplinary action case example #2[108]

May 2012: Warning Letter issued

It was discovered that an employee was signing registration forms for vessels "even though [they] had no authority to do so", according to an individual directly involved in the case. The official was instructed to reissue these certificates signed by the appropriate authority in June 2011. Upon discovery that the official was still issuing the registrations themselves, the official received a warning letter. The warning letter issued in May 2012 and signed by the department head was reviewed by the Inquiry team.

August 2012: Notice of Disciplinary Investigation

The Inquiry team reviewed a letter from a senior Ministry official to the employee outlining the following issues:

- The employee received a warning on May 30, 2012 for signing the "blue registration form" that the employee is not permitted to sign.
- The employee gave a dossier with confidential client information to a third party.

The letter states that there will be a disciplinary investigation into the employee's actions as it appears that "time and time again" the employee is unable to follow instructions. The employee was also informed to stop working. The employee was informed that they will be informed about the outcome of the disciplinary investigation, will maintain their salary, and must follow the instructions provided.

November 2012: Advice for the Referral of the Case to the National Detective

An Advice related to the employee was signed approving suspension from service

[108] Based on documents provided by various Ministries

in August, pending the outcome of the investigation by the National Detectives.

The following is outlined in the Advice as issues around the employee that were discovered through interviews with individuals who interacted directly with the employee:

1. *"Improper behavior towards clients and personnel (cursing; improper behavior – kicking shoes through the office in the presence of clients; knocking office equipment, including electronics, off desks etc.*
2. *Performing actions against section procedures and regulations, sometimes directly or indirectly placing personnel in liability issues (giving away copies of clients' documents, issuing registration cards without receiving payment and having inspections performed etc.*
3. *Informing clients of loopholes and regulations, and benefitting family and friends in the process*
4. *Suspicion of corruption by receiving and asking moneys from clients*
5. *Conflict of interest (receiving money from clients to pay the registration fee on their behalf)*
6. *Suspicion of being intoxicated while at work."*

The Advice also includes that the employee provided third parties with information containing confidential client information on two occasions. "Another serious offence" was also discovered in September 2012. The employee was not following the certification procedure and that registration certificates were being issued for commercial vessels "without proof of inspection and payment being present." An attached witness statement report includes testimony about the employee from multiple colleagues. One witness stated in the report, "I have never seen [the employee] take money from clients, but I am very suspicious that it does happen. I have however seen [the employee] with money from clients who [the employee] took money from to go and pay for their registration. The witness also stated in the report that the employee referred clients who were not eligible for registration to a "lady to still get their boats registered. People often call for this lady at the office thinking that she works for us." The witness stated in the report that the employee used their "sister, who is part of a notary, [X], in order to arrange for [clients] to have a link to Sint Maarten, as this is one of the requirements for registration."

A list of 33 certificates issued without performing an inspection or collecting payment was reviewed by the Inquiry team. Most of these 33 certificates were divided between three companies: 17 to one, and six and five to the other two.

<u>October 2013: Referral to National Detective</u>

In October 2013, a letter from the department head was sent to the National Detective asking the National Detective to investigate the following suspicions of the employee:

- *"Receive money for issuing certificates 'Bribery'*

- *Provide information to third parties without permission 'integrity'*
- *Sign certificates without having authority 'fraud'"*

An official with direct knowledge of the case stated that once the case was sent to the National Detective, the National Detective stated to the official that the case related to "an integrity issue and nothing can be done" even though the official stated to the Inquiry team that they told the National Detectives that the employee was suspected of taking bribes. An official recounted a firsthand account to the Inquiry team of seeing this employee "making certain remarks to clients" and in [their] office, "[the employee] would open [their] drawer and say when you put something in there, then we can make a deal."

December 2013: New Witness Testimony

In December 2013, an individual contacted the responsible department to notify them that she had been working with the employee to obtain a business license. During the time this individual was working with the employee, the employee was reportedly suspended. The individual was referred to the employee to receive help obtaining a license for her vessel. The individual signed a statement saying that she had paid the employee "over an extensive period of time" payments ranging from "USD 250 to USD 500" with a total of up to USD 5,000. The employee told the individual to contact an accountant to help "handle the paperwork" but did not notify the individual that the accountant was the employee's sister.

The individual reported that the employee asked for payments and stated that "these funds were for extra expenses and drafting of documents needed in order to get the business license." Payments were always made at local establishments in "non-marked envelopes and passed in a very discreet manner", according to the signed statement.

The individual reported the issue to the department as the license had not been granted and she came to offer someone in the department money to move things along, according to a firsthand account from a Government official. "she offered money – she said to get things done, usually you pay", according to the official.

Upon notification of the employee working with this individual, the department notified P&O but did not notify the National Detectives, according to interviews.

January 2013: Advice For Employment Suspension

According to a Ministry of General Affairs official, "no investigation is currently being done on this case and there is no movement to get rid of the employee. P&O did what they needed to do but other individuals have to take action, and they are not." The employee is currently on suspension and the Advice putting the employee on suspension does state that their salary will continue "pending the investigation."[109] The Advice also calls for "suspension from service…in accordance with article 92 sub c from the LMA." Article 92 sub c states that employees may be suspended or dismissed "in other cases in which, in the view of the relevant

[109] Information verified with the Ministry of General affairs on July 24, 2014

competent authority, suspension is called for in the interests of the service." Article 94 of the LMA does not require that employees receive payment during suspension under Article 92 sub c.

According to officials in General Affairs and the related Ministry, the employee is still on payroll and receiving full salary. The Inquiry team confirmed this through payroll documentation from March 2014 provided by the Ministry of General Affairs. An official from the related Ministry stated that a replacement was not able to be hired because the employee was still on payroll, and the department is therefore currently very short-staffed and unable to effectively carry out its function.

Disciplinary Action Case Example #3[110]

August 2013: Department Head Letter

A letter was issued by a department head regarding alleged violations of conflict of interest law for an employee working in the labor inspectorate and reportedly "submitting and assisting clients (businesses) with employment permit applications through [their own] business" located on a prominent street in Phillipsburg. A report was made including names of clients that the employee submitted applications for and states that the employee's activities date back to "at least April 2013." The letter states that the "additional job" constitutes a "serious conflict of interest" and is "harmful to the independent, objective and trustworthy reputation" of departments in the Ministry. According to the letter, the employee was instructed previously by the SG to submit a declaration form on activities, which was not completed. The letter finds the employee in violation of Article 52 and 86 of the LMA.

Article 52 states,

> *A civil servant shall not perform any secondary activities as a result of which good performance of the relevant position or good operations of the relevant service cannot or can no longer reasonably be assured. The civil servant who performs or is to perform secondary activities shall notify the head of his service of this in writing.*

Article 86 states,

> *The competent authority may impose disciplinary sanctions on a civil servant who fails to comply with the obligations imposed on him or neglects his duties in other ways. Neglect of duty covers both the infringement of any rules and action or omissions that a good civil servant should not take or make in similar circumstances.*[111]

[110] Based on documents provided by various Ministries

[111] Landsverordening Materieel Ambtenarenrecht

August 2013: Hearing

In August 2013 a hearing was held based on this complaint. The hearing minutes state that the inspector denies helping people apply for work permits. The inspector states that they never visited VSA to apply for a work permit for an individual or a business.

The inspector states that they do not have a firm and the building that is referred to is just a building that has been in their family for a long time and is rented out to some shops. The employee uses a small room to do some administrative work from for several other family real estate properties. The room is also used by a friend who helps clients fill in tax forms and apply for work permits.

The employee signed a note denying the alleged activity and no further action has been taken according to officials involved in the case. An official stated that the file requesting dismissal has "been on the Minister's desk since December and nothing happens. [The employee] is still on payroll and working."

Disciplinary action case example #4[112]

A department head of a Government Office was reportedly named in a criminal complaint filed in November 2010 relating to allegations of corruption while in office.[113] A senior Ministry of Justice official interviewed stated to the Inquiry team that there is "so much evidence" supporting the corruption allegations against this individual; however the investigation initiated by the Prosecutor's Office appears to be ongoing, and no criminal charges have been filed to date.

Undated internal investigation report and email correspondence obtained by the Inquiry team related to the internal investigation

Prior to the filing of the criminal complaint, employees completed an internal investigation regarding what appears to be financial mismanagement by the department head while employed by the Government. The report states that the department head and an employee received trip reimbursements in the amount of USD 1,250 that they did not receive the required permission for from the Executive Council.

Other specific and relevant findings from an internal report filed are as follows:

- **Destination management company:** The department head and an employee reportedly organized at least ANG 184,081 in payments from the Government office U.S. affiliate to a destination management company from June 2009 to January 2010 without obtaining approval from the Executive Council or the Director of Resource.
- **Publishing company:** The Executive Council approved an amount of ANG 82,210 for service year 2010 to a publishing company. The Government office made a payment of USD 10,000 on April 7, 2010 and another payment of USD

[112] Based on documents provided by various Ministries
[113] Open source media report, December 2010

4,300 without approval or permission from the Executive Council or Director of Resource. Open source information appears to link an individual with the publishing and destination management companies, and this individual was reported in many firsthand accounts to be in a close personal relationship with the department head.

- **IT contracts:** The department head co-organized payments of USD 16,608 for computers, iPads and other related items to what appears to be an IT company. The purchase included 15 iPads, which could not be accounted for, according to the report. The report also notes that the purchase of computers and IT equipment must be approved by the Information and Communications Technology ("ICT") section head and that the Government office must always receive advanced approval from the Executive Council and in this case the ICT department, which was not obtained. The report further states that the Government office, through its US affiliate, paid ANG 107,008 to an individual between 2009 and June 2010 without necessary approval from the ICT department or Executive Council.

Other payments identified in the undated internal investigation report include:

- Christmas food costs paid to a restaurant via the Government Office US Affiliate for USD 2,544 without permission
- Travel made by the department head's colleague to Panama in October 2010 via Aruba without permission, also paid by the Government Office US Affiliate
- Travel made by the department head without permission form the Executive Council that cost USD 3,900
- Presentations and food paid without permission that cost ANG 156,047
- ANG 61,734 paid by the Government Office US Affiliate to the Westin Hotel without permission[114]

The report concludes that a total of ANG 875,911 was identified to have been paid out without approval from the Director of Resource or the Executive Council. Additionally, unauthorized commitments of ANG 257,929 still needed to be paid (at the time of the report), according to the report. The total amount of unauthorized payments was reported as ANG 1,133,840 (875,911 + 257,929).

The two employees were temporarily suspended in November 2010. In December 2010, a Minister withdrew the suspension of the department head and colleague, "on the basis of insufficient grounds/lack of evidence."[115] The department head is currently an executive at a SoC and an investigation is ongoing, according to Ministry of Justice officials. Other than temporary suspension, no other disciplinary sanction was placed against either employee, according to a Ministry of General Affairs official.

[114] Undated internal investigation report
[115] Open source media report, December 2010

Recommendations

Administer timely disciplinary sanctions on employees who engage in integrity breaches and prioritize closing out the backlog of existing cases and take appropriate disciplinary action: Employees who engage in integrity breaches and do not comply with the law should be held accountable for their actions in a timely manner. A more stringent policy should be created and enforced from a disciplinary perspective in regards to engaging in corrupt activity while in office. Departments should not suffer due to an employee who engaged in misconduct while that employee is suspended. Timelines should be created for internal investigations with strict deadlines for information gathering and execution of sanctions. If investigations take more than three months and an employee is suspended due to allegations of misconduct, a replacement should be hired in order to avoid disruption to the proper functioning of the department. Town halls and department/unit meetings should be held to communicate misconduct identified and disciplinary measures taken to resolve misconduct in order to serve as a deterrent to other employees and to demonstrate to employees that integrity breaches are not tolerated within the Government. Disciplinary sanctions statistics should be published on the Fight Against Corruption website.

Investigations and enforcement

Lack of enforcement for commercial sex workers' work permits

Observations

As set forth in ***Regulatory framework***, there have been several policies issued over the years in Sint Maarten concerning the prostitution business and how work permits for commercial sex workers should be handled.

Multiple Government officials indicated to the Inquiry team that there is a current problem with commercial sex workers violating their six month work permit. As recently as July 11, 2014, and as previously described in ***Regulatory framework***, the Ministry of VSA issued new guidance on commercial sex workers and published this guidance in the National Gazette titled, General description of the new Commercial Sex Workers Policy Sint Maarten.[116] It is unclear the effect that this guidance may have as it has not yet been approved by the Council of Ministers. The July 11 Labor Commercial Sex Worker Permit Policy proposes to impose additional obligations for the brothel owners which could improve enforcement of the six month visa rule. Importantly, the new suggested policy also indicates that a request for a new work permit will not be processed until the sex worker that the new candidate replaced has left Sint Maarten. The club-owner would be required to provide proof of departure with a copy of an airline ticket a week before the departure date.

While informal multidisciplinary inspection/control teams are already in place, currently, there is no formal inspection mechanism to assure that commercial sex workers and brothel owners are complying with the work permit rules. The majority of the efforts are currently focused on ensuring the health and safety of

[116] "Notitie m.b.t. toepassing nieuwe beleidsregels bij de behandeling van aanvragen voor tewerkstellingsvergunningen voor 'commerciële seks werkers'," *National Gazette*, July 11, 2014; http://www.sintmaartengov.org/government/AZ/laws/National%20Gazettes/Landscourant%2011%20juli%202014.pdf

the commercial sex workers. Although there is currently a process in place to fine business owners that are employing illegal immigrants, fines are rarely levied on businesses upon discovery of illegal commercial sex workers, according to Ministry of Justice, VSA, and TEZVT officials.

Recommendations

Building on the informal multidisciplinary inspection/control teams already in place, formalize a Prostitution Inspection Task Force: The GoSM should inspect brothels to measure compliance with existing immigration and health concerns and to identify possible instances of human trafficking. Importantly, this Task Force should be empowered to impose sanctions for non-compliance. The proposed Task Force should have authority to issue fines and further action if needed in instances of non-compliance with policies and procedures governing commercial sex workers.

This Task Force should be comprised of members from the Ministries of VSA, TEZVT and Justice. All three of these Ministries have a role in the regulation of prostitution industry. This Task Force should work closely with the interdepartmental licensing authority to advise on improvements in the current regulatory mechanism.

Investigations and enforcement

Lack of resources for immigration enforcement

Observations

An overall lack of enforcement was identified regarding foreign nationals residing in Sint Maarten illegally. A Ministry of Justice official estimated that there are more than 5,000 illegal immigrants; however, a 2014 US Department of State Trafficking in Persons report estimates that the number may be as high as 30,000.[117]

Immigration control and enforcement in Sint Maarten is performed by two MCUs, and the GoSM Immigration department in the Ministry of Justice is, according to Justice officials, only two years old. The primary responsibility of the two units is to identify, locate and apprehend immigrants who are in non-compliance with the GoSM's residency requirements. A Ministry of Justice employee indicated that the units "bring in people but nothing happens." The interviewee further stated that the teams have to rent cars in order to support their operations, and that the team needs twice the number of cars in order to effectively complete their objectives. Ministry of Justice officials also stated the need for training for MCU staff.

Lack of prison space

Foreign nationals in non-compliance with residency requirements who are arrested and detained are frequently released back into the community due to a lack of holding cell space. According to Ministry of Justice officials, foreign nationals often fail to appear for deportation proceedings and a lack of resources appear to make it difficult for immigration personnel to locate and apprehend these individuals again. This lack of cell space appears to significantly undermine the arrest and apprehension process.

[117] *2014 Trafficking in Persons Report,* US Department of State; http://www.state.gov/documents/organization/226848.pdf

Foreign nationals who are arrested for criminal offenses appear to be turned over to Immigration and Border Control for deportation proceedings when criminal cases are dismissed or deemed insufficient for prosecution. No specifics were identified regarding the frequency of dismissed criminal charges.

Recommendations

Provide MCUs adequate resources to effectively control immigration: The Ministry of Justice should allocate greater resources to Immigration staff. Further, MCU units should have dedicated vehicles, which will likely save money over renting cars, and staff should be provided adequate training on skills that will contribute to the ability of immigration officers to conduct their mission. Such specialized training should include training on refugees and asylum as well as identification and treatment of victims of human trafficking.

Provide sufficient cell space for successful deportations: MCUs will lose their effectiveness if illegal immigrants cannot be deported at the end of the process. As mentioned previously, the Ministry of Justice should have adequate cell space to effectively apprehend and deport illegal immigrants. It is noted that the Ministry of Justice is currently constructing new cell space. However, the GoSM should also consider alternative detention centers for targeted round-ups of illegal immigrants. Such centers do not necessarily need the same security precautions as a normal prison because they typically house nonviolent individuals and can be utilized as a temporary space to house the illegal immigrants until deportation. Such identification and expulsion centers have been utilized in other countries around the world.[118] Any such detention center should comply with all applicable human rights and international law afforded to those housed there.

Investigations and enforcement

Limited capability to detect fraudulent documents

Observations

Interviewees within the Ministry of Justice indicated that significant responsibility is placed on Immigration personnel assigned to the Admittance and Residency office to detect fraudulent documents. Although Ministry of Justice employees confirmed that admittance and residency personnel are trained to detect fraudulent documents, there were few details offered regarding the level of training provided or the proficiency of staff in detecting fraudulent documents. The Ministry of Justice employees acknowledged that immigrants do at times obtain work and residency permits using fraudulent documents.

A senior Ministry of Justice official mentioned that there has been an ongoing project to "pardon" individuals who are illegally residing in Sint Maarten but never used fraudulent documents to gain entry into the country. The official further explained that there were approximately 4,000 individuals who requested to be pardoned, and around 450 were deemed eligible, which they believed was because the remaining individuals were identified to have used forged documents to obtain status.

[118] Italy, for example, has similar detention centers. "Italy Detention Profile," GlobalDetentionProject; http://www.globaldetentionproject.org/countries/europe/italy/introduction.html#c2421

Recommendations	**Enhance skill set of residency office staff to detect fraudulent documents:** The GoSM should assess the staff's level of capacity to detect fraudulent documents and provide training where needed. The ability to detect fraudulent documents can help confirm that residency and work permit offices are obtaining valid information on immigrants when they enter Sint Maarten.

Investigations and enforcement
Lack of resources to pursue human trafficking cases

Observations	Human trafficking was described to the Inquiry team by a Ministry of Justice official as a "prevalent problem" that the Ministry of Justice does not adequate have resources to combat. A Ministry of Justice official also reported that it is in possession of "quite a lot of information" from old investigations, wiretaps and informants but there is "no follow-up capacity" or experience in solving these types of cases. According to the U.S. State Department's 2014 Trafficking in Persons, Sint Maarten is classified with *Tier 2* status which applies to "countries whose governments do not fully comply with the Trafficking Victims Protection Act's ("TVPA") minimum standards, but are making significant efforts to bring themselves into compliance with those standards."[119] The TVPA's minimum standards provide guidelines for governments to implement a program aimed at eliminating human trafficking. The U.S. State Department report further estimates that there could be as many as 15,000 people working as forced labor in Sint Maarten, and also notes the dependency by sex workers on brothel and strip club owners to obtain work permits.
Recommendations	**Increase number and quality of resources to effectively combat potential human trafficking:** Place additional resources to allow police and prosecutors to initiate investigations against suspected traffickers. The Ministry of Justice should also provide training to police regarding the investigation of human trafficking crimes. The GoSM should work to align its anti-human trafficking framework to the TVPA's Minimum Standards for the Elimination of Trafficking.

Investigations and enforcement
Lack of training and technology in customs enforcement

Observations	Customs were traditionally managed by officials of the Netherlands Antilles located in Curacao, and consequently the Sint Maarten Customs department has had to start anew after 10/10/10. The Customs department currently has 11 employees and is responsible for control of goods at the Airport, Harbour and the borders. According to Custom officials there is a department head, one assistant, and one team leader at the Airport, Harbour and detective division. In a highly-publicized incident in 2014, two senior customs officials were arrested for participating in large scale narcotics trafficking scheme. This incident called into question the integrity of the Customs department and had an adverse impact on its

[119] *2014 Trafficking in Persons Report,* U.S. Department of State; http://www.state.gov/documents/organization/226848.pdf

public reputation.

The Inquiry team received information from senior Justice officials including Customs department employees that reveal a number of areas of concern, including:

- **A lack of adequate capacity and supervision:** This is particularly noteworthy in customs operations at the Airport and Harbour locations. The lack of supervision presents a risk to ensuring compliance with customs policies and procedures, and limits accountability of Customs staff.
- **A lack of appropriate equipment**: The Customs department does not have sufficient canine detection capacity to support inspection operations, and since 2011 has not had access to a functioning x-ray machine, which inhibits the ability to identify customs violations at the Airport. Furthermore, at the Harbour, cargo containers are inspected by hand, if at all. Sint Maarten has not yet been able to purchase container scanning equipment. Such equipment could be helpful in preventing illegal goods entering or leaving the island and are readily available from the commercial market.
- **Inadequate inspections of private aircraft**: According to senior officials, private aircraft are rarely inspected by customs officials (other than to verify paperwork) despite being frequently used to transport narcotics and other illegal goods. The GoSM should enhance its inspection protocol and publicize noteworthy detections in order to increase the public's perception regarding the risk of detection. It is also possible to outsource detection solutions that can be immediately deployed.
- **Inadequate inspections of international cargo ships**: The examination and monitoring of international cargo transiting through Sint Maarten can be strengthened. This is particularly important since the strategic position of the Port of Sint Maarten provides a venue for narcotics trafficking and transnational criminal organizations looking for transshipment point to move contraband to other regions of the world.
- **Insufficient funding:** The operational reach of the Customs department is constrained by a lack of funding.
- **Inadequate training:** Many new Customs personnel are reportedly being assigned to work without adequate training.

Recommendations

Develop and deploy training programs for new Customs department agents and seek to acquire appropriate inspections equipment: Sint Maarten's position as a transshipment point for contraband presents substantial risk of integrity breaches. Customs officials must be adequately trained and resourced to detect and intercept illegal goods passing through Sint Maarten's Harbour and Airport. Enhanced and basic training to include narcotics interdiction and other detection techniques should be implemented for all new and existing agents.

7.5. Procurement

7.5.1. Description aligned to global standards and leading practices[120]

Government procurement constitutes a major portion of public expenditure. Policies, procedures, and internal controls should be in place as a part of an effectively designed procurement system in order to support procurement objectives and prevent, detect or mitigate the risks of fraud, corruption, waste and abuse.

Procurement procedures that are aligned to global standards – such as the *Model Law on Public Procurement* from the United Nations Commission on International Trade Law (Model Law) and *Guidelines for Internal Control Standards for the Public Sector* from the International Organization of Supreme Audit Institutions – in design and execution can help:

- Provide structure and oversight for procurement processes to achieve specified objectives, mitigate potential risks, and support the execution of "orderly, ethical, economical, efficient and effective operations" (INTOSAI GOV 9100).
- Promote transparency, accountability, objectivity, and consistency across procurement activities.
- Protect public funds from misuse (whether from fraud, corruption, waste or abuse), so that such funds can be used for their intended purposes, in accordance with laws and regulations.

For example, a detailed set of regulations, policies and internal controls establish a structured process for procurement and provide safeguards against improper conduct, while monitoring mechanisms promote compliance with procurement regulations and guidelines.

In order to assess the integrity architecture related to procurement processes, the Inquiry team analyzed applicable legislation, formal guidance, and interviewed a number of civil servants involved in these areas.

7.5.2. Observations and recommendations

A structured set of regulations, policies and internal controls is essential in government procurement to provide adequate safeguards to prevent, detect, and mitigate fraud, corruption, waste and abuse. The Inquiry team found that the maturity of the GoSM's procurement framework is low as compared to global standards based primarily on the lack of a National Decree containing general measures that provides a clear set of guidelines and expectations regarding public tenders. In addition, the reliance on an internal control framework that is based on customary informal practices that are not applied consistently across Government agencies and departments contributes to a weak maturity level as well as insufficient safeguards to prevent public expenditures that deviate from established budgetary priorities and constraints.

The following were identified as the key observations affecting procurement within the GoSM, according to interviews conducted and documents analyzed by the Inquiry team:

- **Lack of formal public tender procedures**: While certain elements of an effective procurement system exist, there are opportunities to formalize existing protocols to strengthen and better align

[120] The key features related to ***Procurement*** that are highlighted in this section represent an aggregation of relevant guidance contained in the leading global standards and practices referenced in ***Appendix B***.

them with global standards. For example, GoSM has not yet adopted a National Decree containing general measures to provide guidance around the execution of a public tender. Accordingly, existing procedures may not meet the goals of a public tender such as the principles of fair competition and procurement efficiency.

- **Need to strengthen internal controls**: GoSM's internal control activities appear to range from informal, or inconsistently documented, procedures to pockets of standardized activity. While certain internal control activities are under development (e.g., Ministry of Finance's draft of a Procure-to-Pay Procedures Handbook), there are opportunities to further strengthen existing internal controls.
- **Lack of approval for budget amendments**: It appears that budget changes may be made across individual Ministries without adhering to relevant legal processes, thereby bypassing the review and approval of Parliament. Unapproved budget amendments may enable or conceal procurement fraud, corruption, waste or abuse.

Procurement
Lack of formal public tender procedures

Observations

As noted in the Model Law, a global standard on public procurement, an effective procurement system "promotes economy, efficiency and competition in procurement and, at the same time, fosters integrity, confidence, fairness and transparency in the procurement process." GoSM has certain elements of an effective procurement system that align with such global standards; for example, Article 47 of the National Accountability Ordinance defines the requirements on when a public tender is to be used for procurement, as well as when exemptions to the requirement can be made.[121] However, there are opportunities to formalize the disparate, and sometimes inconsistently applied, elements to strengthen the procurement system. For instance, the Inquiry team understands from discussions that a National Decree containing general measures has not been issued as contemplated under Article 47.6 of the National Accountability Ordinance. Article 47.6 provides for the promulgation of procurement rules regarding the design and execution of a public tender process in the form of a National Decree containing general measures.

The lack of a formal set of procurement regulations may have an adverse effect on the main goals of public tenders to provide transparency and promote a competitive environment, maintain objectivity in awarding contracts, and mitigate misconduct, waste and abuse.

Select elements of a procurement system are further detailed below:

Room to abuse public tender thresholds and competition

Public tender thresholds aid in the efficiency of public procurement by establishing guidelines for when public tender procedures are necessary or when they can be bypassed for direct purchasing. Such thresholds also promote competition among vendors. However, thresholds, once established, frequently create opportunities for misconduct. According to discussions with various civil servants, projects are

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sometimes "split up" in order to avoid public tender procedures per bid – e.g., procurement for goods/services totaling ANG 90,000 may be split up into two bids of ANG 45,000 in order to avoid the public tender threshold of ANG 50,000. Government officials may be induced to split bids by bribes/kickbacks from a favored bidder. The manipulation of public tenders and favoritism undermine a nation's efforts to maintain transparency and competition throughout the public procurement process.

Inconsistent implementation of public tender exemptions

The National Accountability Ordinance (Article 47.4) allows the Government to deviate from the requirement to issue a public tender if immediate procurement is needed following a national disaster or if issuing a public tender is against the 'general interest'. Official Government figures indicate that this exemption was requested an average of forty-five times per year in the period between 2011 and June 2014. While Article 47.4 contains a control mechanism, whereby the Minister of Finance presents a draft National Decree to the Governor for signing, to verify the validity of the use of the exemption prior to its use, this control mechanism does not appear to be executed as designed. For example, according to figures obtained from the Government, it appears that at least 40% of these exemption-related National Decrees may not have reached the Governor for signing until after the procurement was made. Excessive use of sole sourcing based on general interest exemption or other distinctive criteria may be a red flag for corruption and a well-functioning oversight mechanism would enhance the scrutiny that is placed on "emergency" or "general interest" exemptions to public tenders. The use of such exemptions should be directed by pre-established guidance and controls.

Inconsistent procedure of public notice

A leading practice in the public procurement process is to issue a publicized notice about the public tender, which promotes transparency and competition among potential vendors. Without a public notice, well-qualified vendors may not be aware of the need for their services, thus depriving the Government of the opportunity to acquire quality goods and services at the most competitive prices. According to discussions with various civil servants, while the Ministry of VROMI has a practice of announcing public tenders in national newspapers, other Ministries do not have a consistent procedure for issuing public notices prior to public tenders.

Recommendations

Pass a National Decree containing general measures on public procurement: Legislation that provides further guidance on the execution of public tenders would strengthen Sint Maarten's public tender process and promote fair competition, transparency, and value for money. A well designed National Decree containing general measures on public tenders would be expected to contain guidance on what is considered an individual procurement to which the thresholds above must be applied or a specific article that forbids dividing procurement into smaller increments in order to avoid a public procurement. The Model Law on Public Procurement can provide a starting point and accelerator for Sint Maarten's National Decree containing general measures on public procurement. There are several internationally recognized standard contracts (e.g.,

the International Federation of Consulting Engineers) that can be referenced in the National Decree containing general measures as default contracts for large infrastructure procurement projects. These standard contracts may not always be appropriate, as some contractors may not be well versed in working with these contracts, the National Decree could include a 'comply or explain' clause which would allow the Government to deviate from the standard contracts, if appropriate.

For large public work projects and in the absence of defined procurement procedures, Sint Maarten may seek to adopt "Integrity Pacts" of the types proposed by Transparency International. An Integrity Pact is a specialized control mechanism that is put in place by all bidders in an important project to mitigate the risk of fraud and corruption in the procurement of goods and services. The ratification of the National Decree containing general measures on Public Procurement should be accompanied by training at all Ministries so that the National Decree containing general measures is implemented as intended and all involved civil servants are made aware of the obligation to follow the formal process during the procurement cycle.

Clarify the appropriate circumstances for public tender exemptions: The use of the provisions in the National Ordinance Accountability (Article 47.4) that allow the Government to refrain from issuing a public tender is generally expected to only occur in exceptional circumstances. As the National Accountability Ordinance does not provide further rules that explain or define when 'a delay in contracting is against the general interest', it is difficult to establish if the provision is used appropriately. A National Decree containing general measures on public procurement should include consideration for further guidance/criteria with respect to public tender exemptions.

Procurement
Need to strengthen internal controls

Observations

Based on discussions with various civil servants, it appears that the current procurement process and internal controls are largely based on the customary practice of those civil servants involved. This customary practice appears to be orally explained to the civil servants by colleagues, as needed.

According to individuals at the Ministry of Finance, as of June 2014, the Ministry of Finance is in the process of developing a formalized procure-to-pay process. A procure-to-pay process defines, in detail, the steps to be taken when purchasing goods or services – from ordering goods or contracting services to payment of invoices – as well as the internal controls underlying the process. Two common examples of internal controls in the procurement process are reconciling invoices to purchase orders and verifying that goods have actually been received before paying the invoice.

In the meantime, the lack of formalized internal controls may create a situation where civil servants are not aware of their responsibilities. For example, the recipient of goods/services should verify that the goods/services, as ordered, have been received, that they are of the agreed upon quality, and that the price on the

invoice matches the price on the purchase order. However, without a formalized document that states these obligations, the recipient may not be aware that these conditions should be met prior to signing off on an invoice. Based on discussions with various civil servants, it appears that, in certain cases, invoices may have been approved for payment by individuals who had no means of verifying whether or not the goods or services were indeed received. The individuals indicated that they rely on the department that ordered the goods/service to provide this verification, as is normal business practice; however, given the lack of formal internal control procedures, there are concerns that such verification that the procedures may not be performed or that they may be performed, but not documented/ communicated to the individuals approving invoices for payment.

Recommendations

Formalize procurement processes and strengthen internal controls: Formalized procurement processes and strong internal controls help provide transparency, support competition, and safeguard Government resources. An effectively designed and executed system of internal controls will provide stability to the procurement system and promote compliance with laws and regulations, it may also identify efficiencies to be gained throughout the process.

The Inquiry team encourages the Ministry of Finance to continue its efforts in completing and formalizing the procurement process and related internal controls, with support and buy-in from representatives of the other Ministries.

Strengthening the design of the procurement process and internal controls may help alleviate the workload of the civil servants involved in the procurement process through an appropriate delegation of duties and authorities.

Based on interviews and documents examined there is limited verification during the procurement process. Often there is no explicit confirmation that verifies if goods received match the quantity of goods ordered and if the invoice received is in line with the number of goods received and priced according to the purchase order. The Inquiry team, therefore, recommends that the new internal controls include sufficient verification of transactions as these were found to be missing throughout the Government. According to the INTOSAI leading practices, proper verification is as follows:

> "*Transactions and significant events are verified before and after processing, e.g. when goods are delivered, the number of goods supplied is verified with the number of goods ordered. Afterwards, the number of goods invoiced is verified with the number of goods received. The inventory is verified as well by performing stock-takes.*"

The diligent implementation of the soon-to-be formalized procure-to-pay process is important to embed appropriate procurement procedures across the Government. The implementation should be accompanied by a training that includes a clear explanation of the need for the formalization, translating the roles and responsibilities defined in the documentation to the civil servants, and stressing the requirement for documenting each step in the process such that the procurement objectives are met, in letter and spirit.

Procurement
Lack of approval for budget amendments

Observations

According to the National Accountability Ordinance Articles 49 and 50, budget amendments are to be presented to Parliament and approved by means of a National Ordinance unless it is "acutely necessary in the national interest" or an "unanticipated urgent need."[122] An overview of budget changes for the years 2011, 2012 and 2013 from the Ministry of Finance reflects changes between categories (e.g., personnel and subsidies) within several Ministries that exceed 20%. A September 2013 press release from the Board of Financial Supervision ("CFT") indicated that budget amendments since 10/10/10 had not been adopted. This may be indicative of a situation whereby Government spending may deviate from the initial budget without the review and approval by Parliament.

Unapproved budget amendments may enable or conceal procurement fraud, corruption, waste or abuse. The absence of sufficient accountability may lead to a lack of proper stewardship in the use of the budget. According to discussions with various civil servants, there was at least one instance of exceeding budget by approximately 60% during a recent quarter. Such behavior, according to the discussions, may have been prompted by the upcoming elections. Furthermore, according to the discussions, questioning such behavior (i.e., exceeding established budgets) may lead to negative repercussions. Such a tone at the top may create an environment where fraud, waste and abuse is not easily discussed or reported – discouraging individuals from coming forward with allegations.

The lack of oversight by Parliament may lead to insufficient safeguards against budget spending that is not in line with the duly authorized national budget.

Recommendations

Follow existing legislation on budget amendments: The budget is a product of a representative legislative process that is intended to reflect the priorities of the citizens of Sint Maarten. Therefore, if the Government intends to deviate from those priorities and allocate resources to other causes outside of those identified through the representative process, then those amendments should be subject to a rigorous review process, similar to that for the initial budget. Given that the current legislation already includes the relevant articles that created the obligation for the Government to have budget amendment approved by Parliament, the Inquiry team can only stress the importance of adhering to these laws.

The Inquiry team also supports the evaluation of personnel and the environment they operate in. For example, Financial Controllers' responsibilities include ensuring that proposed spending does not exceed the budget – as such, their role may include challenging senior members of a Ministry on budget expenditures. Accordingly, it may be beneficial to have Financial Controllers report to the General Audit Chamber rather than report directly to the Ministers.

[122] Comptabiliteitslandsverordening

7.6. Transparency and strategic communications

7.6.1. Description aligned to global standards and leading practices[123]

A robust transparency regime can help a government build and maintain trust with internal and external constituents, be more responsive to citizen needs, and improve the quality of public service delivery. Transparency ultimately promotes effectiveness and efficiency in public administration and raises the credibility and reputation of a government among citizens, international organizations, and the private sector. Among the key principles contained in leading transparency regimes are:

- Access to information: Publication and dissemination of government information--including budget documentation--and mechanisms to enforce the public right to information (in line with domestic laws).
- Facilitating citizen participation: Active engagement of citizens in providing input into the development of government policies and programs, as well as feedback related to the implementation of policies and programs.
- Promoting accountability: Rules, regulations, and procedures that require the disclosure of the reasoning underlying administrative acts and justifications for decisions made by public officials in their official capacity.
- Supporting technology: Government commitment to providing access to technology and improving the capacity of citizens to use technology to obtain and understand information.

Specific measures found in leading transparency regimes include:

- Disclosure of organizational structure, points of contact, and decision-making processes of government agencies and department.
- Income and asset declaration requirements for high-level public officials.
- Requirements that civil servants and elected public officials disclose conflicts of interests.
- Budget transparency mechanisms, including publication of all fiscal reports contributing to the budget formulation process.
- Opportunities for citizens to provide input as part of public rule-making processes (e.g. notice and comment procedures).
- Regular publication of reports by government agencies and departments detailing objectives as well as progress made towards achieving these objectives.
- Access to government data through frequently updated websites, as well as mechanisms to provide alternate methods of accessing information where use of the internet is not possible or not practical.

Strategic communications and outreach across internal and external audiences increases transparency through awareness of the government's overall goals and progress and allows for the engagement of internal and external constituents in helping achieve the government's strategic vision. Communications should be disseminated through all available forms including:

- Website
- TV/Advertisements

[123] The key features related to ***Transparency and strategic communications*** that are highlighted in this section represent an aggregation of relevant guidance contained in the leading global standards and practices referenced in ***Appendix B***.

- Newsletters
- Town hall meetings and other regular meetings
- Working groups
- Posters/flyers
- Overall broad staff messages/e-mail
- Press releases
- Twitter
- Facebook
- Media/Interviews

Messaging and information sharing should occur with staff, the private sector, the public, and international organizations. A culture of open communication can help identify gaps within the public integrity architecture, promote effective remedies, and lead to greater public trust in the government:

- Ongoing interaction with the private sector, the public, and internal stakeholders can create a more trusting environment for parties to file complaints against corrupt officials and government employees.
- Ongoing interaction with the private sector will allow for greater information sharing and collaboration to fight corruption.
- Ongoing communications internally will raise morale, accountability, and pride in the government.
- Ongoing interaction with international organizations will allow for stronger relationships to foster knowledge transfer on leading practices and recommendations for improving performance.
- Ongoing interaction with the public will allow government agencies and departments to gauge public sentiment and will pave the way for more positive public perception due to increased transparency.

7.6.2. Observations and recommendations

The Inquiry team found that overall access to information regarding key types of Government information, including public procurements, asset declarations by public officials, public records, and enforcement statistics was quite limited. While the GoSM has procedures for the reactive disclosure of information in response to specific inquiries, the absence of a proactive information disclosure regime supported a finding of low maturity as compared to leading transparency and communications regimes found in the international community.

The following were identified as the key observations affecting transparency and strategic communications within the GoSM, according to interviews conducted and documents analyzed by the Inquiry team:

- **Limited public access to information:** There is limited transparency across Government and visibility into Government decision-making and transactions is low due to a limited amount of publicly reported information.

- **Limited enforcement data collection and publication:** There is limited information collected on enforcement actions taken in the event of integrity breaches. The information that exists is usually not publicly available.

- **Perceived lack of commitment to fighting corruption:** The GoSM has not consistently demonstrated its commitment to fighting corruption in a public and visible manner, which may undermine public trust.

- **Limited involvement with private sector:** The private sector is not an active partner in the GoSM's anti-corruption and compliance efforts.
- **Insufficient transparency due to language barriers:** Most of Sint Maarten's population is fluent in English, and many residents are not fluent in Dutch. However, many of the official documents and policies are published in Dutch which limits the ability of the public to process information that is available.
- **Limited insight into inspections/controls criteria:** Inspections/controls do not always appear to occur in an even-handed, objective manner, and inspections/controls criteria are not publicly available.

Transparency and strategic communications

Limited public access to information

Observations

Based on statements from interviewees and open source research, the Inquiry team observes limited transparency within the Government. Many interviewees believe that the public does not have insight into Government decision-making or Government transactions. The National Ordinance Open Government does permits citizens to request information regarding administrative matters, which is defined as "a matter related to policy of an administrative body, including its preparation and implementation."[124] The administrative body is given a maximum of three weeks to "take a decision of the request." The Ordinance also requires that administrative bodies "shall regularly provide information on its own initiative on the policy regarding administrative matters that concern it." However, the Ordinance does contain specifics about which information should be made public.

Based upon interviews across Ministries and open source research, the following information is not published by the GoSM or easily accessible to the public:

- Procurement/bid/contract documentation for goods and services including large infrastructural works
- Third-party contracts
- Public expenditures
- Documentation around Government-owned buildings or rented buildings
- Asset declarations of Ministers (and other high level officials)
- Online open records (such as public transportation license holders, business license holders, etc.)
- Campaign contributions
- Financial statements and board information of SoCs

According to senior VSA officials, the Ministry of VSA has plans to publish all third-party contracts online; however, as of July 28, 2014, the third-party contracts did not appear to be accessible online.

Many interviewees from Government, civil society, and private sector cited transparency as the main problem with the Government. Many stated to the

[124] Landsverordening openbaarheid van Bestuur

Inquiry team that they believe large transactions are made by the Government without any explanation to the people and that they believe the Government does not make information transparent because there is something to hide.

Furthermore, there does not appear to be visibility into how or why the Government procures goods and services. For example, a representative from a trade association stated to the Inquiry team that "There is a lot of discretion [in public procurements] – everything is arbitrary, there is no accountability or transparency in terms of how things happened and why." This sentiment was echoed by other interviewees who referred to Government expenditures on office space that has never been used (a full building in one instance, and a few floors in another instance).

There also does not appear to be transparency around campaign financing. The Inquiry team received several independent reports of integrity issues behind campaign financing, including that there are several wealthy campaign financiers that provide large sums of money to Sint Maarten's political candidates in order to receive favorable treatment.

Interviewees also repeatedly cited the lack of transparency in the SoCs. For more information on this, see the **SoCs** section.

Recommendations

Increase transparency and public access to information to enhance accountability: The GoSM should build a foundation for transparency upon a baseline of proactive information disclosure – this means that the Government should make available to the public a set of standard information without waiting for such information to be requested. Among the types of information that the GoSM should proactively disclose and publish on the Fight Against Corruption website are:

- Procurement/bid/contract documentation for goods and services including large infrastructural works
- Third-party contracts
- Public expenditures
- Appraisals and contracts of Government-owned buildings or rented buildings
- Redacted asset declarations of Ministers (and other high-level officials)
- Online open records (such as public transportation license holders, business license holders, etc.)
- Financial statements and board information of SoCs

The GoSM should consider approaching the Open Government Partnership ("OGP") to assess the possibility of fulfilling the criteria for eligibility to join this consortium of 64 countries that are at the forefront of the international government transparency movement. The eligibility criteria include implementing basic measures related to fiscal transparency, access to information, disclosures of information by public officials, and citizen engagement. Once eligible, a country must commit to an action plan consisting of a series of transparency reforms,

many of which are listed above, and periodically monitor and report on progress in completing its action plan.[125] While it is likely that the GoSM will need to improve certain aspects of its transparency regime before it will be eligible to participate in the OGP, the Inquiry team recommends using the OGP as a framework for reform. With only two countries in the Caribbean currently participating in the OGP, the GoSM could take a highly visible step towards being a regional leader in government transparency by declaring its intention to satisfy the eligibility requirements of the Partnership and beginning to work towards full participation. Progress towards this objective could be detailed on the Fight Against Corruption website to clearly demonstrate the Government's commitment to transparency.

Require the disclosure of all political donations above ANG 5,000: The GoSM should require the disclosure of campaign contributions over ANG 5,000, regardless of whether the donation is made by an individual or an entity. The general public should have access to this data online and should not have to make a formal request at the office of the Electoral Council. Further, the National Ordinance Registration and Finances of Political Parties should be amended to remove the option for entities to prevent the reporting of their company names, and instead should require the disclosure of the names of all entities and individuals to the general public.

Transparency and strategic communications
Limited enforcement data collection and publication

Observations

Enforcement statistics for public corruption cases are not effectively maintained and published by the GoSM. A Ministry of Justice official stated that statistics on corruption cases are not published but such publication could be "a possibility" in the future. With regards to disseminating information within a Ministry on disciplinary action taken, a Minister stated that cases are "handled internally. It's a small island and community - we try not to embarrass people any more than they already are. People just know about the issues."

Recommendations

Document and track enforcement statistics as a performance measure, and publish these statistics: Enforcement statistics on integrity breach cases should be published quarterly on the Fight Against Corruption website as a way to measure progress on enforcement and to serve as a deterrent. Data should also be tracked and published on identified integrity breaches as well as the type of disciplinary action taken to resolve the issue across the Government. Data across departments and Ministries should be centralized, transparent, stored electronically, easily accessible, and widely communicated throughout the Government to promote consistent messaging and to avoid discrepancies. It is essential for data to be accurate and consistent before it is widely communicated.

Transparency and strategic communications
Perceived lack of commitment to fighting corruption

Observations

Interviewees stated to the Inquiry team that they were frustrated by the amount of integrity assessments and integrity campaigns launched targeting low- and

[125] "How it Works: Requirements," Open Government Partnership; http://www.opengovpartnership.org/how-it-works/requirements

medium- level officials within the Government. As discussed in ***Leadership, commitment, and devotion of resources***, many interviewees expressed that the problem lies with senior level leadership. One department head stated, "If we really want to do something with integrity you have to be honest. Starting with politicians. If you have dirty fingers and you want to be a Minister you [should not be able to]." The Integrity Bureau has created and disseminated marketing material with the slogan "integrity@work" but interviewees stated to the Inquiry team that the material has not been effective since the distrust lies with leadership. An official stated to the Inquiry team that until leadership makes a change, the Integrity Bureau will not be able to be effective.

Recommendations

Create and launch a strategic communications strategy around the Fight Against Corruption: Press, social media, and external assessment reports regularly document the high perception of corruption in Sint Maarten. All of this information emanates from the public domain. The Government should make every effort to improve the perception of the Government and demonstrate its commitment to fighting corruption. Once the Government puts forth any information, it should follow up on commitments made and demonstrate progress. Bold statements without concrete actions undermine public trust.

- The Integrity Bureau, Prosecutor's Office, and National Detective should jointly create content for internal and external messaging on the Fight Against Corruption and any key anti-corruption initiatives/data/results. This should include messaging around the Government's plan to fight corruption, information on bodies within the Government charged with fighting corruption and the enforcement process, the Government's short and long-term goals, and data collected.
- Content should also be developed on customer rights and responsibilities as well as the role of private sector and civil society. This should include information on rights of citizens and how citizens can help in the Fight Against Corruption. For example, the Government should actively promote information on how citizens have a responsibility to refuse a bribe offer from a Government official and how they have a responsibility not to pay a bribe. Content should also be developed targeting the private sector to stop offering payments to inspectors/controllers and license/permit grantors.
- Progress on the Fight Against Corruption should be documented and information/statistics should be updated according to a cadence, for example, every quarter.
- Create a separate section on the GoSM website solely dedicated to the Fight Against Corruption that allows for any information related to the initiative to be easily accessible and transparent. Thorough transparency will demonstrate the Government's commitment to combating corruption. Information to be published should include:
    - All documents mentioned above in ***Limited public access to information***

- The Government's plan to fight corruption and increase enforcement and information on bodies within the Government charged with fighting corruption (National Detectives, Prosecutor's Office, Integrity Bureau)
- The Government's short- and long-term goals
- Reporting mechanisms within the Government including when/how to utilize them and how complaints are handled; specific information about the anonymous whistleblower hotline that is administered by a third party and description of how complaints are handled once reported on the hotline
- Progress updates including updated information/statistics
- Customer rights and responsibilities to aid in the initiative
- Recent case examples and actions taken
- Progress on automation
- Information and data related to vulnerable areas of corruption within the Government
- Risk analysis methodology and planning criteria for inspections/controls
- The website should be continuously updated and monitored

- Partner with civil society to launch a social media campaign with the slogan "#SXMLet's Enforce!." Provide information on Facebook and Twitter on the Government's anti-corruption initiatives and continuously update these with new data and information including statistics/metrics on action taken against corrupt leadership and employees. Allow for anonymous posts and encourage the public to write comments and start a dialogue on their perspective on the core reasons for corruption within the Government and ways to combat the corruption. Monitor comments from the public and take measures to address issues raised in order to increase positive public perception of the Government.

Transparency and strategic communications
Limited involvement with private sector

Observations	Through interviews conducted, the Inquiry team observed that the private sector does not appear to be an active partner in the Government's integrity initiatives. Some business and trade associations exist, but the Inquiry team did not identify a Government sponsored forum for the private sector to work with the Government to promote integrity.
Recommendations	**Leverage the private sector in the Fight Against Corruption:** Create an Investment Council of local and foreign businesses to gain private sector perspective and support for the Fight Against Corruption. The Investment Council should serve as a strong ally to the Government in deterring corruption on the "supply" side and convene meetings on a regular basis. The GoSM should work

closely with members of the Investment Council to identify major areas of corruption, devise and implement anti-corruption strategies, and monitor success of initiatives. In meetings, the Government should be prepared to present results and progress made based on feedback from the Investment Council.

Every company or business owner involved should sign an integrity pact stating that they will commit to not engage in an integrity breach while working with the Government on this initiative.

Transparency and strategic communications
Insufficient transparency due to language barriers

Observations

Many individuals reported to the Inquiry team that they either do not speak Dutch or do not have strong Dutch reading/writing skills; however, many documents in the GoSM are still maintained in Dutch. Several department heads stated to the Inquiry team that they had limited knowledge of the Dutch language and regularly had to utilize online translation tools to complete daily tasks. The Government has made strides in translating some laws into English and posting those translations on the GoSM website, but much remains to be done in terms of translating department documents and creating systems in English to confirm all employees understand the integrity standards they are being held accountable to. A cabinet member stated to the Inquiry team that there is a general misunderstanding between the GoSM and the general public due to "a language barrier…the consequence is that they are hiding information from people."

The Ombudsman revealed to the Inquiry team a situation where language barriers were felt by the public,

> *"Law provides that English and Dutch are our official languages, but before it was Dutch, so many of our laws are in Dutch. But when it comes to police, people may be required to sign a document verifying what is in there and they can't read it. They can't verify that the oral translation is actually what is written and that discrepancy opens the door for integrity issues. We are advocating that the person must have the right to read their statement back in English. That is something people have complained a lot about, and we are in contact with police on that matter."*

Recommendations

Work towards having all Government documentation including all legislation and regulation available in English: Documents should be produced in English so that all Government documents are easily understandable by Government employees, and all employees and the general public understand the rules and regulations to which they are accountable.

Transparency and strategic communications
Limited insight into inspections/controls criteria

Observations

From an inspections/controls perspective, business owners and Ministry of Justice officials indicated to the Inquiry team that inspections/controls criteria for the inspection of businesses are not transparent. Information obtained from the inspections/controls teams indicate that they select a series of "themes" that are

vulnerable to violations that form the basis for a "year plan" (i.e. an annual strategic plan). Businesses to be inspected daily are chosen based on complaints filed or are determined based on the team's discretion as long as the business falls within one of the themes of the year plan. Themes include sectors such as construction, service industry, adult entertainment, and car rentals that are vulnerable to illegal workers, safety violations, service-related violations, and other license/permit violations.

However, the year plan for inspections is not always followed. A business owner stated, "[inspectors] check [my business] five times in five years and the [the one next door] has not been checked once. They know we will comply with the inspection so they keep coming back." A Ministry of Justice official stated that there are certain businesses that should be avoided that are tied to politicians because if those are inspected, the official "will certainly get a call. We don't have the full control to decide exactly where to control."

A Ministry of Justice official stated to the Inquiry team that the inspections/controls teams need to publicize their criteria and determine their inspections using a risk analysis based approach by stating,

> *"what are the reasons for their inspections? They need to have more procedures to make their organization more professional. Their inspections policy and criteria need to be public so everyone will know why one company is inspected and not another – otherwise, it won't hold up in court because people say it was selectiveness."*

Recommendations

Develop a formalized, objective, and strong risk-based criteria on how to select businesses for inspections and make the criteria more transparent: Along with the selection criteria, publish statistics around the number of inspections/controls conducted (across all departments), number of violations identified, and number/type of sanctions levied. This information will help serve as a deterrent to businesses or individuals and will encourage compliance with policies and procedures.

7.7. Personnel management

7.7.1. Description aligned to global standards and leading practices[126]

Personnel management incorporates all elements of a government's human resources management structure, including: recruitment; hiring/staff placement; disciplinary action; terminations; payroll/bonuses; promotion; and training. Governments should adopt human resource policies and procedures aligned to international leading practices, which include:

- Transparent hiring and performance review criteria and overall consistent human resources management policies and procedures.

[126] The key features related to ***Personnel management*** that are highlighted in this section represent an aggregation of relevant guidance contained in the leading global standards and practices referenced in ***Appendix B***.

- Fair recruitment and hiring policies taking into account conflicts of interest and preferential treatment to certain groups.
- Sufficient salaries and compensation according to market rates, where feasible. Where budgets do not permit such compensation, efforts should be made to explore the use of non-monetary compensation structures.
- Strong commitment to only merit-based (i.e. non-political) promotions and compensation increases.
- Ongoing training on integrity and ethics issues, especially for positions vulnerable to corruption, including training on applicable codes of conduct and other relevant components of the Regulatory Framework.
- Corruption controls focused on placement of personnel including standardized policies around staff rotation.
- Regular performance reviews and encouragement of ethical behavior, including incorporating ethical performance as a criterion in performance reviews.
- Sufficient regulation around disciplinary action and fair and objective disciplinary action taken in the event of misconduct by personnel.
- Information sharing and collaboration across the organization to promote fair treatment of staff and to adequately detect misconduct.

7.7.2. Observations and recommendations

A review of the personnel management framework by the Inquiry team noted many areas for improvement, particularly with respect to effective training, staffing recruitment and rotation, enforcement of personnel management policies, and effective demonstration of leadership. However, the Inquiry team noted that general personnel management policies and procedures are in place within the GoSM such as recruitment and disciplinary action policies, remuneration policies, and personnel evaluation policies. An organizational structure also exists which could support strong personnel management and provides opportunity for the GoSM to develop robust career development and coaching programs. While the existing personnel management framework in place warrants a medium maturity finding as compared to leading practices, significant gaps still exist for the GoSM to build upon, especially in regards to compliance with the existing framework.

The following were identified as key observations affecting personnel management within the GoSM, according to interviews conducted and documents analyzed by the Inquiry team:

- **Opportunities to enhance integrity training**: Integrity trainings have not been consistently attended by leadership, and trainings are not audited or tested.
- **Inconsistent recruiting and appointment**: Personnel are recruited and appointed in an inconsistent manner, and the current recruitment policy is not always adhered to by GoSM.
- **Limited staff rotation:** There is limited staff rotation in GoSM, especially in sections that present a high risk of integrity issues.
- **Incomplete compliance with sick leave policy**: The sick leave policy appears to sometimes be abused by civil servants. There are limited controls and ineffective enforcement mechanisms in place to prevent such abuse.
- **High level of absenteeism in casino controllers:** Casino controllers perform a very limited regulatory role because of a lack of well-defined duties relevant to the gaming industry. Also, there are high instances of poor job performance and absenteeism among the controllers.

- **Insufficient capacity in some departments**: Many areas of the GoSM claim to lack resources and equipment to effectively carry out their functions. Some of these areas are in key sections of the Government that promote good governance.
- **Opportunities for improved career development and coaching**: According to interviews with civil servants, there is little meaningful career development and coaching for career civil servants which could result in low levels of motivation to continue to excel within the Government. Department heads also noted a perceived lack of support from the Government to effectively manage their teams, specifically in relation to the Performance Management policy.

Personnel management Opportunities to enhance integrity training	
Observations	Opportunities exist to make integrity trainings more effective and impactful across the Government. According to a Ministry of General Affairs official, the Government has held four integrity trainings since 10/10/10 including two for the entire civil service (one in 2012 and one in 2013) focused on dilemma training. Another training was held specifically for managers, and one was held for Ministers. According to a Ministry of General Affairs official, 60-75% of department heads attended the first integrity training on dilemmas and 40-50% attended the second training. Five Ministers attended each of the larger civil service trainings and two parliament staff attended both of these same trainings. The training that specifically catered to managers was attended by 40% of managers. The number of Ministers who attended the training for Ministers was not provided by the Ministry of General Affairs. None of the trainings are administered on a specific cadence, according to the official. A department head and a Ministry of Justice official separately categorized the completed integrity trainings as a "waste of time" and a former Lieutenant Governor stated that no training is done "on what the law requirements are." A Ministry of Justice department head stated, "many of the heads of departments don't show up…most civil servants – they want to do the right thing, but the department heads don't come." A Minister stated, "training courses have made an impact. What I have heard and noticed is that civil servants say 'are Ministers getting it? Are parliamentarians getting it?'" When asked if action was taken against employees who did not attend, the Ministry of General Affairs official stated, "it was a mandatory training and the invite was sent via the Minister. So it was up to the Minister on what to do with people who didn't come." According to the official, the Minister of Justice requested the registration list but did not communicate any action to be taken against employees who did not attend the training. None of the other Ministers requested registration information to determine who in their Ministry attended the training, according to the official.
Recommendations	**Develop effective, interactive, and standardized anti-corruption trainings across the Government and mandate managers and senior leadership to attend all trainings:** Trainings should be organized by the Integrity Bureau – specifically the commissioner overseeing education, advice and

training – and should be taught by experienced anti-corruption practitioners (internal and external). Training should be focused on integrity-related policies, detecting corruption, and consequences for integrity breaches within the Government. Trainings should also cover hypothetical situations that Government officials could face and instruction on how to handle these situations. Trainings should be administered on a specific cadence – for example, every six months and should align to the following:

- Invitations to attend the training should be sent by the Integrity Bureau rather than through Ministers. The Integrity Bureau should be in charge of keeping track of employees who did/did not attend.
- All trainings administered should be followed by a test, and all trainings should be auditable. Metrics around trainings should be tracked by the Integrity Bureau, and follow up reminders should be sent to individuals who do not complete the trainings. Records on the status of completion of trainings should be stored electronically in a central repository. If employees do not complete or do not pass the trainings in a timely manner, disciplinary action should be taken.
- All senior leadership and managers should be required to attend and take any test administered following the training. Provisions should be made for minor disciplinary action to be taken against officials who do not attend, and the list of attendees should be easily accessible to Government employees.
- Perform regular, specific integrity trainings for Ministers and members of parliament only; these trainings must be mandated and followed with a test.
- Individuals should be required to retake tests following trainings until it is passed.
- Metrics around the requirements and completion of all integrity trainings by personnel should be published on the Fight Against Corruption website as well as metrics of disciplinary action taken against personnel that did not complete or pass trainings. Statistics, specifically of the number of senior leadership and managers who attend each training, should also be made available.
- Mandate integrity onboarding training for all new hires.
- Introduce specific trainings on the detection of corruption for departments vulnerable to corruption. These trainings in particular should be taught by experienced anti-corruption practitioners.
- Cost effective online, auditable trainings can be deployed to all employees by third-party vendors to allow users to complete trainings with ease. Third party vendors that deploy online trainings can provide instant audit reports and follow up mechanisms to identify employees who did not complete the trainings.
- There should be mandated town hall meetings at the unit, department, Ministry, and GoSM with personnel specifically dedicated to integrity. These meetings should be interactive – not lectures – and should cover:

- The Government's strategic vision and goals related to integrity.
- Details around case studies and action taken against employees, including leadership, who engaged in corrupt activities.
- Information on new integrity initiatives.
- Any updates in laws or National or Ministry Decrees/policies and procedures.

Personnel management

Inconsistent recruiting and appointment

Observations

Personnel are recruited and appointed in different ways across the Government, and the intake policy does not appear to be consistently followed. The Employee Handbook outlines the selection process for a new employee:

> *"The selection of the right candidate is done by a selection committee. The intake policy stipulates who is part of the selection committee for each type of position.*
>
> 1. *The first step in the selection process is the pre-selection of the application letters.*
> 2. *After that the selected candidates have a job interview with the committee.*
> 3. *Depending on the position, a skill test can be considered. For instance, most candidates for management positions are tested on several management skills.*
> 4. *For some positions a psychological test may be required.*
> 5. *A medical examination is required by law. However it is usually done after approval for appointment. SZV does the medical examination for Government.*
>
> *After the committee has made its choice salary negotiations are done by P&O. Most other benefits are regulated by law and are non-negotiable. If an agreement is reached, an advice for appointment is drafted for the Minister."*[127]

According to many senior officials, the selection process is not always followed, and the Minister frequently fills positions without the selection committee conducting an evaluation of multiple applicants, as required in the intake policy. A senior official stated that an individual is frequently placed into a position by a Minister and the "recruitment process does not even occur. There is already a decision that person X has been placed into a position." Another senior official stated to the Inquiry team,

> *"it's not your country first, it's my pocket first, or my relative, or my party first, and then the country. This is the major issue,*

[127] *Government of Sint Maarten Employee Handbook*, Government of Sint Maarten; http://pnobeleid.sharepoint.com/Documents/111124%20Employee%20Handbook%202011.pdf

and it's reflected in everything. If you have a staff vacancy and one candidate is a relative of the Minister [you have to hire them] or someone from the party will call you and request you to hire people."

The official stated that in those cases the applicants requested to fill positions are not evaluated against other applicants.

There also appears to be limited screening conducted on all employees. A senior official in the Ministry of General Affairs stated that references from former employers are collected, but "criminal checks" are only conducted on certain individuals that are deemed to be dealing with "positions of confidence." The National Security Service Sint Maarten ("VDSM") conducts background screenings on "positions of confidence," according to interviewees and a National Decree containing general measures, of February 21, 2012, for the appointment of positions involving confidentiality and for the establishment of rules concerning the way security investigations are conducted.[128] The list of positions screened does not appear to be comprehensive of all high-risk positions within the GoSM. A senior official stated that the list "is not what it should be. The Head of Inspections for TEZVT is not even on the list, so I doubt individual inspectors underneath are on the list."

Recommendations

Mandate that all employees go through the established recruitment and selection process: Ministers and other senior officials should be allowed to suggest employees to undergo the recruitment and selection process, but no individual should be placed into a position without proper vetting and a fair and independent appointment process. Applying favorable treatment to recruits should be prohibited. Disciplinary action should be taken against those who not follow the intake policy.

Confirm mandated criminal checks are being consistently conducted on all employees prior to beginning employment within the Government, and confirm that comprehensive and accurate pre-hire screening is being conducted in a timely manner on individuals working in senior positions and high-risk departments: Conduct an assessment of the screenings currently conducted to answer and evaluate the following:

- Who is pre-hire screening conducted on? Are there different levels of pre-hire screening depending on the position and how do the levels differ? How long do the different pre-hire screenings take?
- What does the pre-hire screening entail? What questions are asked and how is background information acquired and verified? Is the pre-hire screening comprehensive enough? How is educational information verified?
- Are all candidates for high risk positions screened? Should more positions within the Government require comprehensive screening prior to hiring?

[128] Lb ham aanwijzing vertrouwensfuncties

- What criteria are used to determine if a negative Advice should be issued on the hiring of an individual? What happens when a negative Advice is issued around the hiring of an individual? Who makes the final decisions based on hiring when negative screening results occur? Have there been cases where negative screening results still led to the hiring of an individual in deviation from National Decree AB 2012, no. 9?
- What happens when negative screening results are identified related to a potential Minister, including the PM?
- Are screenings conducted on members of parliament?
- Is it mandated that screenings are completed prior to hiring? Are there instances of individuals working before the completion of their screening?
- Are continuous screenings conducted to monitor changes over years of employment? How often are employee screenings conducted?
- Are third parties that do business with the Government screened prior to the finalization of contracts?

Passing of criminal checks should be a requirement prior to being hired by the Government for all employees. It should be required that all necessary screenings are complete before an employee may begin work. Criminal checks should be conducted every two years on all officials, and comprehensive background checks should be repeated every two to three years for high-risk positions.

The Government should conduct due diligence on all existing vendors to identify potential integrity issues and based on the results, should consider termination of contracts with high-risk vendors. Due diligence should be required prior to entering into third-party contracts for new vendors and annual screenings should be conducted on existing vendors. Information on screenings should be reviewed and stored by the commissioner overseeing integrity pact and contractor compliance.

Personnel management
Limited staff rotation

Observations	Staff rotation is not a mandated policy in high risk functions, according to department heads of those functions. Based on discussions in interviews, some department heads do think staff rotation would be a good idea, and many stated to the Inquiry team that staff rotation does informally occur within the Government, but usually to transfer someone who has not performed well into another department. A Ministry of Justice official stated, “If I had additional staff, I could rotate people and that would be ideal. Sometimes we do it – but it is not a written policy. It is more used as a punishment. We need to make the policy real.” A VROMI official stated, “a job like this you have to rotate the person, you do not leave a person in here too long - give them break. It is too easy to get corrupted.”
Recommendations	**Implement staff rotation in high-risk functions:** Create and enforce a policy around staff rotation especially around high-risk functions such as license/permit processing and inspections/controls. Staff rotation can be a useful

tool to limit an official staying in a position of influence for an extended period of time. Measure the effectiveness of this initiative on the reduction of integrity breaches and breaking up established networks. Publish results of this data on the Fight Against Corruption website. Do not transfer staff to a new department as a "punishment" or as a result of misconduct in one department, but rather take disciplinary action against those employees.

Personnel management

Incomplete compliance with sick leave policy

Observations

The Inquiry team received many reports of people working within the Government that have been "absent" or on chronic sick leave "for years." Interviewees noted that the amount of sick leave occurring throughout various departments affected capacity because hiring replacements does not occur if an individual on sick leave is being paid. The Inquiry team requested statistics on the number of people within the Government who are on chronic sick leave but were told that individual departments would know this information and Government-wide statistics are not maintained on this area. Some departments do not have a system to clock in and out which appears to lead to absenteeism. Interviewees noted to the Inquiry team the need for a system to clock in and out especially in the Ministry of TEZVT, especially with casino controllers. Many of the individuals who are reportedly chronically ill do not appear to follow the requirements in the sick leave policy to gain authorization for being absent or "abuse the system" by coming into work inconsistently creating efficiency issues for their departments.

A Ministry of Justice official stated that one officer in their department had been "sick since 1990." The official stated to the Inquiry team, "if you want to get sick, you can beat the system easily. [The officer] comes in for four hours every once in a while. [The official] only worked 90 days a year. Sick leave kills our organization and this Government." The official stated that the officer they referred to was promoted during the time they were absent from the office.

Another Ministry of Justice official stated to the Inquiry team that sick leave is a "major" issue within the prison. The official stated,

> *"one of the biggest problems is that some staff members report sick real fast and they use the system and can be sick forever. There is one right now who has been out almost a year on sick leave and I can't get him back on the job. And I told the Minister we need to do something about this because I heard that [the employee] is working somewhere else. There is also one working 50% - [the employee] comes in 7 am and leaves at 11:30 and [the employee]...goes and works somewhere else. [The employee] gets paid full time."*

Two department heads told the Inquiry team of an incident a "few years ago" when P&O made an Advice for the dismissal of a number of individuals, referred to as "ghost workers", who had been "absent without official leave" and who claimed to be "sick." Right before the Advice came out, all these individuals "suddenly" returned to work, and therefore, dismissal cases for these individuals were not

approved, according to the department heads.

There is also inconsistency in compliance with the long term illness requirements of the sick leave policy. A department head recounted to the Inquiry team an example of an individual in their department who has been on sick leave since 2007 and has been receiving full pay since then. The employee handbook outlining the Government's sick leave policy states ,

> *"In case of long term illness, sick leave is granted by the SVB for a maximum of 1 month. This period can be extended with periods of maximum 1 month. During this illness one has to remain under supervision of SZV and report back to SZV on the dates indicated.*
>
> *The total period of sick leave cannot exceed 4 years for civil servants in permanent service, and 1 year for employees in temporary service. During sick leave one is entitled to full pay for the first 2 years, 90% during the third, and 80% during the fourth year."*[129]

An Advice for the employee's dismissal from early May 2014 states the following,

- *The employee has exceeded the maximum length of an exemption from service due to sickness. During the past 6.5 years, they have retained their full income.*
- *Both the physician at SZV and the APS Medical Advisory Committee have investigated the health of the employee and found them to still be unable to fulfill the requirements of their position.*
- *Through negligence of the organization, the employee's income has not decreased. Given that the employee will receive an immediate honorable release from service, it is advised to not proceed with decreasing their income.*
- *Given that the employee cannot resume their work responsibilities with the Government of Sint Maarten, they will immediately receive an honorable release from service. They are eligible for a disability pension from APS.*

According to an official with direct knowledge of this case, the Advice was sent to the Governor for sign off and the dismissal took effect on July 23, 2014, more than seven years after beginning sick leave. According to a GoSM official, the employee retained full salary during the seven years they were on sick leave, which did not allow for a replacement to be hired, ultimately jeopardizing the efficiency and effectiveness of their department.

Recommendations

Enforce the Sick Leave Policy and consider dismissal of employees who have not complied with the Sick Leave Policy and have been away from their job for an extended period of time: All components of the sick leave

[129] *Government of Sint Maarten Employee Handbook*, Government of Sint Maarten; http://pnobeleid.sharepoint.com/Documents/111124%20Employee%20Handbook%202011.pdf

policy should be enforced. Disciplinary action should be taken against individuals who do not receive the proper authorization to be absent from work. The Sick Leave Policy should be amended to include clear disciplinary sanctions that can be placed on employees who do not comply with the policy and a maximum amount of sick leave days before being placed on long term illness should be established.

All departments across the Government should institute a time recording policy and system where all employees are required to record their time in and out of work. Departments should report statistics weekly to P&O on the number of absent workers or the number of workers who did not work the required hours. P&O should follow up with those employees who were absent without authorization or not in compliance with their schedule. If wrongdoing occurred, disciplinary action should be taken. Disciplinary action should also be taken against employees who do not comply with the time recording policy. GoSM employees should be required to document activities performed during hours worked as part of their performance evaluations.

For employees on long term sick leave who have been absent for more than one year, the GoSM should allow and provide funding to the affected department to hire a replacement so that the department can continue to function effectively. If that is not feasible, the GoSM should consider amending the sick leave policy to reduce the maximum period for a civil servant to stay on sick leave from four years to one year, before the worker is suspended without pay.[130]

Suspicions of an employee who is absent or on sick leave but performing secondary activities should be reported to P&O. P&O should treat these allegations seriously and should initiate an investigation immediately. Upon identification of any wrongdoing, P&O should take appropriate enforcement action in a timely manner.

Personnel management

High level of absenteeism in casino controllers

Observations

According to a Ministry of TEZVT official, the only regulatory measure that the GoSM has implemented with respect to the gaming industry is the establishment of "casino controllers," who are Government employees hired by individual casinos to oversee operations. The official stated that there are currently 44 casino controllers working in Sint Maarten. According to the CFATF report responsibilities of casino controllers are as follows:

- *"Checks the casino on compliance with the conditions on the hazard play and regulations concerning safety in the casino;*
- *Ensures that visitors who do not meet the admission requirements do not have access to the casino;*
- *Performs supervision over minors, drunk people, cheaters and watch misconduct in the casino;*

[130] *Id.*

- *Monitors compliance with the officially fixed hours for the opening and closing times of the casino and makes violations known to the head of the department head;*
- *Make a daily report and or identifies any irregularities to the casino manager;*
- *Ensures strict adherence to the provisions of the casino's, rules and conditions;*
- *Provides information about the casino and its rules to casino visitors and hear their complaints;*
- *Mediates between the visitor and the casino manager."*[131]

Despite the job criteria outlined above, according to a TEZVT employee, casino controllers have "no job criteria" or "day to day tasks," and "there is nothing [for them] to do." The official stated that casino controllers had to "invent what to do" each day, and some controllers were upset after the group was told performance evaluations would take place even though there are no documented job tasks.

The Inquiry team was informed by various employees in different Ministries that the primary responsibility of casino controllers is to monitor casino entrances and ensure that local gamblers do not enter a gambling establishment more than three times per month; however, high absenteeism and a lack of technological support do not allow this task to be carried out effectively. A casino employee reported that casinos are supposed to pay the Government ANG 7,500 per month for each casino controller stationed at each entrance. The number of casino controllers required for each casino varies depending on the hours of operation and number of entrances of each casino since multiple controller shifts may be required.

Officials from the Ministry of TEZVT reported to the Inquiry team that no shared system exists across casinos to track local individuals and how many times each is entering a casino, which makes accomplishing the primary task of casino controllers "near impossible."

Casino employees and civil servants stated to the Inquiry team that they believed casino controllers "rarely show up to work" – an impression that was confirmed through interviews with Ministry of TEZVT officials who stated that there is a substantial problem with absenteeism.

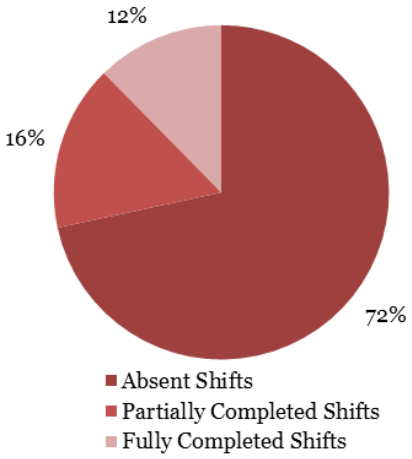
The Inquiry team interviewed employees of a casino and was able to review a security log book documenting attendance of the casino's controllers.[132] Analysis of the security log book covering 162 shifts in 81 days between February 13, 2014 and May 4, 2014 showed that the controllers were absent for approximately 72% of shifts during the recorded period. In addition, controllers reportedly arrived late to

[131] *Sint Maarten 2013 Anti-Money Laundering and Combating the Financing of Terrorism Mutual Evaluation Report,* Caribbean Financial Action Task Force; https://www.cfatf-gafic.org/index.php?option=com_docman&Itemid=414&task=doc_download&gid=894&lang=en

[132] Excerpts of the Security Log Book and full data behind 81 days of analysis

12% of their shifts and left early from 6% of their shifts. Only 12% of shifts were reportedly completed from start to finish.

Shift Attendance between February 13, 2014 and May 5, 2014	
On Time Attendance Rate	**17%**
On Time	12%
On Time & Left Early	4%
Tardiness Rate	**12%**
Tardy	10%
Tardy & Left Early	2%
Early Departure Rate	**6%**
On Time & Left Early	4%
Tardy & Left Early	2%



The Inquiry team noted that documentation of time and attendance was inconsistent among security guards who filled out the log, with notable variations in rigor and level of detail. Analysis by the Inquiry team was conducted using the explanation of the record keeping methodology provided by employees of the related casino.

One casino employee reported that they initially sent the monthly results of the controller attendance to the Government by email to report the high level of absenteeism but never "got a response" from the Government. The employee stated to the Inquiry team that "after some time" they decided to keep the log book for the casino's records but stopped sending the results to the Government since "no action had been taken."

Employees of this casino further complained to the Inquiry team that the casino pays the Government for the controllers who do not fulfill their function, which results in the casino committing its own resources to monitor entrances while still having to pay the Government for the delinquent controllers.

When asked if a casino controller supervisor monitors the casinos to make sure the controllers are present, a Ministry of TEZVT official who has direct knowledge of the casino controller unit stated that one supervisor "actually checks, [the controller] comes by every evening…[the controller] notices that people are not showing up every day." When asked what happens if a casino controller is absent, the official stated to the Inquiry team that "nothing happens…enforcement is not there so I don't know why [the controller] is checking."

The lack of career progression was cited by the official as the "biggest problem" and a reason for the high rates of absenteeism. The official stated, "there is a scale and when you reach the end of the scale, you are there until you retire. There is no motivation."

When asked what a good use of the casino controllers' time would be, the Ministry of TEZVT official stated that controllers could be useful in identifying illegal

	immigrants who enter casinos and could work with the police to identify "criminal" behavior.
Recommendations	**Remove or revise the casino controller function to add value to regulating casinos:** Based on interviews with individuals who work in casinos, interviews with Government employees, and document analysis, it appears that currently casino controllers provide little value to the casinos or to local gamblers. The lack of information sharing means that even if a controller at one casino limited a local to entering the casino only three times, the local individual could go to another casino the next day, and the controllers and the Government would not be aware. If the GoSM decides to keep the casino controller function it should provide controllers with an electronic database to record and maintain attendance records so controllers are able to see the actual number of times an individual has entered a casino in a month's time. The GoSM could also eliminate this function, or train these individuals as part of the gaming oversight board so that the Government has staff within the casino at all times to monitor illicit behavior.
Personnel management Insufficient capacity in some departments	
Observations	In some departments, especially in enforcement and inspections/controls related departments, there appears to be a lack of capacity. Many department heads reported to the Inquiry team that they do not have enough staff to effectively carry out their function. A VSA official stated to the Inquiry team that there are four inspectors within the Labor Inspectorate. One of these inspectors is reportedly on chronic sick leave, one is periodically ill, and one is involved in a disciplinary action case due to allegations of owning their own business to facilitate work permits (see ***Investigations and enforcement*** for more information on this case.) It appears that the Labor Inspectorate would not be able to function effectively under the circumstances reported to the Inquiry team. A VSA official also stated that food/safety inspectors did not have the capacity to comprehensively conduct inspections. The official stated, "there are around 3,500 restaurants in the database which have to be controlled with five people." A Ministry of Justice official stated about immigration controls, "one of the biggest problems is there are not enough people to do the job – there are seven [mobile control officers] – you can't run Sint Maarten with seven people – no way, no how." A TEZVT official commented about civil aviation inspections, "there are four inspectors but [the department] needs more people. It is at bare minimum right now." There is a perception amongst some interviewees that enforcement staff is purposely limited by senior leadership in order to prevent the effective carrying out of these functions. A Ministry of Justice official stated to the Inquiry team, "I will never get more personnel because then I could do more damage." Critical vacancies exist within the Government, according to interviews with Ministry of General Affairs officials. Some of these critical vacancies are filled by existing employees that have to fulfill two jobs until someone is hired. For example, the SG of VROMI is also the acting head of Domain Affairs, and a cabinet

member of TEZVT is also the acting financial controller of the Ministry.

Caliber of staff was also discussed in interviews by multiple interviewees in leadership positions. Many section heads and department heads stated to the Inquiry team that the quality of staff and variety of skill sets was one of the most challenging factors they face. For example, one SG stated, "caliber of staff in a small-scale society [is the biggest problem from my perspective]. Vacancies for higher up positions require going outside of Sint Maarten. It is mostly persons from the Netherlands which makes it difficult to grow."

For more information on the capacity of the National Detectives, see ***Investigations and enforcement***.

Recommendations

Conduct an organizational assessment to determine how to improve capacity especially within enforcement functions: To adequately address the reports of insufficient capacity, an external assessment should be undertaken to determine how many staff/skill sets/positions per department are required in order to effectively function. Following the assessment and depending on findings, priority should be given to departments identified to have limited capacity and efforts should be made by Sint Maarten, with the assistance from the Netherlands, to find skilled practitioners to fill those vacancies.

With support from senior leadership, launch a comprehensive recruitment program focused on identifying seasoned practitioners to fill critical vacancies: P&O, with support from Ministers and SGs should launch a recruitment program focused on filling critical vacancies across Ministries. Priority should be given to filling the most critical vacancies first, and Ministers/SGs should commit to enhancing their Ministries with qualified personnel in order to be as effective as possible and to serve the common good.

Create sponsorship programs for students to study abroad in order to gain a particular skill set and then require them to return to Sint Maarten to work in the Government: According to interviewees, many individuals leave Sint Maarten to study and do not return to the country following their studies. Additionally, study financing programs do not mandate that the student return to Sint Maarten. Conduct an assessment to determine which areas require unique skill sets that appear to be currently lacking on the Island. As a way to help address to the lack of these skill sets, offer students a sponsorship program to study abroad with a requirement to return and work in Sint Maarten for a certain period of time following their studies.

Personnel management

Opportunities for improved career development and coaching

Observations

Many employees reported to the Inquiry team that inadequate career development guidance and coaching was provided to help civil servants advance within the Government. Some department heads also told the Inquiry team of this issue as well as the lack of perceived support from the Government to effectively manage their teams.

A midterm and final performance assessment is conducted in May and November

annually, according to the performance management policy.[133] A department head stated, "feedback sessions are one-way, it is here is how you are telling me how I am doing. This is really wrong. It should be a continuous process of constantly providing feedback, mentoring and coaching."

The performance management policy states that during their final assessment, an individual could be rated poor performance, strong performance, or excellent performance. For excellent performance the policy states,

> *"objectives were exceeded due to exceptional performance of the employee. As an immediate result he will get an increment in salary scale as of January and will also receive a bonus. The bonus is an amount equal to 12 times the amount of his/her last increment."*[134]

A department head told the Inquiry team that they felt they were not given adequate support to effectively manage their departments as a result of not being able to award staff who received excellent performance ratings, despite the provisions in the performance management policy. Some individuals who received excellent performance ratings in some Ministries were awarded the increment in salary scale, but the department head stated that their department had not received the "incremental payments" as of June 2014, which was required by policy to be paid in January. The department head stated to the Inquiry team that they asked P&O and were told that the personnel advisor assigned to the Ministry has been on long-term sick leave since April which is why the payments have not been processed. The department head was also told that the Government does not "have money to pay the increment." The department head stated to the Inquiry team, "The EP bonus is embedded in legislation and doesn't have limitations in the legislation for it to not be paid out." The department head concluded by saying,

> *"HR management is a problem, and where that ties to integrity is also significant, because if you have low employee morale, and a civil servant population that feels they have been duped, you have a gap for an integrity breach where an employee may feel, 'why can't I take a payback for a license when I don't get my money anyway?'"*

Another department head stated that they felt their staff is "demotivated" and that "morale is low." The department head stated that in order to address these issues, coaching and leadership development training needs to be provided to section heads and middle managers so that "they can demand more from their staff." The department head stated that "people skills, leadership training, conflict management, and performance appraisals" are lacking and that the Government should focus on "teaching people how to be a manager." The department head also stated,

[133] Performance Management Policy, *Government of Sint Maarten Employee Handbook*, Government of Sint Maarten; http://pnobeleid.sharepoint.com/Documents/111124%20Employee%20Handbook%202011.pdf

[134] *Id.*

"you have – the way I understand it – what should be a continual process throughout the year –not just once. It's a mentoring and coaching relationship. But here there are just specific dates. You don't have managers providing development. Succession planning and career development doesn't exist. There are no career paths, no trainings to keep people moving up."

An official stated, "the worst place to be a manager is in government, because I have no control of staff, but still am responsible for the deliverables."

Recommendations

Provide leadership training conducted by a reputable external provider for all employees who oversee staff. Provide support to department heads and SGs to effectively manage their staff: Effective personnel management and performance measurement of staff should be a core objective of each Ministry. Staff should be provided with development opportunities, training, and feedback in order to excel in their fields. Feedback should be provided continuously and not just at specified times, and a core goal of leadership should be to help their staff grow within the organization. Staff should be recognized for their achievements and integrity bonuses should be provided to individuals who demonstrate outstanding integrity within their positions. All required bonuses and payment increases should be awarded on time and as outlined in the performance management policy in order to keep personnel motivated. This should occur without exception.

Create a coaching program within the Government to provide employees mentorship and opportunities to advance: Each employee should be assigned a coach who is senior to them within the Government to provide guidance and career development advice. Coaches should be outside of the department of the employee in order to provide an independent perspective. Coaches should meet with their coachees regularly to help motivate employees to grow and advance within the Government. Coaches should also be present at annual career planning interviews in order to understand the career development goals of the coachee and to push them to advance throughout the year.

7.8. Systems and information sharing

7.8.1. Description aligned to global standards and leading practices[135]

As recognized and affirmed by leading conventions and treaties noted in this document, electronic and automated systems limit unnecessary discretion in public administration and facilitate greater transparency within government. The use of sophisticated ICT systems - with appropriate security precautions - can help create robust audit trails around government expenditures, streamline data collection, and promote regular data monitoring, which in turn increases the chance of detecting suspicious

[135] The key features related to ***Systems and information sharing*** that are highlighted in this section represent an aggregation of relevant guidance contained in the leading global standards and practices referenced in ***Appendix B***.

transactions and functions as a powerful check on the abuse of public authority. Accurate data should be kept by all agencies and departments within a government and should be shared with relevant counterparts to aid in the joint detection of corruption and in measuring the effectiveness of integrity initiatives.

ICT systems should be capable of sharing data with relevant government stakeholders, including audit, investigative, and prosecutorial functions, which will facilitate proper oversight by providing timely access to data and assisting with identifying anomalous or potentially inappropriate activity. The use of technological solutions to capture, store, and share data is the hallmark of a strong ICT platform and can help government agencies and departments work together on shared goals and leverage complementary capabilities.

7.8.2. Observations and recommendations

Poor information sharing as well as a lack of information automation between government functions hinders a government's ability to identify risks and prevent integrity breaches. ICT can not only streamline data but also allows for audit trails and monitoring that can detect suspicious transactions. The GoSM has limited document storage and retrieval capabilities, and the few processes that are able to be automated, such as registering Advices, are not properly utilized for their intended purpose. In addition, the current lack of automated systems leaves room for human manipulation of processes, for example, in the issuance of licenses/permits. Insufficient documentary storage, poor information sharing among Ministries, and a notable lack of automated information systems support a finding of low maturity as compared to global standards.

The following were identified as key observations affecting systems and information sharing within the GoSM, according to interviews conducted and documents analyzed by the Inquiry team:

- **Limited document storage/retrieval capability**: The GoSM has limited capacity to store and retrieve documents. This lack of capacity impacts their ability to effectively avoid integrity breaches.
- **Missed opportunities for automation in the Advice process**: Advices are not registered in an automated system, and therefore not always retrievable or completed in a timely manner. The current system does not have an appropriate audit trail.
- **Missed opportunities for information sharing due to a lack of official data sources:** The lack of unified and accepted official data sources leads to inconsistencies in data storage on tax payers resulting in missed opportunities for information sharing throughout departments.
- **Lack of information sharing for immigration control:** Many Ministries and other functions of Government do not effectively share information in order to jointly work to prevent integrity breaches. Departments in VSA, Justice, and TEZVT do not effectively share information to jointly tackle the high level of illegal immigrants in Sint Maarten resulting in vulnerabilities for abuse of the system by undocumented immigrants.
- **Integrity breach vulnerability in license/permit processing**: License/permit processing departments are one of the most prone to integrity breaches within the Government, and the lack of automation within these departments makes the existing system more susceptible to integrity breaches.
- **Unclear indication of the impact of illegal immigration on social services**: Illegal immigration appears to have significant costs on the health care system and public education but the level of impact is unknown. Resources devoted to social services do not currently account for the impact of illegal immigration on those services.

Systems and information sharing
Limited document storage/retrieval capability

Observations

Based on the access to information made available to the Inquiry team, there are opportunities to enhance document storage systems to align with international standards.

Limitations due to hard copy filing

Most departments do not have digital systems in place to track or store documents, according to interviews conducted with departments in all seven Ministries. This lack of electronic data storage makes the document retrieval process and access to information within the Government challenging. For example, in a spreadsheet provided by the Ministry of TEZVT that outlines what hard copy folder licenses and their associated files are located in within the Department of Economic Licenses, some licenses and their associated files could not be located. Out of 1,768 economic licenses from 2008-2014 listed in the spreadsheet, 177 were marked as "not found" and two were marked as "blank."[136] According to interviews with TEZVT officials, the Economic Licenses department is currently in the process of moving towards a digital system for document storage.

Recipients of public transportation licenses are also stored in spreadsheets and filed in hard copy, according to an official in the Ministry of TEZVT. This creates difficulty in keeping track of who requested what and the dates of the request, according to the official.

DIV

DIV, the records and information management department housed in General Affairs serves as the central warehouse for documents and archives within the Government. Citizens as well as Government departments are able to request documents from DIV, according to an interview with a Ministry of General Affairs official. Departments, SGs, and Ministers are responsible for sending their relevant documentation to DIV; and therefore, the quality of the documents stored at DIV is only as good as the documents provided to them, according to the official. According to interviews with a Ministry of General Affairs department head, Government employees may (and reportedly do) choose when they will send documents to DIV and when they will not. Based on interviews, DIV hopes to move the Government towards "uniformity" and is helping different departments "digitize" their paper files.

Throughout the course of this Inquiry, the Inquiry team requested large quantities of documents from departments in every Ministry. Many documents were provided in hard copy as electronic copies did not exist according to the statements made by the custodians of the documents. Some documents were scanned in and electronically transferred to the Inquiry team as well. Some

[136] Copy of combined B.V., N.V., and E.Z. licenses from TEZVT

departments sent over documents in a timely manner; however, many departments experienced difficulty in locating the information requested. DIV did not appear to serve as an efficient tool for information retrieval for the purpose of this Inquiry.

Negative impact on enforcement

The existing document storage system hinders enforcement as documents required for investigations are not consistently accessible, according to a Ministry of Justice official. An efficient and validated information storage facility is extraordinarily important for the administration of the enforcement system. Reliable business record retention systems with appropriate audit trails that maintain chains of custody, authenticity and accuracy of documents is necessary for civil and criminal enforcement proceedings – particularly so in cases of investigations of corruption and integrity breaches where appropriately authenticated documents serve as the foundation for successful enforcement action. A Ministry of Justice official stated,

> *"the whole archive is not complete…many documents that you need for investigation simply are not there. For example, in a corruption investigation, we need to see a document where a decision was taken. Sometimes you find it, sometimes you do not find it. Most people remember what transpired then but cannot find the document. DIV, the national archive is there, but sometimes you don't get all of the information."*

According to interviews, the procedure code allows for prosecutors to give written authorization to departments across the Government to provide requested information immediately. An official at the Ministry of Justice stated to the Inquiry team that departments did not always promptly reply to requests for documents. The official stated that it appeared that departments would "drag their feet" in response to requests for information. A Justice official noted that verbal authorization from leadership is also frequently given and the lack of substantive written documentation housed in one system can make finding proof of misconduct challenging.

Recommendations

Conduct a comprehensive ICT systems assessment: A stocktaking exercise should be undertaken to identify and assess the existing ICT systems in place within the Government. Opportunities for linking ICT platforms or consolidating platforms to facilitate information exchange between relevant agencies and departments should be noted. This exercise should be performed by an independent firm with experience conducting ICT systems audits and developing recommendations for Government ICT solutions.

Establish automated archival procedures for consistent document storage: All electronic documentation should be subject to automated archival processes that are not dependent on approval or action by Government employees. Archival processes should allow for the automatic classification of documents that must be stored, as well as designation of the duration that such records should be maintained. Archived documents should contain unique identification tags to

facilitate organization and retrieval. Removing discretionary decisions regarding document storage can limit the opportunities for manipulation of government processes and reduce susceptibility to integrity breaches across the GoSM.

Systems and information sharing

Missed opportunities for automation in the Advice process

Observations

Challenges exist with the current automation and information sharing systems that appear to limit the Government's ability to provide services in an efficient manner. The Inquiry team's most important observation around the lack of automated systems was in the registering of Advices. In interviews, the Inquiry team witnessed stacks of papers and files on desks of Advices that needed to be signed.

An electronic document management system for Advices does exist within the Government called DECOS, and all departments within the Government have access or the ability to access this system, according to an official in the Ministry of General Affairs. The purpose of this system is for every individual to be able to "register and track their own Advices", with the hope of ultimately moving towards a "paperless process." However, the system does not appear to be carrying out its intended purpose. According to interviewees and firsthand observations of the Inquiry team, there is inconsistent usage of DECOS across departments, and in its current state, users are nevertheless required to manually update the workflow and dates. Therefore, the system is currently being used as an electronic document storage platform (for those who choose to leverage it) rather than an automated Advice system.

Moreover, the DECOS system does not appear to have an adequate audit trail to promote the efficient processing of Advices. Users of DECOS stated to the Inquiry team that a user cannot see what time the Advice was sent over and cannot mandate that the next user sign off in a certain period of time, allowing people to "delay if they want to delay."

Negative Advices and lost documents

As a result of the lack of automation and electronic document storage, documents may get lost, especially in regards to negative Advices or negative memos attached to Advices, according to multiple interviewees. According to a senior Government official,

> *"in regards to paperwork, we still need to figure out how to handle all these papers. It needs to be digitalized. The Government is handling too many papers. Papers get lost intentionally or unintentionally. If it's digital you can't lose it, you cannot delete it without a trace." Another official stated, "In the past – we used to book the negative memos separately to DIV because they would often get lost on the way."*

The Inquiry team obtained an example of this in an Advice related to a new appointment of a senior Government official. The Inquiry team obtained the original Advice that was sent to the Minister which contains an attached memo of stated concerns. When the Inquiry team requested this same Advice from DIV, this

	attached memo was not included.[137] A department head recounted firsthand accounts to the Inquiry team of cases of employee misconduct where Advices on the removal of these employees remain on the Minister's desk "for a long time" or it "gets lost" in which case another Advice must be sent. A VROMI official stated that integrity issues "start when [Advices] have to go through certain people and then it doesn't move…I am unsure if it is held up by department head, or SG or Minister." Based on interviews and documents obtained by the Inquiry team, there does not appear to be publicly available information on the protocol to issue Advices including information on time limits to sign off on Advices. Many interviewees stated to the Inquiry team that some Advices often stay on a Minister's desk for as long as they want, and there was no obligation for them to have to sign off within a certain period of time. Interviewees from TEZVT and VROMI stated that they believed Ministers sometimes did not sign off on Advices in a timely manner as a way to exert influence over the requestor or as a stalling technique in order to avoid signing off on more sensitive or controversial Advices. A civil servant stated to the Inquiry team that 17 Advices have been sitting on a Minister's desk that the Minister "just doesn't want to sign" because "most were negative Advices." The official stated that they suspect that the Minister will hold off on approving those negative Advices until after elections. A VROMI official stated that after inspections are conducted and warning letters issued, an Advice is made to exert sanctioning power over the building in non-compliance. The official stated that once the Advice is initiated, they are "unsure if it is held up by department head, or SG, or Minister. Some of them are held up by department head or the Minister just doesn't sign it… [the Minister] is a politician and…does not want to alienate [themselves] and lose votes."
Recommendations	**Develop and enforce policies that require consistent usage of DECOS:** The policy should set strict timelines for signing off on different types of Advices depending on workflow. The Minister should be given a mandated time to sign off on an Advice that is reasonable within their workload. Departments, SGs, and Ministers should be notified of the time restrictions for all of the different types of Advices. Notifications should be sent to employees multiple times as the deadline to sign approaches, and if the Advice is not signed by the particular department, SG or Minister in the allotted time, the Advice should expire. The process to sign off on an Advice should be completely automated and should not require any manual intervention. No one should have the ability to edit the audit trail on an Advice. Consider having the final Minister signature for some Advices signed through electronic signature rather than hardcopy to further facilitate efficiency.
Systems and information sharing Missed opportunities for information sharing due to a lack of official data sources	
Observations	Sharing information between different departments in the same Ministry or between Ministries is challenging and information sharing is not leveraged to jointly address integrity issues within the Government. Many interviewees cited

[137] Advice related to a new appointment of a senior official (obtained from DIV and related Ministry).

the importance of adopting a shared information platform to further develop. An SG stated, "there is not one platform where you have access to all data, but that is where we want to go."

Currently, systems across different departments do not store the same identifying information about tax payers, according to a department head in General Affairs. The department head provided an example: "my name might be 'Michael' in one system, and in another 'Micheal,' and the address might be an old address in one, and new address in another." Based on interviews and documents obtained and reviewed by the Inquiry team, there does not appear to be standardized protocol on where to collect and verify official identifying information. For example, there is no policy that states that the Government should follow the Census Office information as official personal information and the Cadaster information for housing information. Therefore, different identifying information for tax payers may exist across departments making information sharing challenging, according to the department head. The department head stated that ICT was working on a system "to have a single citizen view – every entity should be able to verify information around those citizens. There can be restrictions – but you should be able to see what you need to see to do your job."

Recommendations

Develop a uniform convention for identifying individuals that should be used across Government departments: Criteria should be established to verify identifying information on individuals such as name, age, date of birth, address, etc. For example, census information could be leveraged as official name, age, and date of birth. Publish a policy around this uniform convention and inform employees of the new policy. Publish the policy on the website and make it easily accessible.

Systems and information sharing

Lack of information sharing for immigration control

Observations

There is no system that is tracking existing licenses/permits that automatically generates notices when a license/permit expires or when an entity did not renew their license at the Receiver's Office, according to interviews with multiple Government officials in TEZVT, Justice, and VSA. Because there is no shared platform across different departments and Ministries, compliance with policies and procedures around licenses/permits may be impacted.

Lack of information sharing between Immigration and Labor Office

Systems across the Government seem to operate in silos, and departments/Ministries may be missing valuable opportunities to leverage complementary information and skillsets in tackling problems together. For example, there is no shared system between Immigration and Labor, according to officials in VSA and Justice. Interviewees stated to the Inquiry team that a shared system where both departments could track when an individual was granted their work and residency permits and when they would be anticipated to expire would help in information sharing. This could be greatly beneficial to Labor inspectors to control the level of illegal workers, and it would also allow both departments to send warnings and follow up with individuals with expired permits, according to

VSA officials.

Lack of information sharing between Immigration teams and Residency Permit Office

There appears to be a lack of information sharing between the Ministry of Justice's Immigration control teams and Residency Permit office. According to Ministry of Justice officials, the Immigration control teams do not share or report data on deportations with the Residency Office, and therefore its staff is not equipped to identify immigrants who were previously deported. An Immigration official reported to the Inquiry team that individuals who have been deported can gain entry back into Sint Maarten and apply for residency without the Residency Office having any knowledge of the deportation.

Lack of information sharing to prevent commercial sex workers from violating six month work permit

There were many reported instances by the senior officials within the various Ministries involved that sex workers overstay the six months permitted by their work permit. Brothel owners are required to obtain temporary work permits from the Ministry of VSA that permit commercial sex workers to stay in Sint Maarten for six months. According to interviews with Ministry officials, commercial sex workers are required to remain outside of Sint Maarten for one year prior to applying for a new temporary work permit.[138] According to officials involved in Labor and Immigration, one way bypass the six month requirement is for commercial sex workers to obtain a Director's license from the Ministry of TEZVT, which does not have shared information systems with Labor or Immigration.

Under Sint Maarten law, the granting of a Director license for a business allows the person receiving the license to obtain residency from the Ministry of Justice. According to Government officials in the several Ministries, there is an inability to detect this as there is no automated system in place that allows the various Ministries involved in the work/residency permit process to share information.

Recommendations

Create a centralized immigration database: The GoSM should create a database shared by the Ministry of VSA, the Ministry of TEZVT, and the Ministry of Justice to facilitate oversight of the labor, director and residency permit processes. This database should be a central repository for all foreign nationals entering the country legally or identified illegally residing on the island. Sharing this data will allow each Ministry to have essential information regarding all foreign nationals, including date of birth, passport number, nationality, occupation, valid permit dates, and prior immigration transgressions. Real-time information sharing using a common IT platform will facilitate stronger oversight and allow for proactive integrity risk management (e.g. inspectors will know when licenses/permits are scheduled to expire and can allocate resources accordingly).

[138] "Notitie m.b.t. toepassing nieuwe beleidsregels bij de behandeling van aanvragen voor tewerkstellingsvergunningen voor 'commerciële seks werkers'," *National Gazette* July 11, 2014; http://www.sintmaartengov.org/government/AZ/laws/National%20Gazettes/Landscourant%2011%20juli%202014.pdf

Observations

Many interviewees reported to the Inquiry team complaints about the efficiencies of license/permit processing across departments – especially for VROMI permits and economic licenses. The lack of automated systems creates challenges in terms of timing and could create a licensing process susceptible to integrity breaches.

Susceptibility to facilitation payments and exerting influence

Many civil servants stated to the Inquiry team that they believed permit/license processing departments were one of the most prone to integrity breaches within the Government. Interviewees, including business owners or employees, home/building owners, and boat owners provided firsthand accounts of being asked by Government employees, including senior officials, to make facilitation payments to speed up the processing of the permit or license.

Ministry of VROMI

A business owner stated,

> *"everyone here knows that VROMI is the power source…if you know a certain person is going to come in, you have to pay – or you won't get the permit. You could be waiting one and a half years for the permit."*

A local business owner stated to the Inquiry team that they have been waiting for a year for a VROMI building permit, but yet other groups "come in and get in right away." A Government employee recounted a firsthand experience where a VROMI inspector asked them for ANG 400 to have their permit "moved to the top of the pile" so it would take a few months to process rather than 1-2 years. While many interviewees cited that the processing of VROMI permits could take upwards of a year, a VROMI official stated that "eight weeks is usual turnaround time." When the Inquiry team asked a VROMI official if they were ever offered money, they stated "of course." Various Ministry officials, including Ministry of Justice officials, cited to the Inquiry team that individuals applying for VROMI permits were given preferential treatment on an expeditious basis by senior officials.

Ministry of TEZVT

Business owners stated to the Inquiry team that time to process economic licenses is very long, but a TEZVT official stated that the process "takes as long as it does because you are waiting on Advices from different departments." According to the TEZVT official, economic licenses rarely get denied, but departments from across the Government such as Civil Aviation, Shipping and Maritime Affairs, Fire, and Public Health have to do checks before a license can be signed off on, and there may be a delay in receiving Advices from these departments. Some interviewees stated that they believed the risk regarding facilitation payments for economic licenses lies with the other departments that have to sign off on the license rather than the Economic Licenses department who "simply processes the request." A business owner provided a firsthand account of an inspector saying, "I'm leaving the room. This drawer is open. I expect to see something in it when I return so we

can begin processing the permit." Economic licenses also all have to be signed off by the Minister which "adds to the length of time", according to a TEZVT official.

TEZVT officials stated to the Inquiry team that controls are often conducted and through the control it is often identified that businesses do not have active business licenses but have submitted a request for one and completed payment of the application fee. In these instances, TEZVT officials stated that the lack of a valid license for an active business is overlooked as the processing period is known to be "very long." Similarly, if an individual requests an application for any type of residency, they cannot be deported even though the law states that they should not be on the island during that time, according to a Ministry of Justice official. A department head stated, "the lack of automation also allows processors to manipulate the system and stall processing until a payment is made."

Inefficiencies for the license/permit requestor and impact on the Government

Impact on investment

Automated systems linking the Residency Permit Office and the Labor department do not exist, according to Ministry of Justice and Ministry of VSA employees. In order to become a legal resident, the requestor must first obtain a work permit and then request a residence permit. A Minister stated that creating a "one stop shop" for documents to be submitted "has not worked for whatever reason" and previous attempts have been "put on the back burner." The current process for handling residency and work permits appears inefficient and does not leverage information sharing tools and automated systems that could speed up the process.

According to a business owner interviewed by the Inquiry team, having to go to two departments and make two separate requests creates a burden for the requestor and adds to the time that it takes to process a permit. The business owner stated that foreign investment in Sint Maarten is not what it used to be and obtaining work permits and bringing in foreign workers has become far more difficult than neighboring countries. Prior to 10/10/10 the business owner stated that obtaining work permits for foreign employees required two layers because a portion was reportedly located in Curacao. Now, the process still requires two layers (residency permit and work permit) despite both Ministries being in Sint Maarten. The business owner said,

> *"you have to go to two different buildings, two different lines…and we have told them many times, why are you making it more difficult for us? Why should we have to go to two departments? They need to create a one stop shop. It's a cost to the Government and time factor is there, and there is red tape in both departments. Now they charge a separate fee to process work permit and residence permit – but it should be one fee."*

Multiple business owners stated to the Inquiry team that investment would be more fruitful in neighboring islands due to what they believed to be more efficiencies and less bureaucracy. A business owner remarked,

> *"the policy now is that you have to put an ad in the newspaper for five weeks with a vacancy – and then if you get no response, you can get an expat. Then I have to wait another three to five months to get things processed and even when you pay the fees – it is not guaranteed that they will get the permits. The reason there is corruption is because of the complication they have created in the system. There is inefficiency, it takes a long time. Nassau had a system where they give you the permits you need in three weeks."*

According to interviews with Ministry of TEZVT officials and Ministry of Finance officials, for all licenses/permits, a processing fee must be made to the Receiver's Office and proof of payment must be presented before the license is able to be processed. The officials explained that no automated system exists that allows the requestor to pay the Receiver's Office and the license/permit department to receive immediate notification that the payment was received in order to begin processing. Some payments to the Receiver's Office can be made online but the receipt of payment still needs to be picked up at the Receiver's Office to present to the processing department, according to a Ministry of Finance official interviewed by the Inquiry team.[139]

Lost revenue on economic licenses

One of the requirements to obtain an operational license for a restaurant is to show a copy of the lease agreement for the business, according to a Ministry of TEZVT official.[140] For economic license requesters, the official stated to the Inquiry team that the process was unfair as it could take from three months to a year, and in the meantime the requestor is paying rent with no active business license. The official went on to say that in some instances, the license requestor may choose to begin operations without an active license and without the proper pre-license inspections. The result is that violations may be occurring which jeopardize the local population and the Government is not collecting any license fees on that particular business during the time of operation without a license. Alternatively, the requestor may choose to wait for the license to be processed while paying rent on a vacant building.

The license does not become active until the hard copy file is picked up from the Economic Licenses department, and as a result, the Government is also losing revenue on economic licenses that are not being picked up from the department once they are processed, according to a Ministry of TEZVT official. The official stated to the Inquiry team that the business owner only needs to start paying fees to the Receiver's Office once the license has been picked up, so often the business owner may stall on actually picking up the processed licenses. Since the license was being processed, no sanctions are placed on the business owner in the event of

[139] Process Business Licenses 2011

[140] *Application for permit in accordance with the "Vergunningslandsverordening (P.B. 1963, No. 28),"* Ministry of TEATT; http://www.sintmaartengov.org/Government%20Forms/OPERATIONAL%20LICENSE%20FORMS.pdf

an inspector/controller identifying the lack of a valid license, according to another TEZVT official. Members of the Economic Licenses department stated that they are currently "very busy" following up on all licenses that have not been picked up.

Recommendations

Increase discipline of permit and license processing through automated application management system: A key vulnerability in permit and license processing is the lack of a clear timeline for issuing or rejecting applications. This introduces the opportunity for public officials to solicit, or applicants to offer, facilitation payments to expedite processing. In order to address this vulnerability, the permitting and licensing process should be governed by an automated application management system that requires Government employees to issue or reject a permit within a specified number of days from receipt of an application. This timeline should be well-publicized so that applicants are aware of when they should expect a determination, and applicants should be able to verify the status of their application through an external website. Relevant Government employees should be subject to disciplinary action or adverse performance reviews for failing to comply with the application management system. In addition to reducing the opportunity for integrity breaches, an automated process that imposes a strict timeline for issuing or rejecting permit and license applications will help the Government to start collecting associated fees in a timely manner and will reduce the number of unlicensed and unpermitted activities.

Automatic notification of approved business licenses: The current practice of requiring business owners to collect their license before being held liable for fee payments creates an incentive for business owners to delay collecting their license. To eliminate this adverse incentive, business owners should be automatically notified when their license is approved and be held liable for associated fees upon notification. This notification system should be integrated with the automated process for reviewing permit and license applications discussed above.

Systems and information sharing

Unclear indication of the impact of illegal immigration on social services

Observations

Illegal immigrants who gain entry into Sint Maarten are provided public education and free medical services if they have a medical emergency from the GoSM, according to interviews with employees at the Ministry of VSA and OCJS. Officials stated that because of this, increased patients and students likely place a burden on Sint Maarten's public health and education systems, and the GoSM appears to be unaware of the added costs required to support these programs. Currently, the Ministry of OCJS is only aware of the costs to educate registered children, according to a senior OCJS official.

Immigrants who come to Sint Maarten legally by obtaining work permits are also entitled to healthcare with premiums paid for by the employer, according to a senior VSA official. The official noted that individuals may obtain work permits in order to obtain health coverage and then leave their job shortly after beginning employment. Currently it does not appear that there is a mechanism to determine whether an individual remains employed at their job unless the employer submits

	a letter to the Ministry of VSA, which usually only occurs if the employee and the employer have a dispute, according to the official. This allows individuals to obtain health insurance from one employer and receive benefits for the duration of the work permit even if that individual quits and begins employment elsewhere.
Recommendations	**Determine cost to state of education and health coverage for immigrants and take action to remedy the impact of illegal immigration on social services:** The GoSM should determine the added cost to provide education and healthcare to illegal immigrants. Once this cost is determined, it should be decided whether to allocate budget to education and health programs to account for the extra burden that may be caused by providing services to an increased population. The GoSM should also deploy a mechanism to check employment to confirm the State is not paying for health insurance for unemployed persons. Employers should be required to immediately report any individual who resigns from his or her position, whether formally or informally.

8. Assessment of the integrity architecture of state-owned companies

The GoSM is the sole shareholder of several N.V.s and foundations that are key contributors to Sint Maarten's economy and public infrastructure.[141] SoCs require enhanced controls to combat market distortion and misuse of public funds and the GoSM should require SoC disclosure of governance and ownership structures to all stakeholders.[142] SoC transparency supports a public perception of integrity and increases accountability to internal and external stakeholders, including the GoSM and the general public.[143]

It should be noted that this Inquiry did not include an analysis of the quality of the external audits or procedures related to those audits. Rather this Inquiry focused on the overall state of governance and integrity practices related to the SoCs when compared to global standards and leading practices.

8.1. Governance and corporate structure

8.1.1. Princess Juliana International Airport Operating Company N.V.

The Princess Juliana International Airport Operating Company ("PJIAE") is the operating company of Sint Maarten's international Airport. The organization is managed by a Managing Board of Directors which is supervised by a Supervisory Board of seven Directors, as stated within the company's articles of incorporation. The Managing Director ("MD") is the only managing board member and appears to have sole authority for PJIAE's commitment and devotion of resources to integrity and anti-corruption, according to interviews with Airport officials. The Managing Board and Supervisory Directors of PJIAE are appointed by the Princess Juliana International Airport Holding Company ("PJIAH") which is PJIAE's sole shareholder.[144]

It is noted that the business operations of the airport take place in PJIAE. As a result the Inquiry regarding the airport primarily covered PJIAE; certain aspects of the holding company in relation to governance are discussed below.

8.1.2. N.V. Gemeenschappelijk Electriciteitsbedrijf Bovenwindse Eilanden

N.V. Gemeenschappelijk Electriciteitsbedrijf Bovenwindse Eilanden ("GEBE") is Sint Maarten's main electricity producer and water distributor. The organization is managed by a Managing Board of Directors

[141] According to the Contract Documents, state owned companies are defined as "legal entities incorporated by or on behalf of the government via private or public law as well as subsidiaries thereof."

[142] *Transparency of State-owned Enterprises,* Transparency International, http://www.transparency.org/whatwedo/answer/transparency_of_state_owned_enterprises

[143] *Id.*

[144] 2013 PJIAE Annual Report

which is supervised by a Supervisory Board of five Directors.[145] The Chief Operating Officer ("COO") / President is the only Managing Board member of GEBE and appears to have sole authority for GEBE's commitment and devotion of resources to integrity and anti-corruption, according to interviews with GEBE management.

8.1.3. Sint Maarten Harbour Holding Company N.V.

As of September 2013, the Sint Maarten Harbour Holding Company N.V. ("SMHHC") and its subsidiaries (collectively the "Harbour") included 13 companies established to operate in the following business areas: cruise, cargo, commercial maritime, finance, fueling, consultancy and regulatory affairs.[146] The SMHHC is managed by its Chief Executive Officer ("CEO") who is supported by an executive management team that includes a CFO, a Cost & Quality official, and a Human Resources Manager, according to an interview with a SMHHC senior official. The SMHHC Management Board is supervised by a Supervisory Board of three Directors.

8.1.4. Sint Maarten Telecommunication Holding Company N.V.

Sint Maarten Telecommunication Holding Company N.V. and its subsidiaries (collectively "Telem") is an international communications company that provides, among other services, fixed and cellular telephone and internet services. The organization is led by its executive management team consisting of a CFO, Chief Technology Officer and Chief Commercial Officer, according to interviews with senior management and Telem's website.

8.2. Methodology for assessment of state-owned companies

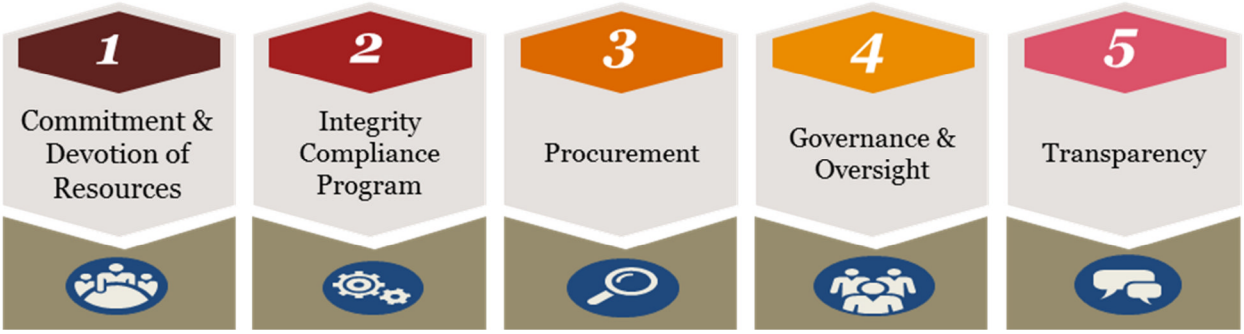
Interviews were held with officials from each SoC and documents were evaluated to collect and analyze information about the SoCs' integrity compliance programs and to identify any potential gaps as compared to leading integrity compliance practices. The Inquiry team attempted to identify integrity compliance program elements such as a Code of Conduct for employees or whistleblower/complaint mechanisms. Documents were obtained through formal document requests to each company, research of open sources and syndicated databases, and requests from Government and private-sector individuals. It is noted that only the four SoCs described above were included within the scope of the Inquiry.

As noted previously, this Inquiry is separate from penal investigations carried out by the Office of the Public Prosecutor and our observations and recommendations should not be viewed as legally or forensically admissible evidence. Whatever follow on actions the GoSM decides to take with the information contained in this Report is entirely within the discretion of the GoSM.

Through desk and field research PwC identified a number of issues affecting the maturity of the current integrity architecture of the SoCs. Key issues are categorized below under agreed upon integrity framework inquiry elements (tailored to the scope and nature of this engagement).

[145] GEBE's Articles of Association

[146] 2012 SMHHC consolidated financial statements



Special Note: It is noted that the SMHHC did not provide the Inquiry team with any documentation which was requested from the company, and therefore the Inquiry of this entity was limited to information obtained through interviews and documents provided by third parties.

8.3. Commitment and devotion of resources

8.3.1. Description aligned to global standards and leading practices[147]

Preventing integrity breaches in SoCs requires a strong commitment from leadership to establish the appropriate "tone at the top" that the company will not tolerate corrupt behavior.[148] Senior executives must communicate clear expectations, both orally and in writing, that all employees adhere to the highest standards of ethical behavior and that misconduct will result in disciplinary action. Leadership is also responsible for allocating sufficient resources to promote compliance and effective oversight, and for ensuring that instances of misconduct are addressed promptly, investigated, and where appropriate, disciplined in a manner proportionate to the level of misconduct, up to and including termination. Leading global standards, such as the World Economic Forum's Partnering Against Corruption Initiative's Principles for Countering Bribery, describe characteristics that SoC leadership should demonstrate in order to prevent integrity breaches, including the following:

- Frequent communications, both orally and in writing, regarding the organization's unequivocal stance against corruption, as well as emphasis on the importance of employees understanding their obligations under relevant anti-corruption policies.
- Allocation of sufficient resources to conduct periodic employee trainings, risk-based due diligence, internal investigations, and internal audits of compliance with relevant anti-corruption policies. Leading practices recommend allocation of resources for training board members on topics such as accounting standards, tax legislation, and other relevant regulations.
- Consistent and visible support, from leadership for ethics and compliance programs.
- Leadership commitment to transparent disciplinary actions in response to misconduct.
- Ethics and compliance metrics incorporated into employee evaluation processes and linked to promotions.

[147] The key features related to ***Commitment and devotion to resources*** that are highlighted in this section represent an aggregation of relevant guidance contained in the leading global standards and practices referenced in ***Appendix B***.

[148] *Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations*, International Chamber of Commerce; http://www.iccwbo.org/Advocacy-Codes-and-Rules/Document-centre/2004/ICC-Rules-of-Conduct-and-Recommendations-to-Combat-Extortion-and-Bribery-(2005-Edition)

- Leadership must hold themselves to the highest standards of ethics and be careful to avoid even the perception of misconduct.
- Transparency of the above listed leadership elements for civil society beneficiaries of the SoC activities is also critical to ensure external monitors can also hold government activities to account for their conduct in the operation of SoC activities.

8.3.2. Observations and recommendations

The Inquiry team noted a lack of visible leadership commitment to the highest standards of integrity in the conduct of business among the SoCs in Sint Maarten. SoC leadership does not consistently communicate and reinforce the importance of integrity to employees and SoCs lack key policies and procedures related to conflicts of interest, due diligence, and whistleblower protections – gaps that could easily be remedied if there were a strong commitment from SoC leadership. These deficiencies expose SoCs to heightened integrity risks and support a finding of low maturity for this element.

The following were identified as key observations affecting commitment and devotion of resources within the SoCs, according to interviews conducted and documents analyzed by the Inquiry team:

- **Room for improvement with regulatory and governance compliance:** The SoCs were observed to be in non-compliance with several regulatory and governance requirements set forth within the GoSM's current established framework. Additionally, there appears to be a lack of enforcement for deviations from existing laws and regulations.
- **Gaps identified among SoC commitment and devotion of resources to integrity:** In general, there appears to be room for improvement for the management and Supervisory Boards of Directors of the SoCs on their commitment and devotion of resources to integrity. The majority of SoC officials whom the Inquiry team interviewed reported that each SoC works to combat corruption, however few visible, implemented initiatives were identified such as a Code of Conduct for employees or communications from senior leadership, and only one SoC appeared to have a resource dedicated to compliance. SoC, GoSM and private sector interviewees reported to the Inquiry team potential integrity breaches by SoC senior officials. Through the analysis of documents and through interviews the Inquiry team was provided information that alleges instances of theft, nepotism and waste which went unaddressed or was not remediated which seem to support the limited commitment noted above.

Commitment and devotion of resources Room for improvement with regulatory and governance compliance	
Observations	**Lack of control over SoCs by GoSM** The SoCs were observed to be in non-compliance with certain aspects of Sint Maarten's regulatory and governance framework. A lack of control and oversight of the SoCs by the GoSM was observed as it appeared several of the SoCs operated freely, without intervention or regulation by the GoSM. Several of the SoCs do not appear to adhere to the same laws governing the operations of private companies. Further, instances of non-compliance with Sint Maarten's current corporate governance framework were also identified. **Limited commitment to integrity** Although the majority of SoC senior officials reported to the Inquiry team that

each took a strong stance against corruption, visible support for or a commitment to the establishment of a robust integrity compliance program was not identified. The Inquiry team notes that one SoC appeared to have a whistleblower policy, and another reportedly has plans to deliver integrity training to its staff. There appears to be a lack of consistency and integrity messaging across the SoCs and in certain instances it was noted that SoCs have not implemented many of the components of an effective integrity compliance program such as a Code of Conduct for employees, mechanism for communication of ethics and integrity or an acknowledgment by the Supervisory Board or MD that integrity must be an element of, and supported by, the management team.

Avoidance of turnover tax on fuel sales required for commercial marinas

SMHHC competes with local companies in the fueling industry through its subsidiary, Sint Maarten Harbour Fueling Company N.V. ("SMHFC"). SMHFC does not pay the 5% turnover tax on fuel sales that commercial marinas are required to pay, according to SoC senior officials interviewed by the Inquiry team, possibly allowing SMHFC the option to offer lower fuel prices than local competitors. It is noted that in 2012 the SMHFC sold "well over 5 million liters of fuel" at a total value in excess of USD 5.5 million, saving the SMHFC approximately USD 275,000 in taxes.[149]

Further, a GoSM official noted in an email to the Inquiry team that the Ministry of VROMI could not find a hindrance permit for fueling activities belonging to the SMHHC dating back to 2000, and that it was the employee's "assumption therefore that one does not exist."

Lack of dedicated resources

The Airport employs a Compliance Officer who supports the organization's compliance efforts, through audits and other means, to measure compliance with internal policies and procedures as well as international laws and regulations; implement and enforcement policies and procedures; and collaborate with the Internal Auditor to investigate matters of potential fraud, according to the Compliance Officer job description reviewed by the Inquiry team.[150]

GEBE, SMHHC and Telem do not appear to have resources dedicated to ethics or compliance, according to interviews with senior officials from each company. It is noted that the Airport, GEBE and Telem do appear to have an internal audit function which could serve as an independent body to evaluate and improve the effectiveness of an integrity compliance program, should one be established.

Recommendations

The GoSM should assert itself as sole shareholder and enforce SoC compliance with laws governing private companies: It appeared during the Inquiry that some SoCs operate with no accountability to their sole shareholder, the GoSM. The GoSM should assert itself as the sole owner of the

[149] SMHHC 2012 consolidated financial statements
[150] PJIAE's Compliance Manager Job Responsibilities

SoCs and demand that they comply with all regulatory and governance laws, as well as requests for information from inquiries, investigations, and other Government-sanctioned initiatives. The SoCs N.V.s and compete in the private sector, and therefore the GoSM should require that each abide by the same rules and regulations as other private companies in areas including those governing competition, taxes and permits.

Communicate visible support for integrity: The Supervisory Board of Directors and Management Board of each SoC should provide a visible commitment to anti-corruption and integrity efforts, establish a proper "tone at the top" within the organization and promote a culture of compliance.[151] Each SoC should establish an integrity compliance architecture, including the creation of an Office of Chief Compliance as noted below and consistent with leading practices that is communicated to internal and external stakeholders. To support this program each SoC should develop a clear set of policies and procedures, including whistleblower protection, gift giving/receiving, hospitality and expenses.

Once an integrity program is in place, SoC management can provide a clear and consistent message that the organization prohibits bribery and corrupt activities through the following ways:[152]

- Periodic communications to internal and external stakeholders
- Town hall meetings to discuss relevant issues and remediation measures
- Public statements to the commitment on integrity on the entities' website
- Disclosure of integrity framework policies
- Independence integrity reviews
- Self-assessments for the purposes of capturing performance and to allow for continuous improvement

Commitment and devotion of resources

Gaps identified among SoC commitment and devotion of resources to integrity

Observations

Several gaps related to an adequate integrity program were noted in connection to senior management of the SoCs. Additionally, SoCs do not appear to be mitigating risk posed by third parties through due diligence procedures. Following are several instances of examples selected by the Inquiry team that underscore the need to enhance the integrity program effectiveness around each SOC.

Lack of due diligence on appointment of individual with alleged connections to improper conduct

In accordance with the GoSM's Island Ordinance Corporate Governance, decisions to nominate a director to a SoC should be reported to the Corporate Governance Council ("CGC") in order to obtain advice regarding the proposed nomination. Based on letters from the CGC to the GoSM analyzed by the Inquiry team, one

[151] *Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations*, International Chamber of Commerce; http://www.iccwbo.org/Advocacy-Codes-and-Rules/Document-centre/2004/ICC-Rules-of-Conduct-and-Recommendations-to-Combat-Extortion-and-Bribery-(2005-Edition)

[152] *Principles for Countering Bribery*, Partnering Against Corruption Initiative, World Economic Forum; http://www.weforum.org/pdf/paci/principles_short.pdf

instance was noted whereby incomplete information was provided to the CGC related to a candidate for a senior position at a SoC. As a result, proper due diligence was apparently not performed on the respective candidate or the candidate's former role as a Ministry employee during which alleged connections to improper conduct appear to not have been taken into consideration.

The CGC advised the GoSM to consider alternatives to the proposed appointment of the SoC official due to the lack of information provided by the parties involved and because a criminal investigation of the candidate was "highly likely", according to a letter from the CGC to the GoSM regarding the appointment, in which the CGC also noted that an alternate candidate or the appointment of an interim director should have been considered due to the importance of this SoC to Sint Maarten's economy.

The Inquiry team spoke with current and former Ministry employees who completed an internal investigation regarding the alleged financial mismanagement by this SoC official. While the Inquiry team did not conduct a forensic investigation of the material, in the information recovered and analyzed, including copies of emails and a summary report, Ministry employees concluded that the official assisted in coordinating payments to vendors unrelated to the official's department and payments missing required approvals. It is noted that the SoC which the official currently heads appears to have active contracts with several of the vendors named in internal investigation documents that received alleged illicit payments.[153]

Potential conflicts of interest

The Inquiry team identified inconsistencies in the procurement bidding process by one of the SoC's in which bids appear to have been awarded to individuals with close personal and/or professional relationships with SoC senior officials. It does not appear that this SoC has appropriate due diligence procedures to help identify and mitigate potential conflicts of interest.

Inconsistent tone at the top

In January 2014 a SoC official allegedly met with a potential concessionaire in the United States to discuss a potential customer service concession at the SoC, according to an interviewee who provided a firsthand account of the situation. During the interview of the prospective deal the senior SoC official allegedly asked the potential concessionaire, "what is in it for me?," and indicated that they had the ability to set up an offshore account at the request of the potential concessionaire should they agree to terms for the deal. During a later meeting between the potential concessionaire and the SoC's official's assistant, the assistant reportedly notified the potential concessionaire that the SoC official required "20% of the deal", according to interviewees. The deal was reportedly called off by the senior SoC official once they became aware of a relationship between the potential concessionaire and another SoC official who would have to approve the deal.

[153] SoC contracts reviewed and emails from SoC employees

Retaliation against employee accused of leaking documents

Internal documents of a SoC that were recently published on a local Sint Maarten news site appeared to have prompted one SoC official to suspend an employee from its accounting department, according to interviewees with a firsthand account of the situation. The employee was later permitted to return to work after filing a lawsuit against the SoC. The SoC official appeared to have retaliated against and subjected the employee to ridicule without concern for integrity. The official appears to have subsequently wasted SoC funds that could have been deployed elsewhere by paying external consultants thousands of dollars to complete the employee's daily tasks, according to an interviewee.

One responsibility taken away from the employee and assigned to a consultant was the creation of investor reports. Invoices received from the SoC and analyzed by the Inquiry team appear to show the SoC outsourced these reports to the consultant at USD 12,500 per month from February 2014, when the employee was originally suspended, until May 2014. Interviewees indicated that the employee was fully capable of completing this task. Interviewees also indicated that the employee "ended up doing all of the work" for the reports anyway and the SoC "paid [the consultant] for zilch."

Recommendations

Require a Chief Compliance Officer (or similar role) for each SoC: It appears that the SoCs have few resources devoted to ethics or compliance. The absence of resources with oversight into compliance with internal and external policies and procedures, as well as local and international laws, can create vulnerabilities for corrupt behavior within the SoCs. Each SoC should employ a Chief Compliance Officer ("CCO"), or similar person of substantial authority who reports to the CEO and Supervisory Board, and is responsible for issues pertaining to governance, transparency, anti-corruption, integrity and ethics. The CCO should oversee the development and implementation of an integrity compliance program.[154] For more information on integrity compliance programs see ***Integrity compliance program*** below. The CCO should also oversee an independent periodic review of the program to assess effectiveness and corrective action when gaps are identified.[155] The CCO, along with the CEO/MD and Supervisory Board of Directors, should demonstrate a visible and active commitment to the success of the program.

The CCO should have access to all data within the SoC and have the authority and responsibility for conducting compliance testing, audit, internal administrative fact finding and reviews to successfully implement the compliance program.

The CCO should be in charge of collecting data, performing risk analysis, promoting compliance with anti-corruption related policies, and conducting administrative fact finding to identify corrupt activity or other breaches of the SOCs' Code of Conduct within each SoC. The CCO should be in charge of handling

[154] *Principles for Countering Bribery*, Partnering Against Corruption Initiative, World Economic Forum; http://www.weforum.org/pdf/paci/principles_short.pdf

[155] *Id.*

all disciplinary action and should formally have the power and discretion to initiate investigations. The CCO officer should coordinate integrity and Code of Conduct trainings for all employees at the SoCs, including senior management. The CCO should be in charge of dissemination of internal and external messaging and communications around the SoCs' commitment to eliminate corruption.

Implement a third-party due diligence policy: Each SoC should implement policies and procedures to perform properly documented, reasonable and proportionate integrity due diligence on third parties prior to entering into business relationships including mergers, acquisitions, investments, suppliers, vendors and joint-ventures.[156] Due diligence procedures should be performed in order to mitigate risk to the company through the identification of reputational issues and potential conflicts of interest which the SoC should avoid.

The SoC that has active contracts with the entities mentioned in the internal investigation noted above should perform due diligence on these entities and a review of services being provided to assess the integrity of the contracts, and individuals representing the entities, as well as to identify potential conflicts of interest.

8.4. Integrity compliance programs

8.4.1. Description aligned to global standards and leading practices[157]

The heightened corruption risk facing some SoCs underscores the need to implement a strong, enterprise-wide integrity compliance program. Leading practices in the design and implementation of corporate ethics and anti-corruption compliance programs for SoCs include:

- Internal policies that clearly prohibit misconduct (e.g. bribery and embezzlement) and provide guidance on issues such as facilitation payments, gifts, and entertainment.
- Periodic, enterprise-wide risk assessments to identify potential vulnerabilities for corruption.
- Risk-based, tiered due diligence procedures to vet third-party business associates.
- Human resources procedures that address recruiting (e.g. background screening process), hiring (e.g. policies around hiring current or former government officials), and transparent disciplinary mechanism to investigate and where appropriate punish misconduct.
- Anti-corruption training that is tailored to the specific role and function of relevant staff.
- Maintenance of a secure hotline for employees and third parties to anonymously report suspected misconduct, as well as clear procedures for handling and investigating complaints.
- Periodic internal audits of the organization's compliance with anti-corruption policies and procedures, and an iterative improvement process to address gaps.

[156] *Business Principles for Countering Bribery*, Transparency International; http://www.transparency.org/whatwedo/pub/business_principles_for_countering_bribery

[157] The key features related to ***Integrity compliance program*** that are highlighted in this section represent an aggregation of relevant guidance contained in the leading global standards and practices referenced in ***Appendix B***.

8.4.2. Observations and recommendations

Leading integrity compliance programs rely on internal policies, risk assessments, due diligence and training to mitigate corruption risk and promote clean business practices. The maturity of the integrity compliance programs within the SoCs reviewed by the Inquiry team can be considered low due to gaps in each of these key compliance areas. The inadequacy of policies prohibiting conflicts of interest and the lack of a fully implemented Code of Conduct for SoC employees were particularly notable factors supporting the low maturity finding.

The following were identified as key observations affecting integrity compliance programs within the SoCs, according to interviews conducted and documents analyzed by the Inquiry team:

- **Limited integrity compliance program elements:** Currently, the SoCs appear to have only limited components of an effectively-designed integrity compliance program, leaving room for improvement in aligning compliance functions with strategic objectives to facilitate new growth and development while mitigating SoC exposure to integrity risks. Further, none of the SoCs appear to have an established Code of Conduct, and the majority of the SoCs reviewed in the Inquiry appeared to lack a whistleblower protection policy or a documented mechanism to anonymously report a complaint.
- **Vulnerabilities in expense policies that create opportunity for "double dipping":** The SoCs appear to have weak expense policies that create vulnerability for employees to receive daily allowances for meals prior to travel but charge meals to corporate credit cards during trips.

Integrity compliance program
Limited integrity compliance program elements

Observations

None of the four SoCs appear to have robust Integrity programs with established policies and procedures to effectively prevent, detect and deter illicit activities including conflict of interests, self-dealing, corrupt or other forms of malfeasance within each organization. Several of the SoCs do, however, have limited procedures and policies that help mitigate corruption.

PJIAE

PJIAE did not appear to have an integrity program in place based on interviews and documents obtained and reviewed by the Inquiry team. Several of PJIAE's policies and procedures, however, contain limited anti-corruption provisions including the Procurement Management Policy & Procedures which contain conflict of interest provisions and mandatory vender quotations for procurements above ANG 25,000.

The PJIAE and the Princess Juliana International Airport Holding Company ("PJIAH") do not appear to have a Code of Conduct for employees, including senior management. It is noted that the PJIAE's legal department mentioned a Code of Conduct is currently being produced, as part of a larger compliance initiative, but that it could not be provided to the Inquiry team for analysis due to its draft status.

PJIAE in-progress compliance charter

PJIAE is currently working on a new, recently-approved compliance charter that will include policies and procedures for board oversight; executive management supervision; standards, policies, procedures and reporting mechanisms; and compliance and ethics.[158] A Code of Conduct for employees that will contain ethics, policies, and procedures, as well as a Code of Ethics for the Supervisory Board of Directors, are also in-progress, according to interviewees.

SMHHC

The Inquiry team did not observe an established integrity framework for SMHHC through interviews.

GEBE

The Inquiry team did not observe an established integrity framework at GEBE. Additionally, GEBE does not appear to currently have a Code of Conduct for employees, or any other policy or procedure that explicitly prohibits bribery or corruption. GEBE's management indicated during a meeting with the Inquiry team that the organization is in the process of approving a Code of Conduct.

Several documents requested from GEBE, including any anti-corruption or procurement-related policies were not provided to the Inquiry team, and therefore a complete analysis of GEBE's integrity framework was not conducted. GEBE's management did indicate in interviews that the company does have a procurement procedure that involves a bidding process for large contracts and employs the use of an internal audit department to review bid submissions.

Telem

The Inquiry team did not observe an established integrity framework for Telem. Telem does have a whistleblower policy which encourages employees to report misconduct, states that it provides protection for anonymous reporting and reprisal, and also includes procedures on how to initiate and complete and investigation into reported allegations. Telem did not appear, however, to have additional anti-corruption-related policies.

It is noted that although the whistleblower policy states that individuals who make complaints can remain anonymous, the policy does not appear to have any sort of mechanism to ensure this, such as a third-party hotline. The current policy appears to require an individual to make a complaint in person, which can compromise true anonymity.

Internal audit

As noted previously, Telem, PJIAE and GEBE appear to have an internal audit function, and Telem's internal audit department appeared to produce reports to management on targeted programs and initiatives, according to documentation analyzed by the Inquiry team. Interviewees indicated that GEBE has an internal

[158] PJIAE's Compliance Charter

audit function and PJIAE was identified to have an internal audit function through analysis of its Compliance Officer job description. The Inquiry team was not able to review the adequacy of these internal audit functions.

Recommendations

Establish an integrity compliance program at each SoC beginning with installing a Chief Compliance Officer: Each SoC should establish an integrity compliance program aligned to global standards and leading practices with a strong commitment from management and centralized ownership of the program within a regulatory compliance office or by a Chief Compliance Officer ("CCO"), as well as a collection of policies that promote and provide guidance around the SoC program. The CCO should champion integrity program establishment and operation. The CCO should work with the PMO mentioned above in order to implement the recommendations set forth within this report. The CCO will be responsible for oversight, management, and implementation of the integrity compliance and should have the appropriate autonomy, authority, and resources to effectively implement the program.

Institute a Code of Conduct that is applicable to all SoC employees. Enforce sanctions against employees who violate the Code of conduct in a timely manner: The SoCs should each establish a Code of Conduct based on leading practices and global standards. The overriding principle for a Code of Conduct is that SoC employees have a duty to protect the public interest. They must, at all times, demonstrate and adhere to the highest standards of ethics and professional conduct to maintain the public's confidence and trust. The Code of Conduct for SoC employees should contain policies including, but not limited to, conflicts of interest, gifts, third-party relationships and kickbacks. Each SoC should adopt an acknowledgement form to accompany the Code that each employee, including senior management, is required to sign. There should be no exceptions to this rule. Records of acknowledgements should be stored electronically in a central repository and should be monitored by SoC compliance staff and subjected to a period audit and independent inquiry. Disciplinary action should be taken against employees who do not complete the acknowledgement form on a timely basis.

The Code of Conduct should be published on each SoC's website so it is easily accessible. Comprehensive training on the Code should occur for all new employees and should occur annually. All employees should annually attest their commitment to the Code with an appropriate audit trail. The Code should be periodically evaluated and updated. Updates should be communicated to all personnel. Aspects of the Code should be demonstrated by all personnel, especially senior management who can serve as an example. Appropriate action should be taken against employees, including senior management, who violate the Code. It should be noted that many vendors provide easily deployable, auditable and verifiable Code of Conduct training platforms, including online training platforms, that provide testing of an employee's understanding of the Code and audit trails of annual certification. The deployment of a Code of Conduct should be a top priority for each SoC.

Institute whistleblower policies and complaint mechanisms: SoCs should institute policies and procedures for employees and third parties to make complaints and promote the protection of whistleblowers. Each SoC should launch an internal whistleblowing hotline administered by a third-party vendor. The internal hotline should be focused on protecting the anonymity of whistleblowers, which can be compromised by making complaints in-person. Each SoC should also set up an Executive Committee to triage allegations. The Executive Committee should utilize a strategic selection process to identify the merits of allegations to focus on plausible claims.

A risk assessment should be conducted on those claims to determine the parameters (e.g., timing, team composition, locations of relevant information, etc.) of investigation. Investigative teams, based on parameters identified by the Executive Committee, should prepare an investigative plan, consistent with leading practices, and perform the investigation. Action taken against employees as a result of the complaints filed should be publicized consistent with privacy laws throughout the SoC to serve as a deterrent. All allegations should be tracked, and periodic reporting of allegations and their disposition should be escalated to the Supervisory Board of Directors.

Conduct checks for non-compliance through internal audit: SoC internal audit functions should support management efforts to implement integrity compliance programs to help ensure implementation is carried out consistently and effectively. The support from internal auditors will also promote management's visible and active commitment to the implementation of each program. Internal audits should include, but not be limited to, third-party payments, expenditures made by SoC management, Supervisory Board members and employees, and adherence to SoC policies and procedures to identify instances of non-compliance by SoC staff. Internal auditors should report to senior management and the Supervisory Board of Directors for follow-up, including investigations and enforcement if necessary.

Assess compliance through periodic, independent external assessments: Once integrity compliance programs are in place, the GoSM should require each SoC to procure a periodic, independent external assessment of each program to promote continuous improvement. A qualified third party should be hired to assess the design and operation of each integrity compliance program, including potential risks against leading integrity compliance frameworks (e.g., the World Economic Forum's Partnering Against Corruption Initiative Principles for Countering Bribery). The assessment should provide observations around compliance gaps and recommendations to remediate such gaps.

Integrity compliance program

Vulnerabilities in expense policies that create opportunity for "double dipping"

Observations

The SoCs appear to have travel and expense policies which create opportunities for abuse by staff. It appears that staff from a SoC received daily cash allowances for meals prior to travel but purchased meals using corporate credit cards while on the trip, according to documents analyzed by the Inquiry team. In 2014, the

	Supervisory Board of Directors and senior management of a SoC traveled to the United States to attend a board meeting. All of the members appeared to have received checks prior to the trip for allowances for meals between USD 175 and 150 per day, which, according to the SoC's travel and expense policy, is solely for "breakfast, lunch and dinner." During the trip the group appeared to have spent more than USD 6,000 on meals charged to corporate credit cards or paid for by wire transfer requests, according to documentation analyzed by the Inquiry team. Records reviewed by the Inquiry team indicate that SoC officials also appeared to have expensed gifts and personal items during the trip. Additionally, the group appeared to have charged to the corporate credit card an expense for USD 5,200 labeled as "Great Seats Miami Inc.," for which interviewees reported to the Inquiry team was for an NBA basketball playoff game.
Recommendations	**Establish effective and documented expense policies at SoCs:** The GoSM is the sole shareholder of each SoC and therefore each is accountable to the Government for the expenditures of public funds. SoCs should have documented and effective expense policies to ensure compliance and integrity regarding employee expenditures. Expense policies should govern ethical entertainment expenses. Specifically, SoCs should adjust their expense policies and procedures to prohibit employees, management and Supervisory Board members from receiving meals on top of their daily allowance. SoC staff should, in general, avoid lavish expenditures using Government funds. **Establish an internal mechanism to prevent duplicate expenses and for personnel to repay unused allowances:** Policies and procedures should be updated to include an analysis of the business purposes of company travel to determine whether employees require daily cash allowances. In instances where allowances are not required, i.e. for a board meeting during which meals will be provided, cash allowances should be reduced or eliminated. Each SoC should also establish an internal mechanism for staff to pay back unused daily cash allowances.

8.5. Procurement

8.5.1. Description aligned to global standards and leading practices[159]

SoCs should take care to conduct tender processes in a manner that promotes transparency, competition, and value-for-money. Leading practices for SoC procurement processes include:[160]

- Publishing tender opportunities and relevant bidding instructions online such that they are available for public scrutiny. Sufficient time should be provided for potential bidders to prepare a bid in accordance with the complexity of the contract.

[159] The key features related to ***Procurement*** that are highlighted in this section represent an aggregation of relevant guidance contained in the leading global standards and practices referenced in ***Appendix B***.

[160] *OECD Principles for Integrity in Public Procurement*, Organisation for Economic Cooperation and Development; http://www.oecd.org/gov/ethics/48994520.pdf

- Establishing formal lines of communication to ensure fair disclosure of information such that all potential bidders receive equivalent guidance and instructions.
- Promoting competition by requiring a minimum number of bidders for tenders commensurate with the value of the contract to be awarded.
- Establishing clear guidelines governing the appropriate use of sole-source contracting that are predicated on objective criteria such as a lack of technically qualified bidders and public emergencies.
- Maintaining the confidentiality of information received from bidders during the tender process.
- Implementing policies to address potential conflicts of interest and bias in the bid evaluation process. This may include requiring disclosure of private interests from SoC employees involved in the bid evaluation and award process.
- When permissible, conducting post-award negotiations in an ethical manner in accordance with pre-defined procedures (e.g. negotiations should be conducted within a specified time period).
- Offering to provide feedback to unsuccessful bidders with due regard to confidentiality considerations.

8.5.2. Observations and recommendations

Although most of the SoCs had some procurement rules in place, many of the procedures had broad exceptions and were often not followed as intended. Overall, the lack of procurement rules and policies and the presence of broad exceptions that created gaps and vulnerabilities in the procurement process supported a finding of low maturity for SoC procurement framework.

The following were identified as key observations affecting procurement within the SoCs, according to interviews conducted and documents analyzed by the Inquiry team:

- **Broad or unwritten procurement rules in place:** The majority of the SoCs appear to have procurement policies in place, however some procedures appear to be undocumented or have broad requirements.
- **Gaps in compliance with procurement exceptional circumstances:** One SoC was identified to have sole sourced a USD 2 million construction contract to a family member of one of the SoC's Supervisory Board of Directors.

Procurement
Broad or unwritten procurement rules in place

Observations	**PJIAE** The procurement of goods, works and services at PJIAE is governed by its Procurement Management Policy and Procedures. the procurement function is built upon the following five principles: cost effectiveness; open and fair competition; conflicts of interest; centralized procurement; and supervisory board of directors resolutions.[161] The procurement policy also contains procedures to obtain vendor quotes for awards over certain threshold amounts. Although PJIAE has established rules for procurement in place, they were not observed by the Inquiry team to be consistently adhered to. The guidelines within

[161] PJIAE's Procurement Management Policy and Procedures, December 1, 2013; Version 1.0

the procurement policy state that three vendor quotes need to be obtained for purchases greater than ANG 50,000 or USD 27,778. The Inquiry team has identified several procurements above this amount in which the required number of vendor quotes appear to not have been solicited.

Broad exceptions to the procurement rules also exist which may allow PJIAE staff to deviate from company policy when acquiring goods or services. PJIAE's current policy allows for its management to sole source contracts "in exceptional instances" and "if a single vendor is uniquely qualified to provide the specific goods and/or services."[162]

GEBE

GEBE's management mentioned during interviews that it has written procurement policies; however the Inquiry team did not have the chance to analyze any documentation due to a delay in response from the company's management. The company's management mentioned to the Inquiry team that there is a bidding process for all procurements exceeding ANG 5,000 and that internal audit staff are present during bidding processes to review large procurements. GEBE can award sole source contracts if the vendor is uniquely qualified to perform the work or if it is a "delicate or urgent matter"; however internal audit "always has a hand in that, they are present", according to a SoC senior GEBE official.

SMHHC

Procurement policies and procedures were not provided by the SMHHC and therefore an analysis of their procurement processes was not performed.

Telem

Telem uses a purchase order policy for the procurement of goods and services, according to interviews with SoC officials and analysis of the purchase order policy by the Inquiry team. Telem's management did note that for big procurements, the internal audit department receives closed envelopes with proposals and reviews the proposals with two other individuals, and this is officially reported. A supplier is selected based on a collective review by the three individuals and sent to the CFO for approval. This appears to be an unwritten policy.

Recommendations

Establish standardized procurement guidelines in line with leading standards: The GoSM should consider the establishment of standardized procurement guidelines that each SoC can adapt and tailor to their specific needs and requirements. The guidelines should provide an objective assessment of bid documents and vendor selection. Each SoC should clearly document their own procurement policies and procedures to increase accountability and make it difficult for staff to deviate from these policies and procedures.

Each SoC should also clearly document any unwritten procurement policies and procedures to increase accountability and make it difficult for staff to deviate from its policies and procedures.

[162] *Id.*

Require internal audit to review large procurements: An internal audit team should review large procurements to determine whether procurement policies and procedures were followed. A report should be made on deviations from the process and provided to senior management and the Supervisory Board of Directors. The SoCs should strive to abide by its procurement rules and justify in writing any deviations from its policies. If integrity breaches are identified, internal audit staff, in cooperation with the CCO, should make a report to the relevant Minister shareholder representative. Disciplinary measures should be taken against any employees, including senior leadership, identified to be involved in integrity breaches.

Procurement

Gaps in compliance with procurement exceptional circumstances

Observations

SoCs appear to use exceptions to procurement rules in order to bypass bidding procedures and sole source contracts. In July 2013, a SoC announced a new construction project adjacent to the organization's property that would include three sculptures made by a local company.[163] The cost of the sculptures appears to have been USD 254,000, which is above the threshold for sole source procurement, according to the SoC's procurement policy. A senior official confirmed that a bidding process did not take place for the procurement of the art, and appeared to justify the expense during an interview by stating, "one does not initiate a bidding process for da Vinci." A resolution signed by the SoC's Supervisory Board of Directors permitted management to proceed with the procurement.

The SoC's procurement policy does state that in "exceptional instances" sole source providers can be exempted from the bidding process if one of the following requirements is met:

- *"Goods and/or services are compatible with current equipment, infrastructure, or services;*
- *Service needs are mandated by the laws and regulations;*
- *An extraordinary urgency exists within 48 hours that may have an unfavorable impact to daily operations or other business matter; or*
- *Vendor is the only business locally that provides the necessary goods and/or services needed (e.g. only manufacturer or distributor)."*

It does not appear that this procurement met any of the exceptions listed above as it was a new construction project, services were not mandated by laws or regulations, an extraordinary urgency did not exist, and the art appeared to have been created in, and shipped from, Nigeria according to an export bill provided to and analyzed by the Inquiry team. The Inquiry team also notes that the container, which the SoC appeared to have paid for its shipping costs in full, contained two additional works of art that appear to be unrelated to the original transaction.

[163] Open source media reports

Recommendations	**Align existing, or establish new, procurement policies to global procurement standards and leading practices:** Formalized procurement processes and strong internal controls help provide transparency, support competition, and safeguard SoC resources. Strengthening the design of the procurement process and internal controls may help maximize value and minimize the misuse of public funds. Often there is no explicit confirmation that verifies if goods received match the quantity of goods ordered and if the invoice received is in line with the number of goods received and priced according to the purchase order. The Inquiry team, therefore, recommends that SoC procurement policies include sufficient verification of transactions. Deviations from policies, including those for procurement, should be justified and documented within project documents. Additionally, SoCs should manage conflicts of interest that arise with the procurements of goods and services. **Internal audit should support management to review procurement exceptions:** SoC management is first and foremost responsible for ensuring that procurement rules are followed, and that if an exception is made, that a business reason is provided for the exception. Internal audit functions should support management by determining whether procurements were made in accordance with procurement policies and report potential conflicts of interest to management and the Supervisory Board of Directors. The SoC should avoid conflicts of interest as much as possible and review current agreements identified to create possible conflicts.

8.6. Governance and oversight

8.6.1. Description aligned to global standards and leading practices[164]

Establishing the appropriate governance structures and oversight mechanisms can be particularly challenging for SoCs since care must be taken to separate the government's role as an owner from its role as a regulator. The independence and professionalization of the Board of Directors is essential, and SoCs are increasingly encouraged by international standard-setting bodies like the Organisation for Economic Cooperation and Development ("OECD") to bring their governance structures in line with private sector practices. Specifically, international leading standards for good governance emphasize:

- Clear articulation of Board duties in applicable laws and regulations, including defining organizational strategy, overseeing management performance, and interfacing with government shareholders.
- The exercise of Board duties free from undue political influence. The Board should only receive instructions regarding government priorities and objectives through established channels to ensure transparency – the CEO should never get direction directly from political officials.

[164] The key features related to ***Governance and oversight*** that are highlighted in this section represent an aggregation of relevant guidance contained in the leading global standards and practices referenced in ***Appendix B***.

- Legal obligations requiring Board members to act in the best interest of the company and its shareholders.
- Transparent nomination of Board members through a method that ensures sufficient independence and objectivity to provide effective oversight and guidance. Appointments should be made at an annual general shareholder meeting and incorporate input from non-government shareholders.
- Government representatives serving on the Board of a SoC should be subject to vetting process to verify qualifications, and individuals with direct links to the executive branch of government should not serve on the Board.
- Compensation of Board members should seek to advance the long-term interests of the SoC, be aligned with market conditions, and endeavor to retain highly qualified candidates.
- Mechanisms to establish specialized Board committees to address specific issues, such as audit, risk, and compensation, as necessary.
- Disclosure of relationships between SoC Board, management, and government officials.

8.6.2. Observations and recommendations

The GoSM currently has an adequate corporate governance framework in place consisting of regulations and an oversight body; however, there appears to be limited compliance by the SoCs with the requirements set forth within the framework. Overall, the GoSM does have a mechanism in place to provide governance and oversight of the SoCs but it is not effectively utilized. Accordingly, a maturity finding of medium is justified for governance and oversight as compared to global standards and leading practices.

The following were identified as key observations affecting governance and oversight within the SoCs, according to interviews conducted and documents analyzed by the Inquiry team:

- **Inconsistent compliance with corporate governance framework:** The GoSM has an established corporate governance framework consisting of the Island Ordinance Corporate Governance, the Corporate Governance Code and the CGC. Compliance with Sint Maarten's corporate governance framework appeared to vary among the SoCs.

- **Lack of independence of Supervisory Boards:** SoC Supervisory Boards of Directors appear to contain members of the Minister's cabinet, possibly inhibiting those board members' ability to make decisions independently.

- **Inconsistent payment of concession fees and dividends:** Concession fees vary widely among the SoCs; however it appears that the shareholder can request dividends from the organizations with the approval of the Supervisory Board. One SoC appears not to have paid a concession fee since the beginning of 2014.

- **Unfair competition in maritime industry:** A commercial maritime regulator appears to be a wholly-owned subsidiary of a SoC that completes in the maritime industry, creating the potential for an un-level playing field.

- **Non-compliance with Corporate Governance Council:** Historically, the CGC appears to have been neglected by the GoSM and treated as a "necessary evil", according to one its former members.

- **Lack of supervisory board profiles:** The Corporate Governance Code states that the GoSM's SoCs should have profiles for their Supervisory Board members. The SoCs do not appear to have profiles, however, which may allow for the placement of unqualified personnel onto the boards.

Governance and oversight

Inconsistent compliance with corporate governance framework

Observations

Each SoC has a designated GoSM shareholder representative which is decided by a National Decree. The four SoCs covered in the scope of the Inquiry have the following shareholder representatives:

- The Minister of TEZVT is currently the shareholder representative of the Airport and the SMHHC.
- The Minister of Public Housing, Spatial Planning, Environment and Infrastructure is currently the shareholder representative of GEBE.
- The Prime Minister and Minister of General Affairs is currently the shareholder representative of Telem.

The Corporate Governance Code was established by the Ordinance Corporate Governance to promote effective and transparent governance and supervision of Sint Maarten's SoCs and foundations. The Ordinance Corporate Governance requires that SoCs and foundations comply with the Corporate Governance Code to the extent possible, and periodically report on the status of such compliance. Also as part of compliance with the code, SoCs are required to include an obligation to apply the provisions of the code to the organization within their articles of incorporation.

Limited effectiveness of the Corporate Governance Council

The CGC was established by Island Decree no.930 on May 11th, 2009, and was officially activated on February 26, 2010 in order to advise the GoSM regarding implementation of the Corporate Governance Code and the guidelines set forth within the Ordinance Corporate Governance. Since its establishment, it appears that the CGC has not been able to carry out its mandate and proposed activities, as defined within the Ordinance Corporate Governance and the Corporate Governance code, due to a lack of resources and support from the GoSM.

The GoSM reportedly treated the CGC as a "necessary evil" according to one of its former members interviewed by the Inquiry team, and the GoSM did not fund the Council until June 2013, more than three years after it was officially activated.[165] The GoSM also did not provide the CGC office space until almost 18 months after it became active.[166]

General non-compliance with corporate governance framework

Inquiry team analysis highlighted areas in which the SoCs experienced challenges to align their practices with the GoSM's corporate governance framework. Examples of areas in which SoCs have opportunities to align their existing protocols with the framework include a lack of Supervisory Director profiles, insufficiently clear roles and responsibilities for audit committees, and inadequate

[165] Interviews with CGC members

[166] Letters written to the GoSM by CGC regarding lack of funding

reporting on observance of the Corporate Governance Code. The dissolution of the CGC in early 2014 was also noted as a substantial deviation from the framework established by the Corporate Governance Code. The CGC has since been re-established with the appointment of three new board members in May 2014.

The GoSM has created and implemented several measures to facilitate good corporate governance of the country's SoCs and foundations, including the Ordinance Corporate Governance, the Corporate Governance Code, and until recently, the CGC. Although these controls promote good corporate governance, it appears that several of the SoCs do not adhere thoroughly to the guidelines set forth within the GoSM's corporate governance framework.

PJIAE

The articles of incorporation of PJIAE indicate that the company is "obliged to comply" with the rules and regulations set forth within the Island Ordinance Corporate Governance (A.B. 2009, no.10) and the Corporate Governance Code.[167] These statements are in compliance with the Corporate Governance Code which states that SoCs should include in their articles of incorporation this obligation to apply the provisions of the Code.[168]

It is noted that the consolidated financial statements for PJIAH mention that the company did not produce a report on compliance with the Corporate Governance Code due to the "absence of significant operations at [the corporate level]."[169]

It appears as though PJIAH's management believes PJIAE it is not subjected to the GoSM's established corporate governance framework. Senior management of PJIAH indicated that the holding company was the only company wholly owned by the GoSM, and that because PJIAE was a subsidiary of PJIAH, PJIAE was not required to abide by the GoSM's corporate governance framework. The same member of PJIAH's management also indicated that Supervisory Board appointments to PJIAE's board do not require advice from the CGC.

SMHHC

A partial copy of the SMHHC's articles of incorporation were provided to the Inquiry team by a third party and contain provisions for the SMHHC to adhere to the Corporate Governance Code.[170] The articles of incorporation also state that the organization's Supervisory Board should have a minimum of five members although there are currently only three. The SMHHC also reportedly performs an annual a self-evaluation of compliance to the Corporate Governance Code and also engages an external auditor to assess the organization's compliance with the Code, according to the SMHHC's 2012 consolidated financial statements.

GEBE

GEBE's management indicated that it began complying with the Corporate

[167] PJIAH and PJIAE Articles of Incorporation
[168] Corporate Governance Code
[169] 2012 PJIAH consolidated financial statements
[170] Partial copy of SMHHC articles of incorporation

	Governance Code in 2012, when new management was appointed at the company. Senior management interviewees reported that GEBE currently engages a consultant to perform a compliance assessment against the Corporate Governance Code, and the company's external auditor reviews the report. GEBE's 2012 consolidated financial statements include its Corporate Governance compliance report. <u>Telem</u> Telem appears to adhere to the requirements established within the GoSM's corporate governance framework.[171] As mandated by the Corporate Governance Code, Telem performs an annual self-assessment of compliance to the Corporate Governance Code.
Recommendations	**Enforce corporate governance rules:** Enforce corporate governance requirements set forth within the GoSM's Corporate Governance Code including the requirements for SoCs to interact with the CGC. The Corporate Governance Code requirements were established by law and should be enforced appropriately. Ensure that the CGC has adequate resources and visible support from the Government so that it can carry out its mandate. Amend the Corporate Governance Code to explicitly state that it is applicable to wholly-owned subsidiaries of SoCs. The GoSM should apply a "Comply or Explain" process in which SoC management, Supervisory Board members and shareholder representatives have to explain deviations from the Corporate Governance Code.[172]
Governance and oversight Lack of independence of supervisory boards	
Observations	Two of the SoCs appear to have Minister cabinet members on their Supervisory Boards of Directors. In one instance, the chief of the cabinet of a Minister is on a SoC Supervisory Board, and a letter written by the Minister indicated that the cabinet chief has "full trust and authority" of the Minister in their absence, further reducing independence and possibly creating the perception that the Minister has undue influence on the SoC.
Recommendations	**Independence of SoC Supervisory Boards of Directors should be required:** The Supervisory Boards of all SoCs should be free of GoSM officials to allow boards to exercise judgment without Government influence. Promoting Supervisory Board independence will also help reduce public perception of the GoSM's influence on SoC operations. The Civil Code Articles 2:139 through 2:144 contain guidelines to enhance Supervisory Board independence which should be considered by each SoC and enforced by the GoSM. Independence of the Supervisory Boards of Directors would be strengthened if these Boards were qualified as Independent Boards in accordance with the Articles stated above

[171] Review internal Corporate Governance Code compliance reports conducted by the Inquiry team

[172] *UK Corporate Governance Code*, Financial Reporting Council; https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-September-2012.pdf

which contain measures, for example, on the minimum amount of Directors, length of appointments, voting, and suspension and termination.[173]

Governance and oversight

Inconsistent payment of concession fees and dividends

Observations

PJIAE

PJIAE has a concession from the GoSM to operate the airport, however, it does not appear that PJIAE or PJIAH pay a fee for the concession. PJIAE's recent refinancing agreements prohibit it from paying dividends to its shareholder, according to several independent interviewees.

SMHHC

On July 18, 2007 the Harbour entered into a 30-year concession agreement with the GoSM in which the Harbour agreed to pay the GoSM an annual fee of ANG 5.2 million for the first 10 years.[174] Records retrieved from the Receiver's Office indicate that the Harbour did not pay its concession fee from January 2014 to May 2014 totaling an outstanding payment of about ANG 2.17 million. Harbour officials indicated that it decided not to pay the concession fee to the GoSM to account for funding that was reportedly promised from the Ministry of TEZVT to the SMHHC for the upcoming Florida-Caribbean Cruise Association conference the Harbour is hosting in October 2014.

GEBE

On August 2, 2010 GEBE singed a new concession agreement which requires the organization to make annual payments to the GoSM of ANG 5 million.[175] GEBE officials indicated that the company has made advance concession fee payments to the GoSM for 2014, 2015 and 2016. GEBE has not paid any dividends to its shareholder(s) since 10/10/10, however the General Shareholders' Meeting can decide to distribute profits with the approval of the Managing Board and the Supervisory Board of Directors.[176]

Telem

Telem pays an annual concession fee of USD 4 million to the GoSM's telecom regulator, BTP, according to senior Telem officials. Similar to the other SoCs, Telem's shareholder can declare dividends through the approval of the General Shareholders' Meeting with consultation with the Supervisory Board of Directors.[177]

Recommendations

Conduct financial analysis and determine whether to declare dividends: The GoSM, as the SoC's sole shareholder, should conduct a review of the financial positions of each SoC and determine whether to declare dividends. It is noted that at least one SoC was identified to be restricted from paying dividends

[173] Burgerlijk Wetboek
[174] 2012 SMHHC Consolidated Financial Statements
[175] GEBE's 2012 Annual Financial Report
[176] GEBE Articles of Incorporation dated May 12, 2012
[177] Sint Maarten Telecommunication Company's Articles of Association

	due to its loan agreements.
Governance and oversight Unfair competition in maritime industry	
Observations	The Simpson Bay Lagoon Authority Corporation N.V. ("SLAC") was established in October 2002 as a regulatory body for the Simpson Bay Lagoon to protect the environment, promote business, analyze data to support sustainable management, and provide advice relating to development activities.[178] SLAC regulates the lagoon by collecting fees for shipping, mooring, and docking of yachts. On November 30, 2009, 100% of SLAC's shares were acquired by Sint Maarten Ports Authority N.V., a wholly-owned subsidiary of the SMHHC.[179] The acquisition of SLAC appears to have given rise to a potential conflict of interest, as the SMHHC now controls a Government regulator and also competes in the marine industry with local marinas. SMHHC competes with local marinas through the rental of slip space. To access slip space in the Simpson Bay Lagoon, the average mega yacht pays SLAC USD 500 to enter the lagoon and USD 250 per week to dock, possibly de-incentivizing yachts from coming into the Lagoon due to the added cost.
Recommendations	**Transfer SLAC's regulatory functions back to Government:** A complete separation of ownership and market regulation responsibilities is required to create a level playing field for SoCs and private companies and to avoid distortion of competition.[180] The regulatory oversight function should be moved from SLAC back into a Government entity. The removal of SLAC's regulatory function will also help reduce public perception of conflict of interest.
Governance and oversight Non-compliance with Corporate Governance Council	
Observations	**Apparent illegal dismissal of board members from SoC Supervisory Board** In 2012, the Minister Shareholder Representative of a SoC orchestrated the dismissal of two Supervisory Board members without reporting the decision in writing and justification to the CGC, which is in violation of the Ordinance Corporate Governance.[181] The CGC sent a letter to the Council of Ministers to explain what had happened and that this was in violation of the law, but received no response.[182] **Bypassing CGC to appoint supervisory board directors** Several instances were identified in which Minister Shareholder representatives appointed board members without consulting the CGC which appears to be in

[178] SLAC's Original Articles of Association

[179] SMHHC's 2012 consolidated financial statements

[180] *OECD Guidelines on Corporate Governance of State-owned Enterprises;* Organisation for Economic Cooperation and Development; http://www.oecd.org/corporate/ca/corporategovernanceofstate-ownedenterprises/34803211.pdf

[181] December 12, 2012 letter from CGC to the Council of Ministers

[182] Interviews and December 12, 2012 letter from CGC to the Council of Ministers

	violation of Sint Maarten's Corporate Governance laws and regulations.
Recommendations	**Enforce corporate governance laws and regulations:** The GoSM should require SoCs to abide by the rules and regulations set forth within Sint Maarten's corporate governance framework. Additionally, the GoSM should enforce disciplinary measures for non-compliance, as it appears there are currently no repercussions for deviations from the established framework.
Governance and oversight Lack of Supervisory Board profiles	
Observations	The four SoCs reviewed do not appear to have profiles established for Supervisory Board members. One of the SoCs was identified to have previously procured profiles from a consultant, but the Board never approved them, according to information provided by the SoC's management. This is mandated by the Corporate Governance Code and SoC-wide non-compliance was identified.
Recommendations	**Mandate SoCs to formulate profiles for Supervisory Boards of Directors:** SoCs should formulate, review and approve profiles for the positions on their Supervisory Boards of Directors through a systematic evaluation process to enhance SoC board professionalism.[183] The profiles will allow for a wide range of necessary competencies amongst Board members. Additionally, a lack of profiles can create vulnerabilities for the appointment of underqualified personnel and nepotism.

8.7. Transparency

8.7.1. Description aligned to global standards and leading practices[184]

Increasing transparency in SoCs is particularly important given the unique position of these companies vis-à-vis the government and the public. SoCs are often involved in highly lucrative industries that provide essential public services such as energy, transportation, and communications. The privileged position of SoCs often provides them with superior market access and substantial revenues, which ideally should be reinvested for the benefit of the public. In reality, however, the lack of transparency in some SoCs facilitates illicit financial transfers that divert public funds to private interests or for activities which do not optimize public benefit given the nature of the mandate of the company. Global standards for promoting transparency in SoCs specify that:

- The role of the government as an owner should be clearly communicated to the public, and an ownership entity should be created and held accountable to a representative body (e.g. parliament).
- SoCs should be held to the same high accounting and auditing standards as listed companies, including annual independent external audits in line with international auditing standards. Purportedly equivalent government controls, such as monitoring activities by Supreme Auditing Agencies, should not be considered a substitute for external audits.

[183] *OECD Guidelines on Corporate Governance of State-owned Enterprises;* Organisation for Economic Cooperation and Development; http://www.oecd.org/corporate/ca/corporategovernanceofstate-ownedenterprises/34803211.pdf

[184] The key features related to ***Transparency*** that are highlighted in this section represent an aggregation of relevant guidance contained in the leading global standards and practices referenced in ***Appendix B***.

- SoCs should disclose all material financial and non-financial information in line with expectations that govern publicly-listed companies, including requirements for certification of financial statements by board members, CEOs, and CFOs.
- Given the impact SoCs often have on public services, and their close relationship with the government, information related to financial and operating results, compensation policies, and governance structures should also be disclosed. This information should include:
    - Ownership and voting structure
    - Material risks to operations and proposed mitigation measures
    - Financial assistance, guarantees and commitments made by the government to benefit the SoC (e.g. government subsidies)
    - Nature of transactions with other SoCs (e.g. investment of one SoC in another SoC)

8.7.2. Observations and recommendations

The SoCs in Sint Maarten are largely not transparent to their stakeholders, including the GoSM, third parties, and the general public. Only one SoC was observed to disclose its financial results and company objectives in an annual report, and the Inquiry team was unable to locate many other types of information that would be expected from a company in line with leading transparency standards. The general lack of transparency noted by the Inquiry team supported a low maturity finding for this element.

The following were identified as key observations affecting transparency within the SoCs, according to interviews conducted and documents analyzed by the Inquiry team:

- **General lack of transparency:** Overall it appeared that the SoCs are not transparent to their stakeholders, including the GoSM and the general public. The majority of the entities do not disclose information to increase accountability such as financial results, corporate structure or strategy.
- **Non-disclosure of conflicts of interest:** Management of a SoC reported to the Inquiry team that the organization has hired its employees on the side to perform basic services for the company, although these contracts are usually small in value.

Transparency General lack of transparency	
Observations	**PJIAE** PJIAE discloses company information through its website that increases its accountability to its stakeholders, including the GoSM and the general public. PJIAE produces publicly available annual reports that include information on strategy, business development, corporate structure, management, board members and financial information including a balance sheet and income statement.[185] Some of the reports also include limited sections on corporate governance but it is noted this section was not included in its most recent, 2013 annual report.

[185] PJIAE's Annual Reports (2010-2013)

SMHHC

The SMHHC appears to be non-transparent with its business activities and financial results. Several individuals who were interviewed mentioned repeated attempts to obtain the SMHHC's financial statements have been unsuccessful, but that the general public should be able to obtain this information from the company by law. The SMHHC discloses very little information in general about the 13 companies that form the group through its website or any other means.

GEBE

GEBE, in general, does not appear to be transparent with its business activities and financial health, as recommended by leading practices.[186] GEBE does not appear to disclose financial and operating results; company objectives; remuneration policies for executive management and the board; information about the selection, qualification and independence of board members; related party transactions involving its shareholder (and their close relations); foreseeable risk factors or the company's governance structure and policies.[187]

Instituting disclosure and reporting mechanisms will increase GEBE's accountability to its stakeholders.

It is noted that the GEBE website was not accessible on several attempts the Inquiry team made to access it, and therefore a full review of publicly available information was not completed.

Telem

Telem, in general, does not appear to be transparent with its business activities and financial results, as recommended by leading practices.[188] Telem does not appear to disclose financial and operating results; company objectives; remuneration policies for executive management and the board; information about the selection, qualification and independence of board members; related party transactions involving its shareholder (and their close relations); foreseeable risk factors or the company's governance structure and policies.[189]

Instituting disclosure and reporting mechanisms will increase Telem's accountability to its stakeholders.

It is noted that Telem appears to be one of few SoCs that operates in a competitive environment in Sint Maarten, and therefore it may choose not to disclose certain information to retain its competitive edge.

[186] *Transparency of State-owned Enterprises,* Transparency International, http://www.transparency.org/whatwedo/answer/transparency_of_state_owned_enterprises

[187] *Id.*

[188] *OECD Guidelines on Corporate Governance of State-owned Enterprises;* Organisation for Economic Cooperation and Development; http://www.oecd.org/corporate/ca/corporategovernanceofstate-ownedenterprises/34803211.pdf

[189] *Transparency of State-owned Enterprises,* Transparency International, http://www.transparency.org/whatwedo/answer/transparency_of_state_owned_enterprises

Lack of financial statement reporting compliance

Interviewees indicated that the SoCs are required to make their financial statements available to interested parties at the office of each company and notification of such must be made to the Chamber of Commerce. Chamber of Commerce officials indicated to the Inquiry team in an email that "none of the [SoCs included in the Inquiry] have submitted financial information to the chamber." Further, the CFT indicated that not one SoC in Sint Maarten has submitted its 2013 financial statements as of August 3, 2014, while the Corporate Governance Code requires SoCs to complete their financial statements within five months after the closing of the fiscal year, according to open source press reports.[190]

Recommendations

Require SoCs to make disclosures: SoCs should have reporting requirements in order to increase accountability to stakeholders, including the GoSM, the general public and local and international customers. Thorough transparency will demonstrate the SoCs' commitment to combating corruption. SoCs should be required to disclose financial and operating results; company objectives, regarding their commercial activities as well as environmental and social policies; remuneration policy for the management board and Supervisory Boards of Directors; selection processes, qualifications and independence of Supervisory Board members; identified risks; and governance structure and policies.[191]

The SoCs should also consider the designating internal audit teams to, among other tasks, oversee compliance with disclosure requirements and report to the Supervisory Board on such compliance.[192] The websites of the SoCs should be utilized to centralize and disclose information to its stakeholders including, but not limited to, financial results, codes of conduct, annual reports, and interested-party relationships. Details of major projects completed by SoCs (i.e. large infrastructure projects) including requests for proposals, bids, selection processes and awards should also be disclosed to the public.

Transparency

Non-disclosure of conflicts of interest

Observations

One SoC appears to have executed contracts with companies owned by its employees to provide external services to the SoC, according to reports made to the Inquiry team by the SoC's senior management. The SoC's management reported one instance in which the organization executed a contract with an employee to provide photography services. It is noted that these contracts are small in value and usually under USD 1,000. The SoC's management noted the difficulties in Sint Maarten to avoid minor conflicts of interest due to limited available resources for basic services.

[190] "CFT warns that government entities have to follow the rules: Massive failure to file annual accounts," *Today*, August 3, 2014; http://www.todaysxm.com/2014/08/03/cft-warns-that-government-entities-have-to-follow-the-rules-massive-failure-to-file-annual-accounts/

[191] *Transparency of State-owned Enterprises,* Transparency International, http://www.transparency.org/whatwedo/answer/transparency_of_state_owned_enterprises

[192] *Id.*

Recommendations	**Disclose third-party relationships with employees:** Due to the size of the country and quality of resources, it may be difficult to avoid conflicts of interest relating to agreements of nominal value. SoCs should be transparent and disclose these types of relationships to increase accountability and limit any perception of conflicts of interest. SoCs should work to avoid conflicts of interest for larger procurements and agreements.

8.8. Integrity

8.8.1. Description

During the course of the Inquiry, information was obtained related to potential integrity breaches by SoC officials, Supervisory Board members and Minister Shareholder Representatives. The following is a summary of the issues which the Inquiry team encountered.

8.8.2. Observations and recommendations

The following were identified as key observations affecting integrity within the SoCs, according to interviews conducted and documents analyzed by the Inquiry team:

- **Potential integrity breaches:** Many interviewees reported to the Inquiry team potential integrity breaches involving SoC personnel and Minister Shareholder Representatives. Examples of potential breaches include nepotism when awarding contacts, using official positions for undue influence and conflicts of interest. Below is a summary of these potential breaches.

Integrity Potential integrity breaches	
Observations	A number of potential integrity breaches were identified relating to the SoCs. **Potential monopoly, conflict of interest and abuse of power** A former SoC Minister Shareholder Representative and former Commissioner appears to be involved in a conflict of interest. This individual was reported to have used their position in Government to force third parties to relinquish businesses and property in order to establish family businesses as beneficiaries, ultimately creating a monopoly with control over an industry at one of Sint Maarten's major ports of entry, according to reports from interviewees and documents analyzed by the Inquiry team. **SoC contract apparently awarded to close relative of SoC Supervisory Board Member without a bidding process** A SoC appears to have awarded a USD 2 million contract to a company owned by a close relative of a Supervisory Board member and without conducting a formal bidding process, according to interviewees with SoC officials.[193] The Inquiry team

[193] Contract Documents and interviews

analyzed emails in which a SoC official stated that the sole source contract with the company was in "accordance with [the SoC's] procurement policy."[194] In the same email the SoC official explained that the company had an agreement with a construction company that had previously provided services to the SoC, and that the contract with the company would "ensure we get back the same quality of work, the same materials used in order to get a uniform look for the building." The explanation by the official does not appear to be in line with the SoC's procurement policy which states that a sole source provider can be selected if "goods and/or services are compatible with current equipment, infrastructure, or services." The sole source selection of the company does not appear to fall within this exception as the official's email, and research of open sources, did not indicate that the company contributed to the services provided by the construction company referenced above.

Interviewees reported to the Inquiry team that this SoC has paid closer to USD 6 million to the finishing company for the contract noted above and additional services. In the same email the official states that the finishing company is performing work at the SoC outside of the contract referenced above. The individual stated in the email that the finishing company does "most of the work" on a "progress work basis," and that "instead of a contract, [the finishing company] gets paid based on the work that they do. Only for the big works, such as the [work performed for the USD 2.075 million], we have contracts with the [finishing] company."[195]

SoC losing ANG 10-15 million per year due to unfavorable agreements

The Inquiry team identified several agreements between the GoSM, two SoCs and an outside company which appear to create an unfavorable situation for one SoC that is losing millions of guilders a year as a result. The agreements have locked this SoC into: expensive leases; the sale of one utility at a market price below the national average; and an inflated purchase price of another utility. Additionally, one beneficiary of this agreement appears to be a shell company with two to three employees that channels profits back to its parent company based in the U.S., according to the agreements analyzed by the Inquiry team and research of open sources and syndicate databases.

Recommendations

Create a standing investigative unit within the recommended specialized anti-corruption/organized crime unit of the Prosecutor's Office: The GoSM should create a unit within the Prosecutor's Office to investigate allegations of integrity breaches involving SoC officials, employees and Minister Shareholder Representatives. This unit should have dedicated and sufficient resources and the GoSM should institute a mechanism to ensure these allegations are investigated in a timely manner with enough capacity.

Introduce and enforce conflict of interest policies aligned to global standards and leading practices: Each SoC should create a conflict of interest

[194] July 2014 email from SoC Project Coordinator to a SoC employee who assisted with the Inquiry team's document request
[195] July 2014 email from SoC official to a SoC employee

policy that is applicable to all personnel, and clearly define conflict of interest within the policy. Senior management and Supervisory Board members should be required to fill out a conflict of interest declaration annually. Senior management and Board members should also be required to disclose a potential conflict of interest immediately upon identification to the CCO. The policy should be published on each SoC website and easily accessible to all employees. The policy should contain procedures for identifying, managing and resolving conflict of interest situations and SoC officials should be clear on the protocol to report a potential conflict of interest.

The Inquiry team recognizes the challenges associated with conflict of interest in a country the size of Sint Maarten – which is all the more reason for strict adherence to a conflict of interest policy. While the potential for a conflict of interest may be unavoidable, there are many ways to manage the conflict appropriately to protect the integrity of the decision-making body, which should be outlined in the conflict of interest policy. If a conflict of interest arises, disclosure should be made and the decision-making power should be transferred from the related official to an official who does not have a conflict of interest. Furthermore, the official with the conflict should be kept out of meetings, discussions, and correspondence related to the interest in order to avoid any exertion of influence over decision-making. The official with the conflict should sign an "agreement not to act" which the OECD defines as, "the individual agrees not to participate in any other action concerning the interest, e.g. signing documents that relate to the interest)."[196] In some circumstances, it may be necessary for the official with the conflict of interest to divest of the interest that is resulting in the conflict in order to maintain integrity and independent decision-making, which should be outlined in the conflict of interest policy.

Failure of an employee to act upon a known conflict of interest should result in timely and serious disciplinary action. Sanctions related to conflict of interest should be clearly outlined in the policy.

[196] *Managing Conflict of Interest in the Public Service*, Organisation for Economic Cooperation and Development; https://web.archive.org/web/20140730221107/http://www.oecd.org/gov/ethics/48994419.pdf

9. Priority recommendations

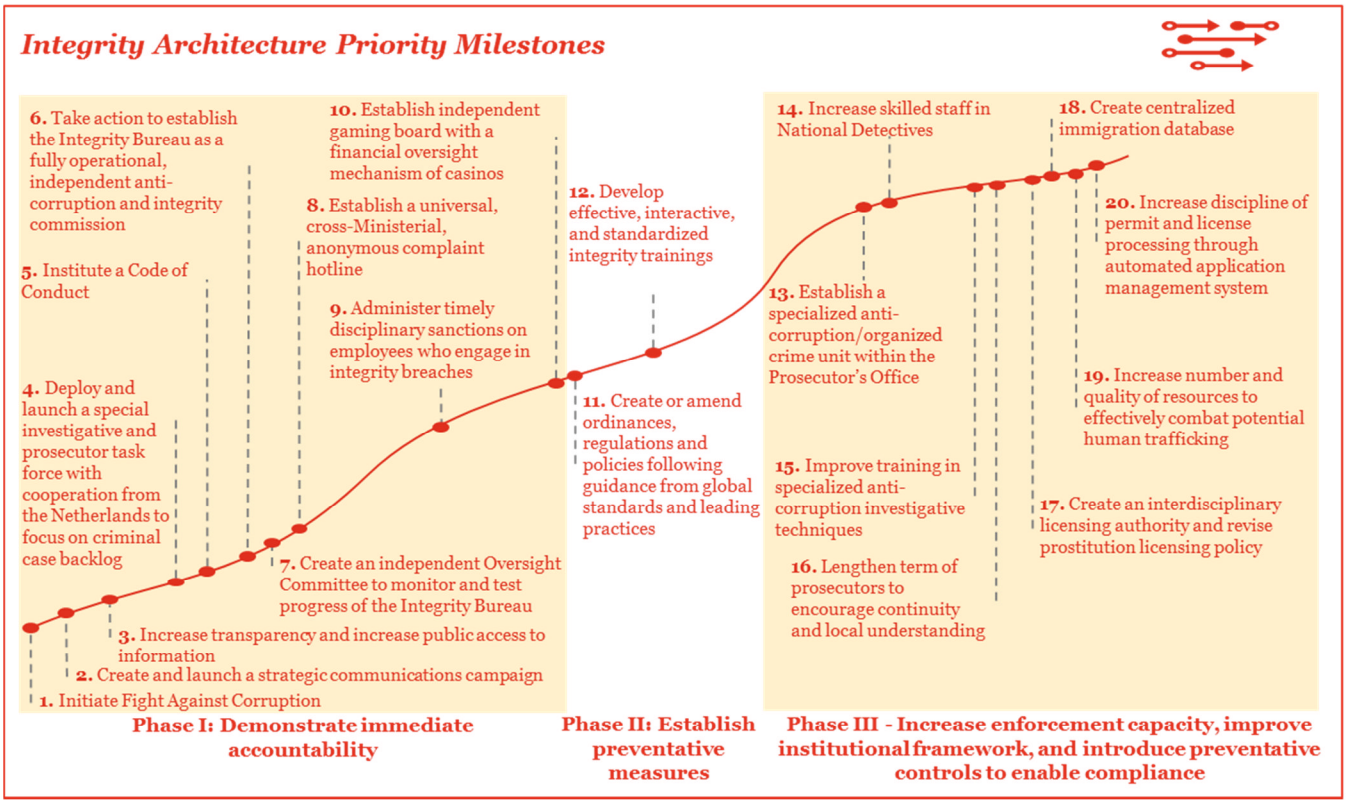
9.1. Government of Sint Maarten priority recommendations

The governance challenges facing Sint Maarten are real and substantial. The Inquiry team noted significant gaps in the public integrity architecture of the GoSM related to each of the seven integrity elements underlying the assessment. A "maturity finding" of "low," "medium," or "high" by integrity architecture element was assigned based on the sophistication of Sint Maarten's laws, policies, procedures, and practices in relation to the global benchmarks captured in each element, as depicted below:

GoSM Integrity Architecture Element	Current Maturity Based on Global Standards		
	Low	Medium	High
Leadership, Commitment and Devotion of Resources	●		
Regulatory Framework		●	
Investigations and Enforcement	●		
Procurement	●		
Transparency and Strategic Communications	●		
Personnel Management		●	
Systems and Information Sharing	●		

Based on observations included in this Report, and taking into consideration the individual maturity findings in each element of the integrity assessment framework, the overall integrity architecture maturity finding for Sint Maarten is considered to be "low."

A series of sequentially organized recommendations have been developed by the Inquiry team to help the GoSM address priority areas for remediation identified by the Inquiry team. These recommendations are placed in a sequence as a guideline for implementation. Some recommendations may be implemented out of sequence for reasons such as budgeting and human resource availability. Recommendations that can be implemented should not be delayed because others sequenced earlier cannot be implemented. In that regard, these recommendations should be viewed with some flexibility as to sequencing.



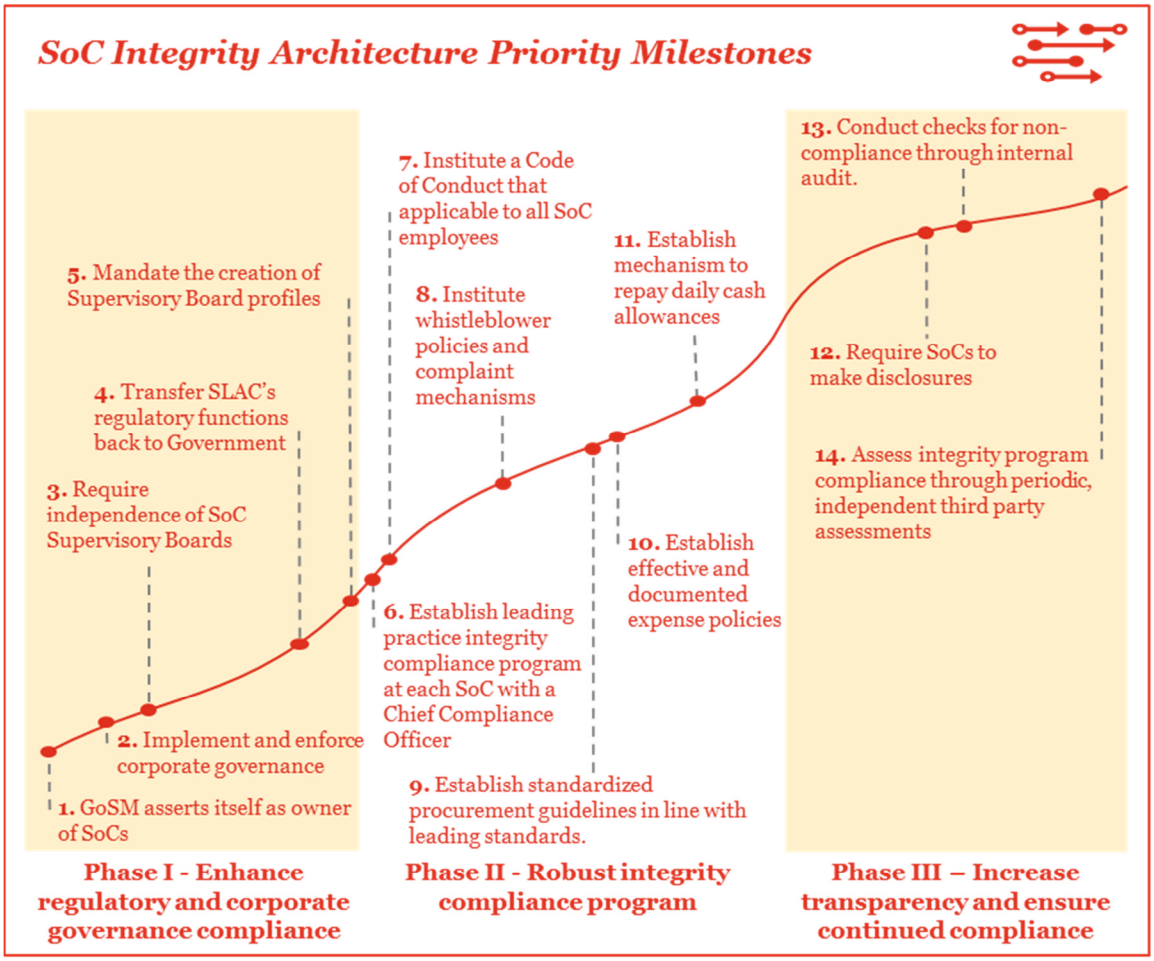
9.2. State-owned companies priority recommendations

SoCs in Sint Maarten face considerable gaps in their integrity framework. Based on the assessment detailed above, the Inquiry team assigned a "maturity finding" of "low," "medium," or "high" based on the sophistication of the SoCs integrity compliance programs, policies, procedures, and practices in relation to relevant global benchmarks. These maturity findings are captured in the diagram below:

SoC Integrity Architecture Element	Current Maturity Based on Global Standards		
	Low	Medium	High
Commitment and Devotion of Resources	●		
Integrity Compliance Program	●		
Procurement	●		
Governance and Oversight		●	
Transparency	●		

Based on observations included in this Report, and taking into consideration the individual maturity findings in each element of the integrity assessment framework, the overall integrity architecture maturity finding for the four SoCs is considered to be "low."

A series of sequentially organized recommendations have been developed by the Inquiry team to help the GoSM address the numerous integrity challenges associated with SoCs in Sint Maarten. These recommendations are placed in a sequence as a guideline for implementation. Some recommendations may be implemented out of sequence for reasons such as budgeting and human resource availability. Recommendations that can be implemented should not be delayed because others sequenced earlier cannot be implemented. In that regard, these recommendations should be viewed with some flexibility as to sequencing.


SoC Integrity Architecture Priority Milestones
1. GoSM asserts itself as owner of SoCs
2. Implement and enforce corporate governance
3. Require independence of SoC Supervisory Boards
4. Transfer SLAC's regulatory functions back to Government
5. Mandate the creation of Supervisory Board profiles
6. Establish leading practice integrity compliance program at each SoC with a Chief Compliance Officer
7. Institute a Code of Conduct that applicable to all SoC employees
8. Institute whistleblower policies and complaint mechanisms
9. Establish standardized procurement guidelines in line with leading standards.
10. Establish effective and documented expense policies
11. Establish mechanism to repay daily cash allowances
12. Require SoCs to make disclosures
13. Conduct checks for non-compliance through internal audit.
14. Assess integrity program compliance through periodic, independent third party assessments
Phase I - Enhance regulatory and corporate governance compliance
Phase II - Robust integrity compliance program
Phase III – Increase transparency and ensure continued compliance

10. Areas for future analysis

In addition to the vulnerable sectors/activities, SoCs, and other major integrity issues identified by the Inquiry team that were within scope, the Inquiry team has identified a number of additional areas susceptible to integrity breaches that were not included within this Report due to time, budget, and scope limitations but are critical to address in order to successfully improve the integrity architecture across the Government. The Inquiry team suggests that research and analysis of the following areas be performed in future inquiries:

- **Parliament:** As a major priority, the Inquiry team proposes conducting a targeted integrity assessment of Sint Maarten's Parliament. Interviewees expressed grave concerns about the Parliament and its capacity, effectiveness, and commitment to integrity. Parliament controls the appointment of the Council of Ministers, and, as such, should be reviewed against the Inquiry team's integrity architecture to ensure that its members are working in the country's general interest and not for personal gain.
- **Forensic investigations and operational audits:** The GoSM should order several factual and forensic books and records investigations into the circumstances surrounding fraud or other impropriety, including the misappropriation of corporate assets or resources within the GoSM's SoCs and adherence to the statutory objectives of the SoC. Particular attention should be paid to those SoCs and Government agencies such as BTP and the SMHHC that did not comply with the Inquiry team's document request. It also appeared during the Inquiry that some SoCs operate with no accountability to their sole shareholder, the GoSM. As mentioned previously, the GoSM should assert itself as the sole owner of its SoCs and demand that its SoCs comply with any and all investigations, inquiries and requests for information.
- **Tax system:** The Inquiry team proposes to bring in tax specialists to conduct a comprehensive assessment of Sint Maarten's taxation system and to assess current compliance of businesses and citizens, identify gaps in the taxation framework, and make recommendations to increase tax compliance.
- **Vote buying:** Vote buying was identified as a prevalent problem in Sint Maarten and one that can skew elections towards individuals with integrity issues. The GoSM should review laws and policies to ensure that vote buying is explicitly prohibited and also investigate any and all individuals thought to be involved in vote buying, no matter status or level within Government, and prosecute these individuals to the fullest extent.
- **Central bank:** A targeted integrity assessment of the Central Bank should be conducted due to its importance on the local economy and business environment in Sint Maarten. The integrity of its senior officials was questioned by several interview subjects. The Inquiry team has been informed that a separate assessment was conducted of the Central Bank. The Inquiry team did not receive or review that report and cannot render any findings or recommendations based on the report.
- **Money laundering:** The lack of oversight into casinos and other cash-heavy businesses creates an environment susceptible to money laundering and other financial crimes. The GoSM should conduct a specific review of its money-laundering identifying gaps with leading practices with respect to compliance with money laundering regulatory requirements, reporting and investigations.
- **Drug and arms trafficking:** The Inquiry team suggests completing an assessment of Sint Maarten's anti-drug/arms trafficking framework to identify gaps in oversight and enforcement.

Interviewees and open source studies indicate that Sint Maarten is currently susceptible to drug/arms trafficking due to its lack of oversight of imports, geographic location and reliance on tourism. Concern over escalated violence in recent years due to a surplus of arms, particularly imports of assault rifles, on the island was also noted by many interviewees.

- **Organized crime:** The Inquiry team received several reports that individuals identified to be involved in organized crime are currently involved in private sector businesses in Sint Maarten, especially in the gambling industry. The Inquiry team did not fully address these issues from a law enforcement or policy prospective. The Inquiry team recommends a further assessment of the capacity of Sint Maarten to investigate potential organized crime on the island.
- **Crime fund:** Although several interviewees mentioned that proceeds from the sale of seized assets are placed into a crime fund, not one interviewee was able to tell us who is currently in control of the crime fund or its value. The Inquiry team recommends an inquiry into the crime fund to determine who has taken control of the fund, how much money is in it, where the proceeds from these seized assets are deposited, and compliance with the law concerning the maintenance of the crime fund.
- **Government background checks:** The Inquiry team proposes to assess the adequacy and effectiveness of the current background check procedure on civil servants, Ministers and politicians. The assessment would include whether the GoSM has sufficient procedures to accurately identify adverse and other information relevant to the subject's criminal history, litigation, and qualifications including educational degree verification.
- **Long lease land and Government land distribution and re-sale:** The Inquiry team recommends conducting an assessment of long lease land sales to identify instances of illegal profiting by recipients of long-lease land, including Government officials.
- **Accuracy and quality of property appraisers in Sint Maarten:** The Inquiry team reviewed many integrity issues relating to property sales and purchases that included property appraisals. There are a small number of property appraisers on the island, and these firms and individuals should operate with integrity and provide fair and honest services to the GoSM, its SoCs and society alike.
- **Health insurance and SZV:** Interviewees noted to the Inquiry team inefficiencies and quality issues regarding SZV and the provision of health insurance. The Inquiry team recommends that the GoSM perform a review of the social health insurance system in Sint Maarten in order to identify gaps and areas for improvement.
- **Foreign investment climate:** An assessment of Sint Maarten's foreign investment climate compared with similar islands and environments should be conducted to identify areas for improvement. Sint Maarten should encourage foreign investors in Sint Maarten.
- **Water treatment:** The Inquiry team recommends that an inquiry be done into the water quality in Sint Maarten. Senior SoC officials indicated that a major water producer in Sint Maarten is not producing the quality of water it has agreed in contracts it has executed with the GoSM. Further, SoC officials reported that Sint Maarten's main water distribution SoC has been locked into agreements to distribute water of a higher quality than the distributor is required to produce. The Inquiry team reviewed documents to support these claims, and it is suggested that this issue is reviewed during future analysis.

- **Environmental issues:** The Inquiry team suggests an assessment of the environmental protection framework in Sint Maarten as well as an on-the-ground assessment to determine the impact of environmental damage on targeted areas including the Great Salt Pond and the Simpson Bay Lagoon. Additionally, the GoSM should ensure that the agency regulating the Simpson Bay Lagoon, SLAC, is performing its duties as mandated in its articles of incorporation.
- **Waste-to-energy plant:** Several interviewees reported integrity issues surrounding the proposed waste-to-energy plant. The Inquiry team suggests that a review of the parties involved in this contract, as several reports made to the Inquiry team indicated that some of the entities involved are structuring the deal to receive improper benefits.
- **Six month contracts:** Six-month contracts appear to favor employers in Sint Maarten and put employees at a disadvantage with financial instability due to limited employment during the tourist offseason. The Inquiry team recommends labor specialists review the issuance of six-month contracts and amend policies accordingly to increase employee rights and protection.
- **Regulation of employment agencies:** The Inquiry team proposes an assessment of the regulations governing the use of employment agencies based on reports from interviewees that these agencies may evade taxes and health insurance premium payments to SZV.
- **Pension fund:** The GoSM should conduct an assessment of the viability of its pension fund to ensure it is in line with budget restraints and that it is able to make future payments to those individuals that are on pension. Additionally, an inquiry should be conducted into individuals trying to steal money from the pension fund or abuse the system, including any individuals who attempt to increase their pay scale in the years prior to reaching pension which would increase their pension payments significantly.

11. Conclusion

The readers of this assessment should understand that this exercise was not an investigation of specific acts or allegations of corruption with a view towards assigning accountability. Such investigative activities are more appropriately left within the purview of the police, prosecutors and the judiciary. Rather this assessment was designed to (1) review the historical record of governance related procedures and practices in Sint Maarten (and where necessary, areas of conduct by individuals or entities) to illuminate specific institutional weaknesses in the GoSM's public sector integrity architecture as compared to international standards, and (2) to offer a road map of recommendations and priority milestones on how to mature this architecture in a strategic fashion. This assessment is forward-looking and focused on prospective action that can be taken to enhance the quality of the lives of the citizens of Sint Maarten.

The preceding Report has indicated that the maturity of the GoSM's governance and public integrity architecture is low. Sint Maarten now finds itself in a position similar to many emerging economies that have been independently benchmarked and are seeking to develop leading practices in public sector integrity to enhance economic prospects, attract foreign investment, and address long-standing domestic political concerns, as well as improve their reputation and relationship with key international stakeholders. This is not an easy task and is made all the more challenging by certain characteristics that are distinctive to small island communities such as Sint Maarten, where dense social networks and relationships often govern how business and politics are conducted and supersede formal rules and procedures. Although developing a more mature integrity architecture in Sint Maarten will be challenging, it is achievable through strategic investments aimed at addressing the recommendations identified in this Report.

Many of the key actions that need to be taken by the Government are achievable in a short period of time, and indeed represent foundational steps in building a strong public integrity architecture. In fact, many of the action items detailed in the ***Integrity Architecture Priority Milestones*** roadmap above are activities that can be acted upon immediately by referring to international leading practices, templates, and existing procedures and protocols. Adopting models available in the international community can help Sint Maarten rapidly progress through many of the initial steps outlined in this assessment. For example, enacting a Code of Conduct, promulgating detailed procurement rules, and installing training programs can be accomplished quickly using internationally accepted standards without the need for much debate or unnecessary expenditure of funds. Any delay in achieving these relatively easy initial tasks--or in creating a PMO to coordinate Government reform efforts—will be highly visible and risks being viewed by civil society as an indication of the level of political will within the GoSM to improve public sector integrity.

In addition to the initial progress that is easily achievable, the GoSM will have to demonstrate a sustained political will and a commitment to enforcement in order to tackle the more challenging actions contained in ***Integrity Architecture Priority Milestones*** roadmap such as enhanced financial transparency of SoCs, audits of financial disclosures by political officials, and increased prosecutions of senior political officials who have engaged in conflict of interests or outright corruption.

Full scale remediation of the institutional weaknesses noted in this Report may take years of effort by a committed political leadership to achieve the standards of governance expected by the international community. In addition to political will, the GoSM must also sustainably fund this initiative, staff it with qualified people, and periodically test progress against international standards to determine the pace of reform and development. The Government is not alone in this effort, and there are a plethora of stakeholders that can and should be engaged to oversee that reforms undertaken are in line with leading international practices, including Transparency International, the World Bank Institute, industry

associations, and other sources of thought leadership, expertise, and diagnostic aides that can assist the GoSM monitor and tailor its reform efforts.

While the Government can and should study and discuss this Report, as well as other assessments that have been conducted (or are currently underway), such deliberations should not interfere with decisive action, which requires dedicated individual(s) with substantial authority to initiate the actions called for in this and other reports. Without such a commitment to action, the Government will fail to achieve the public sector reforms necessary to enhance the low level of maturity currently found in Sint Maarten.

Finally, the Inquiry team would like to acknowledge the expert assistance provided throughout this review by the Steering Committee made up of Dr. Marten Oosting, Chairman, and members Mr. Jaime Saleh and Mr. Miguel Alexander. Their advice, support and comments on drafts and outlines of this Report were very much appreciated and contributed positively to the final product. The Inquiry team would also like to thank the Governor of Sint Maarten, Governor E.B. Holiday, for his leadership, advice and commentary during the course of our work –without which this task would have been impossible.

Appendix A. - *Glossary of terms and acronyms*

The table below reflects a glossary of terms used throughout the Report with the English term used in the Report and the Dutch equivalent based on information obtained on the GoSM website.

English	Dutch
Attorney-General	Procureur-generaal
Board of Financial Supervision	College Financieel Toezicht ("CFT")
Cadaster	Kadaster
Chamber of Commerce	Kamer van Koophandel
Charter for the Kingdom	Statuut voor het Koninkrijk
Civil Code of Sint Maarten	Burgerlijk Wetboek
Code of Conduct	Gedragscode
Code of Criminal Procedure	Wetboek van Strafvordering
Common Court of Justice	Gemeenschappelijk Hof van Jusitie
Constitution	Staatsregeling
Council of Advice	Raad van Advies
Council of Ministers	Ministerraad
Court of first instance	Gerecht van eerste aanleg van Sint Maarten
Criminal Code	Wetboek van Strafrecht
Department of Interior and Kingdom Relations	Afdeling Binnenlandse Aangelegenheden en Koninkrijksrelaties ("BAK")
Department of Public Prosecutions	Openbaar Ministerie
Financial Intelligence Unit	Melpunt Ongebruikelijke Transacties ("MOT")
General Audit Chamber	Algemene Rekenkamer
High Council of State	Hoog College van Staat
Integrity Bureau	Bureau Integriteit Sint Maarten ("BISM")
Kingdom Act	Rijkswet
Law Enforcement Council	Raad voor de Rechtshandhaving
Limited Liability Company ("LLC")	Naamloze Vennootschap ("N.V.")
Minister Plenipotentiary	Gevolmachtigde Minister
Ministry of Education, Culture, Youth and Sport	Ministerie van Onderwijs, Cultuur, Jeugd en Sport ("OCJS")
Ministry of Finance	Ministerie van Financiën
Ministry of General Affairs	Ministerie van Algemene Zaken
Ministry of Public Housing, Spatial Planning, Environment and Infrastructure	Ministerie van Volkshuisvesting, Ruimtelijke Ordening, Milieu en Infrastructuur ("VROMI")

Ministry of Health, Social Development and Labor	Ministerie van Volksgezondheid, Sociale Ontwikkeling en Arbeid ("VSA")
Ministry of Justice	Ministerie van Justitie
Ministry of Tourism, Economic Affairs, Transportation and Telecommunication	Ministerie van Toerisme, Economische Zaken, Vervoer en Telecommunicatie ("TEZVT")
National Accountability Ordinance	Comptabiliteitslandsverordening
National Decree	Landsbesluit
National Decree Containing General Measures	Landsbesluit houdende algemene maatregelen
National Detective	Landsrecherche
National Ordinance	Landsverorderning
National Ordinance Corporate Governance	Landsverordening Corporate Governance
National Ordinance Foreign Laborers	Landsverordening Arbeid Vreemdelingen
National Ordinance Health Inspectorate	Landsverordening Inspectie voor de Volksgezondheid
National Ordinance Ombudsman	Landsverordening Ombudsman
National Ordinance Open Government	Landsverordening Openbaarheid van Bestuur
National Ordinance Promotion of the Integrity of Ministers	Landsverordening Integriteitbevordering Ministers
National Ordinance Structure and Organisation of National Government	Landsverordening Inrichting en Organisatie Landsoverheid
National Ordinance Study Financing	Landsverordening Studiefinanciering
National Ordinance on the Rights and Obligations of Civil Servants	Landsverordening Materieel Ambtenarenrecht ("LMA")
Person of Confidence	Vetrouwenspersoon
Prime Minister	Minister-president
Private Limited Company ("PLC")	Besloten Vennootschap ("B.V.")
Public Tender	Openbare Aanbesteding
Records and Information Management	Documentaire Informatievoorziening ("DIV")
Secretary General ("SG")	Secretaris-generaal
Social and Health Insurances	Sociale- en Ziektekostenverzekering ("SZV")
Social Insurance Bank	Sociale Verzekeringsbank
Sole Proprietorship	Eenmanszaak ("E.Z.")
Solicitor-General	Advocaat-Generaal
Study Financing	Studiefinanciering

Below is a list of acronyms used in the Report:

English	Acronym
Bureau Telecommunication and Post	BTP
Integrity Bureau	Bureau or BISM
Caribbean Financial Action Task Force	CFATF

Corporate Governance Council	CGC
National Committee on Money Laundering	CIWG
Committee of Sponsoring Organizations of the Treadway Commission	COSO
Corruption Perception Index (published by Transparency International)	CPI
Documentaire Informatievoorziening ("DIV")	DIV
Financial Action Task Force on Money Laundering	FATF
Ministry of Finance	Finance
N.V. Gemeenschappelijk Electriciteitsbedrijf Bovenwindse Eilanden	GEBE
Ministry of General Affairs	General Affairs
Government of Sint Maarten	GoSM
Information and Communications Technology	ICT
International Civil Aviation Organization	ICAO
International Organization of Supreme Audit Institutions	INTOSAI
Ministry of Justice	Justice
Mobile Control Unit	MCU
Ministry of Education, Culture, Youth and Sports	OCJS
Ministry of Tourism, Economic Affairs, Traffic and Telecommunication	TEZVT
Ministry of Public Housing, Spatial Planning, Environment, and Infrastructure	VROMI
Ministry of Health, Social Development and Labor	VSA
National Security Service Sint Maarten	VDSM
Netherlands Antilles Development Foundation	USONA
Organisation for Economic Co-operation and Development	OECD
Open Government Partnership	OGP
Personnel and Organization	P&O
Public Financial Management Performance Measurement Framework	PEFA
Princess Juliana International Airport Operating Company N.V.	PJIAE
Prime Minister	PM
Project Management Office	PMO
Standards to Secure and Facilitate Global Trade	SAFE
Secretary General	SG
Simpson Bay Lagoon Authority Corporation	SLAC
Sint Maarten Harbour Holding Company N.V.	SMHHC
State-owned Company	SoC
Third Country Nationals	TCN
Sint Maarten Telecommunication Holding Company N.V.	Telem
Trafficking Victims Protection Act	TVPA
United Nations Convention Against Corruption	UNCAC
United Nations Commission on International Trade Law	UNCITRAL

United Nations Office on Drugs and Crime	UNODC
Uitvoeringsorganisatie Stichting Ontwikkeling Nederlandse Antillen	USONA

Appendix B. - *Global standards considered*

When assessing the integrity of a Government and SoCs, it is important to measure current frameworks against recognized and accepted leading global standards. As a result of a large anti-corruption movement, there are many leading integrity standards that have emerged, in addition to practices and procedures that are promulgated in authoritative publications and professional forums. These frameworks are in the form of principles of leading laws, regulations, standards, and/or authoritative guidance ranging from the United Nations Convention against Corruption ("UNCAC") to the World Economic Forum's Partnering Against Corruption Initiative. The Inquiry team consulted the following global standards and leading practices when formulating observations and recommendations for GoSM's and SoCs' current integrity architecture. A brief description of each standard is included below.

Global standards and leading practices underlying the Inquiry team's integrity architecture assessment framework

Promulgating organization	Standard / Guidelines / Leading practice	Description
Committee of Sponsoring Organizations of the Treadway Commission	**Internal Control – Integrated Framework (2013)**	The 2013 Framework is expected to help organizations design and implement internal controls, broaden the application of internal control in addressing operations and reporting objectives, and clarify the requirements for determining what constitutes effective internal control.
Council of Europe	**Model Code of Conduct for Public Officials**	The *Council of Europe Model Code of Conduct for Public Officials* outlines expectations and standards of behavior for public officials serving within countries belonging to the Council of Europe. The Code provides guidance on conflicts of interest, asset disclosure, acceptance of gifts, improper influence, abuse of power, and other key issues related to establishing the highest standards of integrity for public officials.
European Casino Association	**Crime Prevention & Consumer Protection in the Gambling Sector**	This standard by the European Gaming Association discusses the prevention of illegal activities as well as the protection of consumers of the gaming industry. The standard touches on criminal activity

Promulgating organization	Standard / Guidelines / Leading practice	Description
		associated with gaming industry and provides recommendations to prevent fraud and promote responsible gaming.
European Gaming and Betting Association	**International Code of Conduct and Standards for EGBA members**	This Code of Conduct includes recommendations for socially responsible gambling and gaming in order to promote a safe and secure gaming environment. It also includes several impactful principles to improve oversight and integrity of gaming activities.
Financial Action Task Force ("FATF")	**International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations**	The *FATF Recommendations* set out a comprehensive and consistent framework of measures which countries should implement in order to combat money laundering and terrorist financing, as well as the financing of proliferation of weapons of mass destruction.
Financial Reporting Council	**UK Corporate Governance Code**	The Financial Reporting Council's *UK Corporate Governance Code* is an industry-leading corporate governance code that can serve as a model to benchmark existing corporate governance framework against. The code serves as a model for leading practices on company leadership, effectiveness, accountability, remuneration and relationships with shareholders.[197]
International Association of Gaming Regulators	**Guidance from the International Association of Gaming Regulators**	The *International Association of Gaming Regulators* consists of gaming regulatory representatives from around the world which share and promote leading practices within the gaming industry to increase the efficiency and effectiveness of gaming regulation and oversight.
International Chamber of Commerce Commission on Anti-Corruption	**Combating Extortion and Bribery; ICC Rules of Conduct and Recommendations**	The *ICC Rules of Conduct and Recommendations* is another leading standard that provides guidance on establishing an effective program to eliminate corruption within organizations. The standard contains rules for voluntary implementation by organizations seeking to drive a

[197] *UK Corporate Governance Code*, Financial Reporting Council; https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-September-2012.pdf

Promulgating organization	Standard / Guidelines / Leading practice	Description
		corruption-free system that allows all participants to compete on a level playing field.[198] Specific topics the standard touches upon include policies and procedures, relationships with third parties, and financial recording an auditing.
International Organization of Supreme Audit Institutions	**INTOSAI 9100 Guidelines for Internal Control Standards for the Public Sector**	The INTOSAI Guidelines focus on three broad issues: (1) Definition of Internal Control and limitations on internal control effectiveness, (2) Components of Internal Control (Control Environment, Risk Assessment, Control Activities, Information and Communications, Monitoring), and (3) Roles and Responsibilities of relevant stakeholders. The Guidelines take into account all relevant and recent evolutions in internal control and incorporate information from the COSO report "Internal Control – Integrated Framework."
Organisation for Economic Cooperation and Development ("OECD")	**Asset Declaration for Public Officials Toolkit**	This toolkit provides an analysis of existing practices in the area of asset declarations in Eastern Europe and Central Asia and in some OECD countries in Western Europe and North America. It presents policy recommendations on the key elements of asset declaration systems that can provide guidance to national governments engaged in the development, reform and assessment of asset declarations systems at the country level.
Organisation for Economic Cooperation and Development ("OECD")	**Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions**	Established in 1997 as the first international anti-corruption instrument focused on the 'supply side' of bribery, the OECD Convention is aimed at reducing corruption by encouraging sanctions against bribery in international business transactions carried out by companies based in countries that are party to the Convention. The

[198] *Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations*, International Chamber of Commerce; http://www.iccwbo.org/Advocacy-Codes-and-Rules/Document-centre/2004/ICC-Rules-of-Conduct-and-Recommendations-to-Combat-Extortion-and-Bribery-(2005-Edition)

Promulgating organization	Standard / Guidelines / Leading practice	Description
		OECD Convention has been adopted by all 34 OECD member countries and six non-member countries.
Organisation for Economic Cooperation and Development ("OECD")	**European Principles for Public Administration**	This document identifies the standards to which EU candidate countries are expected to conform in order to align their public administrations with those of EU Member States. The document was developed through a joint OECD-EU effort, and covers key administrative law principles and civil service standards.
Organisation for Economic Cooperation and Development ("OECD")	**Guidelines on Corporate Governance of State-owned Enterprises**	OECD's *Guidelines on Corporate Governance of State-owned Enterprises* provides leading practices to promote corporate governance specifically in State-owned Companies, including the suggested roles and responsibilities of executives and supervisory board members, to support the effectiveness, competitiveness and transparency of SoCs.[199]
Organisation for Economic Cooperation and Development ("OECD")	**Guidelines for Managing Conflicts of Interest in the Public Sector**	The *OECD Guidelines for Managing Conflicts of Interest in the Public Sector* represents the first international benchmark for mitigating integrity risks arising from conflicts of interest. The Guidelines contain a comparative overview that highlights trends, approaches and models across OECD countries, and includes case studies to illustrate institutional frameworks and examples of implementation efforts.
Organisation for Economic Cooperation and Development ("OECD")	**OECD Principles for Integrity in Public Procurement**	The OECD Principles are based on acknowledged good practices in OECD and non-member countries, and outline a series of policies and practices that have proved effective for enhancing integrity in procurement. They are intended to be used in conjunction with

[199] *OECD Guidelines on Corporate Governance of State-owned Enterprises;* Organisation for Economic Cooperation and Development; http://www.oecd.org/corporate/ca/corporategovernanceofstate-ownedenterprises/34803211.pdf

Promulgating organization	Standard / Guidelines / Leading practice	Description
		identified good practices from governments in various regions of the world.
Organisation for Economic Cooperation and Development ("OECD")	**Principles of Corporate Governance**	OECD's *Principles of Corporate Governance* is a leading global standard for corporate governance practices that provides guidance to policy makers, investors, corporations and other stakeholders to enhance and support financial market stability, investment and economic growth.[200]
Open Government Partnership ("OGP")	**Open Government Partnership**	OGP was launched in 2011 to provide an international platform for domestic reformers committed to making their governments more open, accountable, and responsive to citizens. The OGP is a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. To become a member of OGP, participating countries must endorse a high-level Open Government Declaration, deliver a country action plan developed with public consultation, and commit to independent reporting on their progress going forward.[201]
Organization of American States ("OAS")	**Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions**	The *Model Law* was developed through an extensive consultation process involving representatives of countries belonging to the OAS, and was endorsed by the Committee of Experts of the MESICIC (the body charged with monitoring implementation of the Inter-American Convention Against Corruption). The Model Law covers key principles related to establishing a robust asset declaration regime for public officials.

[200] *OECD Principles of Corporate Governance*, Organisation for Economic Cooperation and Development; http://www.oecd.org/daf/ca/corporategovernanceprinciples/31557724.pdf
[201] Open Government Partnership; http://www.opengovpartnership.org

Promulgating organization	Standard / Guidelines / Leading practice	Description
Public Expenditure and Accountability ("PEFA")	**Public Financial Management Performance Measurement Framework**	The *PEFA PFM Performance Measurement Framework* is a set of high level indicators which draw on the HIPC expenditure tracking benchmarks, the IMF Fiscal Transparency Code and other international standards. It forms part of the Strengthened Approach to supporting PFM reform, which emphasizes country-led reform, donor harmonization and alignment around the country strategy, and a focus on monitoring and results.
Queensland Government	**Prostitution Licensing Authority: Strategic Plan 2010-2014**	The Queensland Prostitution Licensing Authority (PLA) Strategic Plan outlines the key roles and functions of the PLA with respect to regulating the commercial sex industry in Queensland, Australia. The Strategic Plan matches regulatory objectives with proposed actions, and establishes key priorities and performance indicators.
State of Nevada	**Nevada Gaming Control Board**	The Nevada Gaming Control Board is recognized as a global leader in gaming regulation, legislation and oversight. The board provides a model of leading practices for audit, enforcement, investigations, taxes and licensing.[202]
Transparency International	**Transparency of State-owned Enterprises**	Transparency International's *Transparency of State-owned Enterprises* provides leading disclosure practices for SoCs to increase accountability to stakeholders including the GoSM as the 100% shareholder and the general public. This standard provides guidance to help ensure that SoCs are subjected to the same high standards with regards to accounting, auditing and reporting, and also includes guidance for enhanced safeguards due to SoCs handling public funds.
UK Gambling Commission	**Anti-money Laundering: Approach to**	This document provides guidance from the UK Gambling Commission on establishing the appropriate supervision mechanisms to ensure

[202] Nevada State Gaming Control Board; http://gaming.nv.gov

Promulgating organization	Standard / Guidelines / Leading practice	Description
	Supervision	that gambling establishments are not used for money laundering.
UK Gambling Commission	**Gambling License Conditions and Codes of Practice**	This document outlines the principal licensing conditions for gambling establishments in the UK as well as codes of practice for casinos and personnel involved in the gambling industry.
UK Gambling Commission	**Money Laundering: the Prevention of Money Laundering and Combating the Financing of Terrorism**	This document outlines the key principles and safeguards that casinos should follow to prevent money laundering and the financing of terrorism.
United Nations	**United Nations Convention Against Corruption ("UNCAC")**	UNCAC is a comprehensive global treaty providing framework for collective action against corruption.[203] It was adopted by the UN General Assembly in 2003 and 133 countries are parties to the convention as of April 2009. The convention calls for government transparency and accountability, regulation of private sector, and improved civil society participation. Some provisions of the UNCAC are mandatory while others are discretionary.
United Nations	**United Nations International Code of Conduct for Public Officials**	The *United Nations International Code of Conduct for Public Officials* presents key principles related to conflicts of interest, asset disclosure, acceptance of gifts and favors, protection of confidential information, and political activity. The Code was adopted by the UN General Assembly in 1997.
United Nations	**United Nations Convention Against Transnational Organized Crime ("UNTOC")**	The UNTOC entered into force in 2003, and requires parties to establish in their domestic laws four criminal offences: participation in an organized criminal group; money laundering; corruption; and

[203] *United Nations Convention Against Corruption*, United Nations Office on Drugs and Crime; https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

Promulgating organization	Standard / Guidelines / Leading practice	Description
		obstruction of justice.
United Nations Commission on International Trade Law ("UNCITRAL")	**Model Law on Procurement of Goods, Construction and Services with Guide to Enactment**	The *Model Law on Public Procurement* contains procedures and principles aimed at achieving value for money and avoiding abuses in the procurement process. The text promotes objectivity, fairness, participation and competition and integrity towards these goals. Transparency is also a key principle, allowing visible compliance with the procedures and principles to be confirmed.
US Department of State	**Trafficking Persons Report 2013**	The US Department of State's *Trafficking in Persons Report* is the US Government's primary tool to "engage foreign governments on human trafficking", and it is also a premier resource for governments to consult in the fight against human trafficking. This report is used worldwide in government and a wide range of industries to assess resource requirements to combat human smuggling.
World Customs Organization	**Standards to Secure and Facilitate Global Trade (SAFE Framework)**	The *SAFE Framework* establishes a series of customs, security, and supply chain standards to deter international terrorism, secure revenue collections, and promote trade facilitation worldwide.
World Economic Forum	**Partnering Against Corruption Initiative - Principles on Countering Bribery**	The *Principles on Countering Bribery* provide "practical guidance" to organizations on how to establish an industry-leading and effective integrity compliance program.[204] The principles provide a suggested framework consisting of policies, procedures and practices aimed at eliminating corrupt behavior within an organization.

[204] *Principles for Countering Bribery*, Partnering Against Corruption Initiative, World Economic Forum; http://www.weforum.org/pdf/paci/principles_short.pdf

Appendix C. - *Key relevant findings from previous assessments and reports*

A number of previous assessments were reviewed by the Inquiry team as part of desk research process. Key findings from those assessments are included below. These findings were considered by the Inquiry team during the assessment as well as in the formulation of recommendations.

General Audit Chamber's Baseline Study of Institutional Integrity Management in Sint Maarten

The General Audit Chamber released a *Baseline Study of Institutional Integrity Management* for Sint Maarten in March 2014. This report was based on a review of all published laws and National Ordinances related to integrity since October 10, 2010. This review was supplemented with responses from a web-based questionnaire and interviews with a limited number of government officials. Several key gaps in Sint Maarten's integrity management identified in the report include:

- Lack of specific rules and regulations to implement integrity-related laws and policies;
- Lack of uniformity across Ministries with respect to the implementation of integrity-related policies;
- Insufficient awareness and understanding among civil servants of their obligations under relevant codes of conduct; and
- Uncertainty regarding which government agencies and departments are responsible for integrity management within the civil service.

Of particular relevance to the current Integrity Inquiry are the General Audit Chamber's observations regarding the Council of Ministers and Civil Service. The primary observations are listed below:

Council of Ministers

- Sufficient screening procedures are in place to prevent conflicts of interest from arising among Ministers;
- Insufficient clarity regarding the rules governing the acceptance of gifts by Ministers;
- Ministers in the current government have complied with the National Ordinance requiring disclosure of business interests and assets, though Ministers from the former government failed to disclose this information upon leaving office as required by law; and
- There is no formal integrity Code of Conduct governing the behavior of Ministers.

Civil service

- The wide variety of answers received from civil servants in response to the General Audit Chamber's integrity survey may indicate a lack of uniformity in the awareness and understanding of integrity issues within the civil service;
- Roughly half of the civil servants who responded to the integrity survey did not believe there were sufficient rules and regulations to implement existing integrity laws and policies;
- Almost half of the civil servants who responded to the survey were not aware of their obligations under relevant codes of conduct;

- Lack of clarity among civil servants regarding which government agencies and departments are responsible for developing and implementing integrity-related rules and regulations;
- Insufficient monitoring and tracking to ensure that newly-hired civil servants complete requisite actions, such as taking an oath of office;
- Possible weakness in internal controls regarding the use of government property (e.g. official vehicles, mobile phones, laptops, etc.);
- Lack of disclosure requirements and internal controls regarding the acceptance of gifts by civil servants during the course of employment;
- Lack of transparency and compliance with reimbursement policies for business travel;
- Insufficient awareness of reporting channels for suspected breaches of integrity; and
- Inconsistent application of disciplinary measures and sanctions in the event of integrity breaches.

The key recommendation offered by the report is that emphasis should be placed on "hard controls" such as developing rules and regulations to implement integrity-related Ordinances, and "soft controls" such as reporting mechanisms and risk assessments can be developed during subsequent reform efforts.

Criminaliteitsbeeldanalyse - Sint Maarten Crime Pattern Analysis

The Sint Maarten National Police ("KLPD") performed a Crime Pattern Analysis study that provides an overview of crime on Sint Maarten from 2008 to 2010. This study was performed through Tripartite Justice Consultations with the goal to enable the Sint Maarten Public Prosecution Service to prioritize its prevention and crime repression efforts. The study reviews the nature, scope and crime trends on Sint Maarten and through interviews and quantitative analysis identifies the current state of crime and anticipated developments. The KLPD were limited in their research by the available information.

The study separates crime in the following categories: illegal markets, money laundering, property crime, violent crimes, fraud, document forgery, corruption and other breaches of integrity. Primary observations of each are listed below.

Illegal markets: Sint Maarten is primarily a transit island for cocaine and marijuana that are destined for the U.S. or Europe. Sint Maarten is an important market for marijuana because of the demand from the younger generation and unskilled workers. The island is generally an attractive location for the drug trade because of its geographic location along drug routes to the U.S. and Europe, its bays and inlets with little to no oversight, and the seaport and airport. Sint Maarten cooperates with the U.S. in the fight against drugs and is creating cooperative agreements with Caribbean countries.

Sint Maarten faces a continual stream of economic refugees who are vulnerable to human smuggling. Some of the causes of human smuggling include limited economic development, modest prosperity, political instability, and natural disasters on surrounding islands.

Human trafficking is not a criminal offence and law enforcement performs few human trafficking investigations. The majority of the estimated 15,000 illegal immigrant are prepared to work long hours in low wage positions.

Money laundering: Sint Maarten is an open and financially attractive investment and business climate. The government does not enforce their minimal and dated tax laws or have tight controls over money flows. The

Financial Intelligence Unit, the Tax Office and the Customs service face staffing constraints which limit their ability to track money.

Violent crime: Violence on Sint Maarten includes: violence in public places, assault, murder and homicide, domestic violence and vice crimes. The KLPD assess that public violence statistics may not represent the totality of the criminal acts on the island. The young perpetrators of many crimes create the impression that their use of weapons is increasing violence and becoming more serious. The gaps in information available to the KLPD' limited their ability to confirm if the frequency or severity of crimes is increasing.

Fraud: Sint Maarten's current systems contain minimal fiscal monitoring with facilitates fraudulent activity. Health insurance fraud among the migrant population is the primary source of fraud. Many illegal migrants succeed in obtaining health insurance using a fake employer's statement. The report estimates that health insurance fraud costs the Sint Maarten government millions of dollars annually.

Document forgery: Illegal workers on the island use forged documents for insurance, residence permits and building permits.

Corruption and other breaches of integrity: Sint Maarten, in the past three years, has confronted corruption among public servants, to include within the highest ranks of the public administration. Allegations regularly surface on social media of senior government officials and the police abusing their power.

The KLPD's key recommendations are to improve the information exchange among Sint Maarten government bodies to better identify and prosecute crimes, to train government entities to combat fraud and corruption to include building mechanisms into their procedures, to allocate resources to combat corruption at all levels within the Sint Maarten government, and to provide adequate resources law enforcement to control human smuggling and the drug trade.

Detentiecapaciteit – Sint Maarten Detention Capacity Report

The Sint Maarten Law Enforcement Council performed a study in December 2013 to define the current state of the detention system, to quantify the detention capacity shortage on the island and to identify the associated consequences from the shortage. The Council concludes that "a state under the rule of law, in which judgments form judges are not executed, undermines itself." In creating this report, the Council was hampered by insufficient information to accurately quantify the capacity shortage.

The Council made the following observations:

- In Sint Maarten, a detention shortage exists and is the result of the law enforcement process. Sint Maarten is reactive in expanding its detention capacity instead of creating a lasting solution.
- The report relies on information from 2008 until 2012 to determine how frequently the judiciary imposed unconditional sentences on adults, young adults and youths. The Council assessed that 40% of prison sentences could not executed and based on a cautious estimate, Sint Maarten needs 251 additional cells.
- The Council believes that it is important to implement Constitutional provisions "about separated detention and treatment of convicted persons, non-convicted person and youths," which will mandate additional cells.
- The Council assesses that the increase in serious offenses by minors and young adults mandate not only more cells but alternative punishment to prison sentences.

Based on the Council's research, they presented the following recommendations to the Justice Minister: build additional cells; implement legal provisions to separate detained individuals, convicted individuals, not

convicted individuals , and youth; invest in prevention measures and integrate the prevention measures into existing procedure; and promote information registration to improve the law enforcement chain.

U.S. State Department's Trafficking in Persons Report

The U.S. State Department releases an annual Trafficking in Persons ("TIP") Report. The report defines trafficking in persons as "umbrella terms for the act of recruiting, harboring, transporting, providing, or obtaining a person for compelled labor or commercial sex acts through the use of force, fraud or coercion." The report separates human trafficking into the following categories: sex trafficking, child sex trafficking, forced labor, bonded labor or debt bondage, involuntary domestic servitude, forced child labor, and unlawful recruitment and use of child soldiers. The report relies on information from the U.S. Embassy or consulate, Sint Maarten government officials, non-government and international organizations and news and academic information. Sint Maarten is considered to be a Tier 2 country out of a Tier 1 to 3 scale. Tier 2 is defined by "countries whose governments do not fully comply with the 2000 Trafficking Victims Protection Act's (TVPA) minimum standards but are making significant efforts to bring themselves into compliance with those standards."

The TIP identifies the following human trafficking trends and risks in Sint Maarten:

- Sint Maarten is a source, transit, and destination for women and children primarily from regional countries and men subjected to sex trafficking and forced labor.
- The TIP report assesses that 15,000 illegal migrant workers in the country are highly vulnerable to forced domestic service and forced labor.
- The Sint Maarten Government does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts on prevention through the creation of the National Reporting Bureau on human trafficking, an awareness campaign, and the launch of a 2013 anti-trafficking hotline.
- The government's lack of standard operating procedures for victim identification hinders its victim identification efforts and its larger anti-trafficking efforts.
- Even though the government initiated new trafficking investigations in 2013, no trafficking offenders were held tried or convicted.

Based on the TIP report's prevent, detect, protect and prosecute human trafficking methodology, the U.S. State Department makes the following recommendations:

- Implement formalized and proactive victim protection measures to help law enforcement identify and assist victims of forced labor and sex trafficking in the sex trade
- Create procedures to physically protect victims using secure transportation;
- Implement an anti-trafficking law to identify and convict guilty offenders;
- Maintain its collaboration with the Netherlands Government on the leading practices in identifying trafficking victims;
- Maintain awareness campaigns about trafficking and human smuggling on Sint Maarten tailored to the general public, public officials, and victims.

Caribbean Financial Action Task Force: Mutual Evaluation Report

Caribbean Financial Action Task Force ("CFATF") released a mutual evaluation report on *Anti-Money Laundering and Combating the Financial of Terrorism* in Sint Maarten in January 2013. CFATF relied on the 2003 Forty Recommendation and the Nine Special Recommendations on Terrorist Financing 2001 from the Financial Action Task force to evaluate and to create the anti-money laundering (AML) and combating the financing of terrorism (CFT) framework. CFATF relied on laws and regulations provided by the Sint government as well as in-person interviews conducted on March 19 through March 30 2012.

Of particular interest to Sint Maarten's anti-money laundering and terrorism financing includes the following:

General risk: Sint Maarten's location, tourism industry, logistical accessibility, mobility of goods and services make the island a good location for illegal activities such as drug trafficking, human trafficking and money laundering (ML). Non-bank financial institutions are vulnerable to money launderers and terrorists as they seek to launder their funds derived from criminal activities. This approach is not in accordance with the Terrorism Financing Convention.

The Central Bank regulates and supervises the financial services sector in Sint Maarten although the anti-money laundering and combating the financing of terrorism regime does not regulate the following activities: financial leasing, financial guarantees and commitments; participation in securities issues and the provision of financial services.

The CFAFT identified the following gaps in legislative requirement: customer due diligence (CDD) during wire transfers; CDD on the suspicion of ML or TF, mandatory customer identification data and continuous due diligence on business relationships.

Sint Maarten cooperates with international partners; however law enforcement entities need to provide better international cooperation with their foreign counterparts. The law enforcement agencies possess a shortage of qualified officers who are trained in ML investigations.

Legal systems and related institutional measure: The Penal Code only applies to a person who commits ML crimes inside Sint Maarten. Sint Maarten's penal code criminalizes most predicate offenses identified by FATF; although it is missing laws on illicit arms trafficking, smuggling and insider trading, market manipulation, and some environmental crimes.

Sint Maarten's legal system includes the seizure and freezing of funds and other assets criminally and administratively to include adhering to terrorism related United Nation Security Council Resolutions (UNSCR).

The Sint Maarten's AML/CFT framework for the financial sector includes National Ordinances and executive decrees, regulations, provisions and guidelines that state that the FIs must at least consider the following risks, and develop and update profiles: (i) customer risk, (ii) products/services risk, (iii) country or geographic risk, and (iv) delivery channels risk.

National and international cooperation: The Attorney General will chair the soon to be installed National Committee on Money Laundering ("CIWG") with representation from the Office for Legislation and Legal Affairs, the Office for Foreign Affairs, the Central Bank, the FIU, the banking and insurance sector. CFAFT was unable to assess the CIWG's effectiveness as it is currently being built.

Notaries: Sint Maarten has five notaries who "provide legal and public faith to private acts and contracts, and oversee the wording of public instruments based on the will of the parties".

After a general agreement is implemented, the notary is responsible for recognizing and authenticating specific documents issued by the notary's office to include information on the status and capacity of a person; issues the

attestations vita; legalize a signature; take an oath; issue certificates of inheritance; incorporate or establish legal persons; and transfer legal ownership of real estate.

AML/CFT strategies and priorities: The two FIU authorities oversee the key aspects of Sint Maarten's strategy to combat money laundering and TF to include: implementing international standards; maintaining a penal regime against drug trafficking, money laundering, terrorism financing and other crimes; having effective law enforcement to serve as a strong deterrent; hiring professional staff to develop and implement AML/CFT policies and measures; promoting a coordination and cooperation among all relevant government agencies; and hosting private sector representatives' meetings to coordinate recent policies and to gain their input on changes to the AML/CFT frameworks.

Responsible Government Ministries: In Sint Maarten, the Justice Minister is responsible for the AML/CFT in addition to his or her oversight on judicial matters and enacting legislation relating to penal procedures and legal persons and arrangements. The Minister of Finance oversees financial legislation and tax legislation, including the budgetary implications of newly proposed AML/CFT legislation. The Department of Legal Affairs and Legislation, within the Ministry of General Affairs is responsible for reviewing the draft legislation of AML/CFT and ensuring that national legislation quality is maintained. The Central Bank supervises the AML/ CFT legal framework compliance by working with company service providers and investment institutions administrators.

The National Committee on Money Laundering ("CIWG"): As of 2012, Sint Maarten is creating a CIWG to advice the government on AML/CFT measures to be compliant with the FATF recommendations. The CIWG will be expected to handle the consultation process concerning review of draft legislation, rules and regulations and to monitor and co-ordinate the agencies' efforts to achieve full compliance with the FATF.

Third Report of Findings: Public Expenditure and Financial Accountability (PEFA) Stocktaking Financial Management Sint Maarten. October 2013

The report is issued by the Board of Financial supervision Curacao and Sint Maarten (College Financieel Toezicht) and provides an overview of the developments the government has made on financial management since the baseline study in 2011. In doing so the report evaluates progress of the financial improvement plans of the government. The study is performed in line with Performance Measurement Framework of the Public Expenditure and Financial Accountability workgroup which is a partnership of, amongst other, the World Bank and the European Commission. The study focusses on 2012 which includes the financial statements 2011, the execution of the 2012 budget and the process of preparing the 2013 budget.

The general conclusion of the report is that Sint Maarten is in general on schedule. Of the 28 indicators defined by the PEFA, six have improved as of the February 2013 stocktaking while one has deteriorated. Sint Maarten is behind schedule on seven of the indicators. The budget process has been improved and the value of the budget has increased. However, the financial administration, salary administration, tax levying and collection as well as public tenders remain a source of concern as no improvements have been made.

The indicators with the lowest score (D) are:

1. Oversight of aggregate financial from other public sector owned entities
2. Orderliness and participation in the annual budget process
3. Effectiveness in collection of tax payments
4. Effectiveness of payroll controls

5. Competition, value for money and control in procurement
6. Timeliness and regularities of accounts reconciliations
7. Spending by education and medical institutions
8. Quality and timeliness financial statements
9. Scope and nature of recommendations by the General Audit Chamber
10. Oversight Parliament on the budget process
11. Oversight Parliament on report of the General Audit Chamber

General Audit Chamber Sint Maarten Financial Compliance 2012 and selected GoSM Financial Statements

The report provides the results of the financial compliance audit on the financial statements of Sint Maarten as well as the operations of the government of Sint Maarten. The General Audit Chamber concludes the following:

1. The financial statements do not comply with the National Financial Accounting Ordinance (CV) and the National Ordinance General Audit Chamber. There is a lack of internal controls that cause deviations between the budget and actual spending as well as material errors in the financial statement.
2. Ministries of Sint Maarten are not 'in control' of their operations. Important improvement plans have not been implemented, amongst other the new Tax Office and the budget process.
3. The financial statements contain insufficient information for users, such as the people of Sint Maarten and the Kingdom of The Netherlands, to form an opinion on the extent to which the government has executed policy.

The General Audit Chamber states that there have been no improvements as compared to the 2011 financial statements and considers objecting against Ministers if there are no improvements in financial year 2013.

Appendix D. - ***Public perception of corruption in Sint Maarten based on open sources***

Prior to the start of the Inquiry, the Inquiry team conducted open source research to determine the public perception of corruption in Sint Maarten and to identify any frequently-mentioned integrity issues that contribute to this public perception. This material is being provided on background perceptions of integrity as reported in the media and provides a basis and context of perception from one of the key channels that shape and inform public perception - the media. Voluminous and persistent reporting in local mainstream media is highly relevant to current public perception of integrity. The Inquiry team did not investigate or inquire into the validity of these media reports nor are we now rendering an opinion on their accuracy on truthfulness, but rather the Inquiry team used the media reporting as another index of perception of public trust along with individual witness interviews. These media reports may not be accurate, valid or truthful.

Sint Maarten is a young country with what appears to be a high level of perceived corruption by the public. Research of media and open sources identify consistent mentions of allegations of bribery, illicit gain and waste involving public officials.[205] Open source reports appear to suggest that there is significant public concern about the Government's capacity and/or commitment to promote the rule of law and equitably uphold justice. Some, distrusting of the GoSM, believe that it does not seek to protect and serve its citizens, but rather enrich and empower a small minority of the country's population. This perception is Government-wide and also includes the Government's major SoCs which are main contributors to the local economy and infrastructure.

On the ground in Sint Maarten, rumors are extensive as the high perception or corruption appears to lead the public to believe that there is a lack of integrity surrounding the majority of the Government's decision-making processes and activities. A theme that frequently appears in press reports is the perceived lack of and delayed prosecution of high ranking officials. The Inquiry team has identified several major cases through the research of open sources that are frequently reported upon and were also discussed frequently in interviews.

Member of Parliament caught on camera allegedly accepting bribe on behalf of former Minister

One consistent mention in media and blog posts is a case involving the former Minister of Justice and a Member of Parliament ("MP"). The former Minister of Justice was accused of owning a brothel during his time as Minister, according to open source press reports.[206] [207] The former Minister commented on the accusations in an interview with a Sint Maarten news outlet in which he reportedly mentioned that he did not own a brothel but did have businesses with others that the former Minister felt did not represent a conflict of interest.[208] [209] Press reports from 2013 described video footage of a Sint Maarten MP allegedly accepting a bribe from the

[205] Special note on media and social media: The Inquiry team did not investigate nor validate the underlying basis for the reports appearing in the public domain nor previous assessments. They are listed as reference material only and their observations, findings, and recommendations are their own and not adopted for purposes of this Report.

[206] *St. Martin News Network,* January 4, 2013

[207] *Id.*

[208] *Id.*

[209] *Id.*

owner of a local adult entertainment club.[210] The article stated that the Dutch newspaper, *Telegraaf,* reported, "based on sources," that the recording captured the MP stating that the former Minister was unable to be there himself, but that the MP was explicitly acting on the former Minister's orders. The article also notes that the bribe could have been for a permit for the club owner to open a new brothel.

In a following investigation, the former Minister was reportedly questioned as a witness by the head of the National Detective Agency (Landsrecherche) and the Chief Prosecutor at the time, according to open source press reports.[211] The same article noted that the MP was collecting a bribe of 15,000 (unspecified currency) from the club's owner. Another media article mentioned that the former Minister was questioned concerning bribes between the MP and the club owner for favors including "permits for prostitutes, business licenses and firearms."[212]

Case developments

The former Minister appeared to have resigned from his position as in May 2013 after "being accused by other MPs of nepotism and corruption," according to a post on an international news website.[213] A May 8, 2014 article indicated that this investigation was going to court and also reported that a Prosecutor mentioned the MP was to be charged with accepting bribes.[214] It is noted that the former Minister was not mentioned in these reports.

Former Minister appears to have links to brothels

The former Minister was identified as an owner of two companies that were listed in the roles of Managing Directors of a third company that reportedly operates a brothel (the "Operator") in Sint Maarten using the license of a fourth company (the "Licensee"), according to an open source press report from November 15, 2012.[215] A March 2013 press report indicated that a Ministry of Justice document containing an overview of Sint Maarten's prostitution policy cited 12 companies as holding a license for a "brothel or a strip club" including the operator and the licensee.[216]

MP investigation

The first mentions in media of the bribery accusations against the MP appear to be in March 2013. A press report from that month that reported on the footage of the MP allegedly accepting a bribe from the club owner indicated that a majority of the Second Chamber of the Dutch Parliament supported an investigation into the apparent allegations that took place in the video.[217] Another article from March 2013 reported that Sint Maarten authorities had conducted searches of the MP and the adult entertainment club where the alleged bribe took place.[218] The same article mentioned that the Chief Prosecutor at the time had issued a statement confirming that during the search of the MP's home a 29-year-old man was arrested on charges of illegal weapon possession. The article also reports that in the video, which shows the MP putting "stacks of money into his pockets" that the club owner had removed from a safe, the MP and the club owner were heard talking about documents needed to secure permits for the club and for dancers.

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[210] *Today,* March 8, 2013
[211] *Today,* March 19, 2013
[212] *St. Martin News Network,* April 25, 2013
[213] *The Economist,* May 30 2013
[214] *The Daily Herald,* May 8, 2014
[215] *Today,* November 15, 2012
[216] *Today,* March 13, 2013
[217] *West Indies News Network,* March 8, 2013
[218] *Fox News*, March 9, 2013

Although the MP was reported to be under investigation, the MP's legal advisor was notified that it was not necessary for the MP to report to the Prosecutor's office for questioning, according to a March 2013 press report.[219] Sint Maarten's acting Attorney General, according to an April 2013 article, did confirm that the MP had been questioned by the National Detectives, according to an April 25, 2013 press report.[220] This article also noted that the alleged bribe from the club owner was in the amount of USD 15,000, which the club owner reportedly told his lawyer represented repayment of a loan from the MP. The press report also noted that the club owner told his lawyer that United Peoples Party leader and former Minister, had asked the club owner to tape the MP when the club owner was repaying the MP so that the UPP leader could use the tape as blackmail to "break the current coalition government." The MP was arrested several months later on counts of bribery, money laundering, and taking part in an association that aimed to commit criminal offenses, according to a January 2014 press report.[221] The same article noted that the MP had voluntarily turned himself in. A subsequent article from January 2014 reported that the MP had been released from pretrial detention, but remained a suspect in the ongoing investigation.[222] Several press reports since noted the delay with this investigation, and one article from May 2014 reported the delay was due to the absence of the attorneys of the club owner and the MP.[223]

Public sentiment towards the MP and former Minister

In an April 1, 2013 letter to the editor published in a local newspaper, the author, identified as a "St. Maarten resident," called for the former Minister to step down from his role in the interest of good governance after the allegations of bribery and corruption and also called for an independent investigation into the former Minister.[224] The author also indicated that the MP should step down from Parliament. The letter stated that the people of Sint Maarten are "ashamed and embarrassed of what is happening on our island" and also that they can't hold a peaceful demonstration on the matter, because it would require a permit to be approved by the former Minister.

Additional articles identified through research of open sources provided opinions from the public expressing doubt and anger. A comment made by a reader of one article mentioning the alleged bribery stated:

> *"Is this yet another criminal investigation into public officials that gets stuck in the mud?...Why is [the MP] and [former Minister] not locked up while this investigation takes place? Why don't we still have an outcome into the investigation into [another former Minister] for vote buying?"*[225]

A letter addressed to the Chairman of Sint Maarten Parliament at the time, published on March 17, 2013 in a Sint Maarten news outlet states the following:

> "*The St. Maarten society has been shocked, by a most graphic video on the internet in which [the MP] is seen receiving money from [the Club owner]... This is the point of extreme concern, as the entire St. Maarten society is once again seen as an island filled with nothing but corrupt politicians and civil servants, nepotism, gangsters and a nonfunctioning governmental system, putting the island in a negative light worldwide...* [Chairman]*, parliament owes it to the public to shed light on this case by*

[219] *The Daily Herald,* March 22, 2013
[220] *St. Martin News Network,* April 25, 2013
[221] *St. Martin News Network*, January 20, 2014
[222] *St. Maarten Island Time.com*, January 30, 2014
[223] *The Daily Herald,* May 8, 2014
[224] *The Daily Herald,* April 1, 2013
[225] *Today,* March 10, 2013

calling a public session, by bringing and questioning [the MP, the Club owner, the former Minister, and chief of immigration], and others in a public session."[226]

It is noted that the MP reportedly participated in a meeting on integrity in June 2014 during the Inter-Parliamentary Kingdom Consultation ("IPKO") in The Hague, according to reports made to the Inquiry team. Many interviewees expressed concern to the Inquiry team that following the video showing the MP allegedly accepting a bribe from the owner of a brothel, the Parliamentarian was still allowed to attend this meeting on integrity.

Minister involved in sale of long-lease land

Local media, blog posts, and other open sources detail a case regarding accusations against the former Minister of Labor and Health, and her husband, for allegedly selling long lease land owned by the government for a profit of USD 3 million. A December 15, 2010 article reported that the Sint Maarten Minister of Labor and Health at the time and her husband proceeded to "manipulate the legal terms of the lease by selling the economic value of the property for a whopping" USD 3 million and also noted that the terms of the lease included that the lessee is not authorized to transfer or sub-lease the rights of the long lease land.[227]

A December 30, 2010 article added that on the date of the article, the former Minister had submitted a letter to the Prime Minister of Sint Maarten stating that the former Minister would resign her position effective January 1, 2011, allegedly due to the scandal involving the sale of the parcel of government land.[228] This article also reported the Prime Minister had fired the former Minister, with an undated letter informing her that she would no longer be Minister as of January 1, 2011. The article reported the buyer to be an entity which had been established three days prior to the sale of land. The previously mentioned article from December 15, 2010 included a copy of the former Minister's Deed of Land Transfer to the buyer, the entity, which identifies the former Minister and her husband as selling the property to the Managing Director of the entity for USD 3 million.[229] This article noted that the Prosecutor's Office had received some documentation, but had yet to make a decision on whether or not to investigate the matter further.

Public sentiment

On December 9, 2010, a Sint Maarten news outlet published a letter from a reader addressed to the President of the Parliament of Sint Maarten at the time, in which the author called for an open demand for the President to start an immediate parliamentary investigation into the sale of the long-lease land by the former Minister.[230] The letter states that "after hearing the out-pour of heart-wrenching cries of the people-, with a sense of the highest urgency-, our St. Martin grassroots movement-, hereby makes a demand on you-, to immediately open a parliamentary investigation on all the circumstances surrounding the reported sale of Government long-lease land-, by [the former Minister and her husband]."

Current status

A December 11, 2011 article in a Sint Maarten newspaper noted that a criminal investigation into the former Minister is still "high on the Public Prosecutor's Office's list," according to one Prosecutor, who was also quoted as saying "there are sufficient grounds for it, but we are still in the situation we were in a year ago – a lack of

[226] *St. Maarten Island Time.com,* March 17, 2013
[227] *St. Martin News Network,* December 15, 2010
[228] *St. Martin News Network,* December 20, 2010
[229] *Id.*
[230] *St. Martin News Network*, December 9, 2010

capacity to investigate."[231] The same newspaper also reported on September 6, 2011 that the investigation was pending and quoted the then-Chief Prosecutor as saying, "we must have the capacity for it…but we do intend to look into this case."[232]

A June 23, 2014 news article reported that former Minister announced she will run as a United People's ("UP") party candidate in the August Parliamentary Election.[233] The article noted that the former Minister's husband announced her bid on Facebook, writing that it was "Time to get her back into government where she belongs." The article also noted that the former Minister had been out of politics since resigning in 2010 over concerns of her sale of land government leased land on Pond Island. The article notes that no charges have been brought against her and that neither she nor her husband has been questioned by the Prosecutor's Office. Additionally, the article states "the sale of economic rights is not illegal or prohibited."

According to a July 4, 2014 article in a Sint Maarten newspaper, the former Minister had petitioned the court to order the Public Prosecutor's Office to end the uncertainty of a criminal investigation into the sale of the long lease land.[234] Per the same article, Sint Maarten's current Chief Prosecutor stated in an April 2014 interview, that no decision about prosecuting the case had been taken and that he is "not prepared yet to say that we'll close the book on it" and cited a shortage of detectives with "financial expertise" at the National Detective Agency as a reason for not prosecuting the allegations.

Alleged vote buying

Local media, blog posts, and other open sources provided details regarding a case in which the United People's party allegedly purchased votes for the September 2010 election.

Misunderstanding of legality of vote buying

Allegations of vote buying surfaced just prior to Sint Maarten's September 17, 2010 election. A September 15, 2010 article published in a Sint Maarten news outlet reported that a United People's Party ("UP") candidate stated she believed that voters should not sell their votes.[235] The same article stated that the UP leader had previously spoken openly about the party's leader who had engaged in vote buying and that she supported the soon to be implemented law on prohibiting vote buying. When asked, the same article stated that the party's leader "did not deny if people are asking him for monies or things in exchange for their votes."

At the time of the 2010 election, sources conflicted regarding the legality of vote buying. A February 12, 2014 Sint Maarten newspaper article stated that in 2010, the Chairman of the Sint Maarten Corporate Governance Council at the time, explained that there was not a law that prohibited buying or selling votes. The article then explained that "Article 132 of the Antillean penal code, like article 126 of the Dutch penal code states the following. He who on the occasion of a by legal decree called election through gift or promise bribes someone to exercise his or someone else's voting right in a certain way, or to not exercise this right, will be punished with a maximum prison sentence of six months or a fine of the third category.'"[236]

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[231] *Today,* December 11, 2011
[232] *Today*, September 6, 2011
[233] *The Daily Herald,* June 23, 2014
[234] *Today,* July 4, 2014
[235] *St. Martin News Network,* September 15, 2010
[236] *Today,* February 12, 2014

Dutch Member of Parliament inquiries

On September 21, 2010, a Dutch Labor Party (*Partij van de Arbeid* or "PvdA") Member of Parliament, submitted a list of questions for the Dutch Secretary of the Interior and Kingdom Relations regarding possible vote buying, including the exchange of votes for computers, payment of school fees, rent, electricity bills, refrigerators and building blocks.[237]

In the same document, the Dutch Labor Party MP mentioned two articles which alleged improper conduct—one in the Curacao newspaper *Antilliaans Dagblad* (published on September 17, 2010) and the other in the Dutch newspaper *NRC Handelsblad* (published on September 18, 2010). Research was unable to identify the original articles mentioned by Recourt. However, a September 20, 2010 news article in a Sint Maarten news outlet summarizes these articles, referring to "reports that the UP Party [United People's Party] 'bought votes on a large scale.'"[238] In the same summary of the two articles, it states that the former Minister of Justice "said that [the UP party leader] had restored the old methods of his grandfather…by buying votes."

A November 4, 2010 Letter to the Editor published in a Sint Maarten news outlet encouraged the Sint Maarten Minister of Justice to answer the Dutch Labor Party MP's questions: "The current Minister of Justice…should indicate what his views are now since he has now joined the UP/DP government. Are they the same? Will he pursue justice and investigate his own claims? Are we certain that our current Minister of Justice will live up to the oath taken to serve and protect our country when he has now teamed UP with the same questionable UP party?"[239]

Internal police investigation of vote buying

A November 2, 2010 article in a Sint Maarten news outlet reported that the Sint Maarten Police Force began an internal investigation on September 21, 2010 after the Dutch Labor Party MP inquired about possible misconduct and that the investigation was completed on February 14, 2013.[240] [241]

A February 12, 2014 article in a Sint Maarten news outlet reported that five suspects in the vote-rigging case were summoned to court for a hearing on February 17, 2014.[242] The same article noted that four police officers were charged with accepting or attempting to accept 300 (currency unspecified) for their vote and one UP representative would be charged for paying the aforementioned police officers. At the February 17, 2014 hearing, the judge "ordered the Prosecutor's Office to reopen the investigations where the involvement of UP party leadership was concerned" due to "contradictory statements where UP's involvement in the alleged fraud was concerned." In the same article, the judge summarized that "the Prosecutor's Office had stated it could not be established that the UP party had bribed or attempted to bribe persons." The case is due to resume on August 4, 2014.

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[237] "Questions from the Member Recourt (PvdA) to the Secretary of the Interior and Kingdom Relations on the massive vote buying in elections in St. Maarten," Government of the Netherlands, submitted on 21 September 2010.

[238] *The Daily Herald,* September 20, 2010.

[239] *St. Martin News Network,* November 4, 2010

[240] *The Daily Herald,* November 2, 2010

[241] *The Daily Herald,* April 15, 2014

[242] *The Daily Herald,* February 12, 2014

Public sentiment remains skeptical

The public appears to remain skeptical of this case; several online commenters voiced their viewpoint on a local news article:[243]

- *"Nothing will come of this case I am so sick of all those politician just put all of them in a barrel and light them a fire when we the people suffering they are enjoying life salary get less and cost of liveing sky high I am not voting for none so they better do not come cross me";*
- *"The entire court case is only a reflection of the cancer within the political culture of this island. I am ashamed";*
- *"That is so true very shameful what example are they showing we young youth of the future there is no example there but a bunch of wrong doings."*[244]

Death of a defendant

A June 14, 2014 article in a Caribbean news outlet stated that one of the defendants died unexpectedly after a brief illness from Thursday, July 12 to Friday, July 13.[245] According to the same article, Sint Maarten's Police Chief visited Webster's family, assuring them that "her death was of natural causes, and there is absolutely no link to the [vote buying] court case that is currently ongoing." One blogger expressed skepticism, stating that "they're saying massive heart attack, but HOW do people come up with all these Medical diagnosis when people die when there are NO AUTOPSIES in St. Maarten. Tell me about the autopsy results then, tell me the cause in death."[246]

Former Minister of Finance accused of fraud

Local media, blog posts, and other open sources detail a case involving the former Minister of Finance.

Whistleblower allegations

The investigation reportedly began in April 2011 after the former Head of Finance was fired by the United People's Party/Democratic Party ("UP/DP") coalition government, according to local Sint Maarten media articles published in April 2011 and December 2012.[247] A December 17, 2012 article states that that "the UP/DP coalition fired [the Head of Finance] when he turned over information to the Prosecutor's office that incriminated several persons including former commissioners."[248] In addition to submitting "a large number of documents" illustrating abuse of government funds by "top civil servants and former commissioner [sic]," Roorda also reportedly filed a complaint at the Prosecutor's office, per Sint Maarten news reports in December 2012 and January 2013.[249]

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[243] *St. Maarten Island Time.com,* February 17, 2014
[244] *Id.*
[245] *BearingPoint,* June 14, 2014
[246] *SXMGovernment.com St. Maarten News,* June 13, 2014
[247] *St. Martin News Network*, December 17, 2012; *Today*, December 18, 2012; *Today*, April 3, 2011
[248] *St. Martin News Network*, December 17, 2012
[249] *Today*, December 18, 2012; *St. Martin News Network*, January 29, 2013

Investigation of fraudulent transactions

According to media reports the former Minister of Finance was "suspected of committing fraud when he paid Global Advisory Services double for services the company provided to the Government of St. Maarten."[250] Global Advisory Services ("GAS") was reportedly involved in recruiting personnel for various Sint Maarten government agencies, including the Tax Department, between 2009 and 2011, per open source press reports in December 2012.[251] During this time, GAS' owner allegedly submitted falsified bills on behalf of GAS and "[the Finance Minister] allegedly made it possible for [the GAS owner] to favour himself with money from the government coffers," according to an April 25, 2014 article in a Sint Maarten news publication.[252] In facilitating these fraudulent transactions, the former Finance Minister allegedly violated the Accountability Ordinance (Comptabiliteitslandsverordening) in what "constitutes misconduct as a civil servant in connection with the payment of falsified bills" and cost the GoSM ANG 233,054, per the same source.[253]

According to December 2012 news reports, the owner of GAS is also a former head of Sint Maarten's Finance Department as well as a member of the board, co-manager, and financial administrator for Windward Islands Airways.[254]

Case developments

Police executed searches of the owner of GAS' office in Sint Maarten and in two offices in Curacao on August 14, 2012 before the Special Investigation Unit arrested him on December 3, 2012 and placed him under pretrial detention, according to Sint Maarten news reports from December 2012 and April 2014.[255] The former finance Minister was arrested and questioned by Sint Maarten police days later on December 17, 2012 and released on December 24, 2012, according to December 2012 news reports.[256]

According to multiple local news sources, the National Detectives completed their investigation on June 23, 201, and, on April 24, 2014, both the former Minister of Finance and GAS' owner were formally charged with fraud, embezzlement, forgery and money-laundering in a preliminary hearing (also known as "regiezitting") and are scheduled to go to trial on October 29, 2014, according to an April 2014 press report.[257] [258]

A January 2014 article noted that, as of the date of publication, the former Minister of Finance had been collecting pension payments since he left office, including the period during which he was under formal investigation, and had, as of January 2014, received more than ANG 202,000.[259]

Public sentiment on effectiveness of justice system

In covering the former Minister of Finance's pre-trial detention hearing, a local media outlet noted on December 28, 2012 that "irregularities [...] were observed during the pre-trial detention hearing" remarking

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[250] *St. Martin News Network*, December 17, 2012

[251] *Today*, December 5, 2012; *St. Martin News Network*, December 17, 2012

[252] *The Daily Herald*, April 25, 2014

[253] It is noted that media sources provide conflicting figures for the amount of money defrauded. An April 25, 2014 *The Daily Herald* article identifies the exact amount as ANG 233,054. However, an April 22, 2013 *St. Martin News Network* article and an April 23, 2014 *AVS News Online.com* article identifies the amount as "over [ANG] 235,000."

[254] *St. Martin News Network*, December 17, 2012; *The Daily Herald,* December 5, 2012; *St. Martin News Network*, December 28, 2012

[255] *Today*, December 5, 2012; *St. Martin News Network*, April 22, 2014

[256] *Today*, December 18, 2012; *West Indies News Network*, December 19, 2012

[257] *The Daily Herald*, April 25, 2014; *AVSNewsOnline.com,* April 23, 2014

[258] *The Daily Herald*, April 25, 2014

[259] *Today*, January 16, 2014

that the former Finance Minister "was given class justice and even wondered if this was because his father in law is the Minister of Justice on St. Maarten."[260] In addition, a blog post remarked on the former Minister of Finance's arrest, stating that "the powers that may be, swept [the former Finance Minister] in undercover, while they paraded the Black prisoners down the alley. The media is upset, because justice is supposed to be equal. But when Minister of Justice…is daddy in law, things work out differently."[261]

Commenting on the pace at which the case was being handled, one blog post stated that "as a top Finance official for years, [the former Minister of Finance] has a lot of dirt on a lot of people, and at the time his father in law was…Minister of Justice. I think the St Maarten judicial system has changed its mind when it comes to [the former Finance Minister], not due to lack of evidence, but because when they uncover the can of worms, they all will be exposed. Is [the former Finance Minister] going to be tried, or is the St Maartener supposed to forget the arrest ever happened? Thanks to the internet, everything posted lives in a virtual eternity. We are waiting for a lot of politicians who are under investigation, but they're stalling."[262]

Tourism Bureau scandal

Local media, blog posts, and other open sources detail a case naming two employees of the Sint Maarten Tourist Bureau who were suspended from their positions due to allegations of misuse of funds.

Tourism Bureau employees accused of misuse of public funds

On November 5, 2010, the Director of Tourism and Head of Marketing for the Tourist Board (the "Suspects") were suspended without notice from the Sint Maarten Tourist Bureau, according to November 2010 article.[263] The Minister of TEZVT at the time signed the orders, which were subsequently hand delivered to the Suspects by the Acting Secretary General ("SG") of the Ministry of TEZVT and the Ministry's Controller, according to a November 6, 2010 article.[264] The article states that the Suspects were ordered to relinquish their keys to the office and leave the premises. The two reportedly complied after "what eyewitnesses described as a 'loud exchange of words,'" per the same source. In remarks to the press, one of the Suspects was quoted as saying that she was "shocked, upset, and will be seeking legal counsel," according to the same article.

The former Minister of TEZVT described his suspension orders as part of "an internal government investigation" that did not imply that either of the Suspects were guilty of any wrongdoing and is quoted as saying that the suspensions were not a "finger-pointing exercise, but a due diligence and legal process," according to November 2010 articles.[265] A news report quotes the acting SG as having added that the suspensions were "only a removal from function so that the investigation can take its due course and no tampering of information occurs. That's all it is. There is no punishment attached. They retain all their benefits."[266]

Lifting of suspensions

The former Minister of TEZVT later rescinded the suspensions of the Suspects approximately one month later on December 2, 2010 due to insufficient evidence brought by the government, but noted that the government's investigation would continue and that disciplinary measures could be imposed if they were deemed necessary,

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[260] *St. Martin News Network*, December 28, 2012
[261] *St. Maarten News*, December 20, 2012
[262] *SXM Police (sxmpolice.wordpress.com)*, September 24, 2013, updated on October 1, 2013
[263] *Travel Weekly*, November 9, 2010
[264] *The Daily Herald*, November 6, 2010
[265] *Travel Weekly*, November 9, 2010; *The Daily Herald*, November 6, 2010
[266] *Id.*

according to an October 2013 article.[267] The former Minister of TEZVT's decision to reverse the suspensions happened hours before the Suspects were scheduled to initiate a suit against the government to have their suspensions reversed, per December 2010 and April 2011 news reports.[268] In addition to lifting the suspensions, the former Minister of TEZVT also offered to compensate the Suspects ANG 1,500 each for injunction procedures the two had initiated against the government in administrative court, according to a December 2010 article.[269]

The complaint and the allegations

Approximately three weeks after the Suspects' suspensions, on November 25, 2010, the former Head of Finance filed a criminal complaint against the two Suspects, as reported by news and blog sources in April 2011 and October 2013.[270] Elaborating on the details of the case, the former Minister of TEZVT noted that "discrepancies were uncovered by the Finance Department prior to September 2010 and were reported to the then finance commissioner. The process was left to be completed," according to a November 6, 2010 article.[271] According to an October 24, 2013 article, the details surrounding the aforementioned discrepancies have never been clarified publicly and officially by authorities, although speculation "pointed to financial discrepancies found with funds allotted to the Tourism Bureau."[272]

On November 5, 2010, local media claimed in an article that the investigation was initiated by then-Minister of Finance and that there were allegations that one of the Suspects had charged her travel expenses to a New York tourist office while simultaneously receiving travel allowances from the GoSM for her trips to represent or promote the island. The article also suggested that this Suspect may be "somehow attached to a company…that is contracted by the tourist office," but noted that it was not possible to determine if the Suspect was a shareholder of the company based on a review of Chamber of Commerce records.[273]

However, according to an opinion piece that was published on June 13, 2011, the complaints filed by the Head of Finance allege that the Suspects as well as the former Tourism Commissioner had embezzled government funds by receiving approximately USD 300 a day for government-related travel expenses when in fact they had not left the island.[274]

A blog piece posted on April 6, 2011, citing information from an unidentified "inside source," provided a slightly different version of the allegations, stating that

"In October 2010, someone allegedly ran to [the Head of Finance], to snitch out [the Suspects]. Evidently, they were double dipping, or taking funds (up to $400) per day of their government stipends. [The Head of Finance], according to an inside source, promptly turned the documents over to the guy who hired him…[who] could not turn over the documents to the prosecutor, because it also held incriminating evidence about…the National Alliance [party] number 2 guy. [The individual who hired the Head of Finance], of course was still on the National Alliance slate, after the NA had "accidently" given him a 'No Confidence' vote."[275]

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[267] *The Daily Herald*, October 24, 2013
[268] *St. Martin News Network,* December 2, 2010; *The Daily Herald*, April 4, 2011
[269] *Id.*
[270] *The Daily Herald*, October 24, 2013; *SXM Police (sxmpolice.wordpress.com),* October 23, 2013; *Dutch Caribbean Legal Portal*, April 12, 2011
[271] *The Daily Herald*, November 6, 2010
[272] *The Daily Herald*, October 24, 2013
[273] *St. Martin News Network*, November 5, 2010
[274] *Today*, June 13, 2011
[275] *SXM Politico*, April 6, 2011

Status of the investigation

Nearly three years after the suspensions and criminal complaint filings, Sint Maarten's acting Attorney General ("AG") stated that as of October 2013, the Federal Detectives' investigation of the Suspects had "not concluded, but it is almost concluded," according to an October 2013 article.[276]

On October 22, 2013, the attorney representing one of the Suspects stated that he had not been notified of any criminal charges to be brought against [his client] and that he would be submitting a request to the judge of instruction to close the investigation being conducted on [his client] by the Prosecutor, according to an October 24, 2013 news article and an October 23, 2013 blog post.[277] Acknowledging this issue, the acting AG stated that the law provides the Suspects with the option to ask the court to stop the investigation and that the court would decide whether or not to permit the investigation to continue, per the same sources. The article and the blog post also remarked that neither of the Suspects had, as of October 2013, "been given a proper explanation about why they were suspended" and that "in almost three years, the Prosecutor's Office has not provided any significant information regarding the investigation."

According to an Editor's note responding to a Reader's Opinion published in an online Sint Maarten news source on June 22, 2014, one of the accused individuals remains a suspect in the Prosecutors Office's investigation as of June 2014.[278] However, the Reader's Opinion notes that the reader, a lawyer for the Suspect, had corresponded with the Public Prosecutor who "did NOT confirm" that his client was suspect and noted that the Public Prosecutor "can and will not say anything about" his client's position.

One of the Suspects quit her position as the Director of the Tourist Bureau in June 2011 to become the Managing Director of the Princess Juliana International Airport Operating Company ("PJIAE), according to June 2011 and June 2012 news reports.[279]

Counter-allegations

According to a National Alliance party press release published by a local news outlet on March 19, 2014, the National Alliance accused the former Minister of TEZVT and United People's ("UP") party leader of building "a track record of side lining and politically assaulting locals in St. Maarten" citing his suspension of the Suspects as an act of "political assault."[280] The press release goes on to state that "it was only after the Suspects fought back and obtained lawyers to write government, that they were allowed to return to their offices, but the former [Minister of TEZVT] never dropped the charges against these local St. Maarteners." Moreover, the press release accuses the former Minister of TEZVT and the UP's party leader of waging a public assault on the sister of one of the Suspects by driving "her out of her top executive position at the Harbour Group of Companies."

Responding to media questions in April 2011, one of the Suspects remarked that the complaint filed against her was "unfair, unjust and goes beyond character assassination, according to a republished article from April 2011."[281] The Suspect noted that she was given no due process as she was not provided the opportunity to respond to the accusations, per the same source. The article also notes that, in her statements, the Suspect implied that the Head of Finance had failed to follow his proper chain of command in filing the complaint.

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[276] *The Daily Herald*, October 24, 2013
[277] *The Daily Herald*, October 24, 2013; *SXM Police (sxmpolice.wordpress.com),* October 23, 2013
[278] *Today*, June 22, 2014
[279] *Today*, June 13, 2011; *St. Martin News Network*, June 29, 2012
[280] *St. Martin News Network*, March 19, 2014
[281] *Dutch Caribbean Legal Portal*, April 11, 2011

Public sentiment

A June 25, 2014 blog post criticized the alleged disappearance of some media articles on the subject, stating the following

> "The Tourism Bureau Scandal, like the [vote buying case] has been going on for a few years. Now that they are once again questioning [the former Tourism Commissioner and the Suspects] - the question is why has all '*The Daily Herald*'s' online documentation of the event been removed? Do you pay a fee to *The Daily Herald* in order to get them to remove incriminating stories about you online? Well considering I save and archive all court cases, government cases online – I can bring you all original details and documents from when this was first triggered by [the Head of Finance] approx. three years ago."[282]

National Security Service investigation

Investigation of irregularities at the VDSM

Signs of financial irregularities at the National Security Service Sint Maarten ("VDSM") began to surface in April 2013, according to a September 12, 2013 article.[283] Responding to these issues, on July 8, 2013, the Prime Minister ("PM") announced that the Stichting Overheidsaccountantsbureau ("SOAB") had initiated an investigation of the VDSM's books to determine "if there was inappropriate or misuse of funds," according to a July 2013 article published by a local media outlet.[284] The PM also placed the head of the VDSM, "on suspension the moment [she] initiated the investigation," per the same source.

In the July 2013 article, the media outlet claimed to have learned from "well place sources" that "the VDSM was given monies as their budget for their operations even though the oversight committee was not functioning" and that the VDSM has made a request to the Ministry of Finance for additional funding "even though they [VDSM] did not provide government with their financials on the monies they were granted prior."[285]

According to June 2014 article, the PM later acknowledged that a "significant amount of money" from the VDSM budget was "unaccounted for," but "never confirmed the exact amount."[286] The article noted that "stories floated around suggested that $800,000 [currency unspecified] from the VDSM-budget had disappeared." A July 2013 article noted that "certain people are saying that the VDSM embezzled between [ANG] 100,000.00 to [ANG] 500,000.00 but that is yet to be proven."[287]

A September 2013 article stated that SOAB's investigation concluded that "there were irregularities with regard to money that should have been used for operations" and recommended that the head of VDSM have the opportunity "to substantiate or give elucidations" on SOAB's findings.[288] However, as of June 2014, "the results of this investigation have never been made public," per the June 2014 article.[289]

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[282] *SXMGovernment.com St. Maarten News,* June 5, 2014
[283] *Today,* September 12, 2013
[284] *St. Martin News Network*, July 16, 2013
[285] *Id.*
[286] *Today,* June 1, 2014
[287] *St. Martin News Network*, July 16, 2013
[288] *Today,* September 12, 2013
[289] *Today,* June 1, 2014

Expenditures made by head of VDSM

A December 2013 article noted that some of head of VDSM's expenditures were being contested by SOAB in its investigation of "possible financial misappropriation within the VDSM" and implied that these issues resulted in Richardson's eventual suspension. The article states that Richardson had claimed USD 32,000 in hotel expenses even though hotel bills revealed that his expenditures amounted to only USD 14,000.[290]

Local news reports state that VDSM's head and his family had rented an apartment at the Tamarind Hotel for USD 2,700 per month and accumulated USD 14,000 in hotel expenses during his stay over four months between May 25, 2012 and September 25, 2012.[291] These expenses were invoiced to the Staff Bureau of General Affairs and were borne by the VDSM, per the same sources. According to the December 2013 article, the VDSM head reportedly claimed that these expenses were accrued when he went into hiding after being threatened by "a murderous drug gang" in connection with a large criminal investigation.[292] The article also notes that the head of the VDSM is permitted to declare expenses made for his personal safety.

However, previously noted articles as well as a December 2013 media article questioned the connection between the hotel expenses and Richardson's need to go into hiding.[293] The December 2013 article states that "the claim [...] that [the head of VDSM] went to ground due to threats linked to the [an unrelated trial], do not make any sense at all. All suspects in this case were arrested in November 2011, and the case went to trial in October of the following year. [The head of VDSM] and the VDSM were not connected to the case in an investigative capacity or as a witness." A press report also noted that "the choice of location for the hideout was called 'remarkable,' because the hotel is hardly secured and not secluded."[294]

Separately, the December 2013 articles also remarked that the VDSM head's family had "stayed in [Tamarind's] largest and best unit," "made a big mess in the luxury apartment," and "had the airco on all day and [...] left their windows open," causing the family to accumulate close to USD 400 in electricity expenses per month.[295]

Allegations concerning the PM

According to a July 16, 2013 article, the PM called for an investigation of VDSM books in response to VDSM's investigation of the Government Building on Pond Island, which the PM reportedly has a personal interest in.[296] The article states that "what the Prime Minister did is turn the focus on the VDSM in order to take the focus away from her and the Government Administration Building that falls directly under her and her son in law being the representative of the financiers."

The July 2013 article claims that the VDSM was "particularly concerned" that the PM was in charge of the completion of the Government Administration Building while her son-in-law was simultaneously representing the financiers of the project. The article also notes that the PM had resisted previous attempts by other Ministers to take over the Government Building project "since her son in law was involved in the project and that in itself placed the [the PM] in an uncomfortable position."

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[290] *The Daily Herald,* December 9, 2013
[291] *Id.*
[292] *Id.*
[293] *Id.*
[294] *Id.*
[295] *Id.*
[296] *St. Martin News Network*, July 16, 2013

Recent developments

A January 30, 2014 article reported that the PM confirmed that she had submitted SOAB's investigation report to the Prosecutor's Office in December 2013 but had not heard from the Prosecutor's Office, nothing that "it's that office that has to take a decision as to how they will move forward." The article also stated that, as of the date of publication, the head of VDSM was still under suspension and that he "was moving to court to challenge the decision of government."[297]

A June 2014 article noted that the head of VDSM "will definitely not return to his position" as the head of the VDSM and that a vacancy ad for the position had been published on May 30, 2014.[298]

Separately, a November 2013 article noted that a closed door Central Committee session of the House of Parliament was scheduled to be held on November 06, 2013 to discuss "recent developments related to the VDSM including the suspension of the Head of the agency," but did not provide further details.[299]

[297] *St. Martin News Network,* January 30, 2014
[298] *Today,* June 1, 2014
[299] *St. Martin Island Time.com,* November 4, 2013

Appendix E. - *Code of Conduct framework gap analysis aligned to global standards*

The Sint Maarten Government Code of Conduct was benchmarked against the Council of Europe Model Code of Conduct in order to identify gaps within the Sint Maarten Government code. The Model Code of Conduct is an industry leading standard that provides guidance to establish a Code of Conduct for Public Officials that includes recommended topics of conflicts of interest and reporting requirements, political activity, gifts, reaction to improper offers, duties on leaving public service. [300]

Leading program element[301]	Sint Maarten Government Code of Conduct	Council of Europe Model Code of Conduct	Gaps
Personal responsibility	Performing one's job: • You shall fulfil the obligations resulting from your office in a conscientious and diligent manner; • You are obliged to dedicate yourself to the affairs of Government during the entire work period prescribed for you. You may not leave your work area during this time, without a valid reason; • During the prescribed work period, you are not allowed to occupy yourself with serving the	Article 5 1. The public official has the duty to serve loyally the lawfully constituted national, local or regional authority. 2. The public official is expected to be honest, impartial and efficient and to perform his or her duties to the best of his or her ability with skill, fairness and understanding, having regard only for the public interest and the relevant circumstances of the case. 3. The public official should be courteous both in his or her relations	The GoSM's Code of Conduct does not appear to explicitly state that public officials have the duty to serve loyally the lawfully constituted authority that is the GoSM. The GoSM's Code of Conduct appears to lack expectations that public officials are expected to be honest, impartial and efficient and to perform his or her duties to the best of his or her ability with skill, fairness and understanding, having regard only for the public interest and the relevant circumstances of the case. The GoSM's Code of Conduct lacks statements to ensure that public officials should be courteous both in his or her relations with the citizens he or she

[300] Model Code of Conduct for Public Officials, Council of Europe
[301] This column reflects a summary of leading anti-corruption practices.

Leading program element[301]	Sint Maarten Government Code of Conduct	Council of Europe Model Code of Conduct	Gaps
	private interests of yourself or of third parties; • You are obliged to accept a study assignment given to you as well as a business trip; • If you are prevented by illness or another reason from executing your task, you are obliged to inform your supervisor of this on a timely basis, by reasoned motivation. Additional job: • You are obliged to inform your department head in the event of performing side jobs. • No permission shall be given to accept a side job or to perform additional functions, if this may harm the performance of one's duties, is not in agreement with the standing of the office. Uniforms: • You are obliged to wear your	with the citizens he or she serves, as well as in his or her relations with his or her superiors, colleagues and subordinate staff. Article 12 – Reporting 1. The public official who believes he or she is being required to act in a way which is unlawful, improper or unethical, which involves maladministration, or which is otherwise inconsistent with this Code, should report the matter in accordance with the law. 2. The public official should, in accordance with the law, report to the competent authorities if he or she becomes aware of breaches of this Code by other public officials. 3. The public official who has reported any of the above in accordance with the law and believes that the response does not meet his or her concern may report the matter in writing to the relevant head of the public service.	serves, as well as in his or her relations with his or her superiors, colleagues and subordinate staff. The GoSM's Code of Conduct does not mention that public officials who believe he or she is being required to act in a way which is unlawful, improper or unethical, which involves maladministration, or which is otherwise inconsistent with this Code, should report the matter in accordance with the law. The GoSM's Code of Conduct does not require public officials to, in accordance with the law, report to the competent authorities if he or she becomes aware of breaches of this Code by other public officials. The GoSM's Code of Conduct does not have language to ensure public officials whom have reported breaches of the code in accordance with the law and believe that the response does not meet his or her concern should report the matter in writing to the relevant head of the public service. The GoSM's Code of Conduct does not include language to support that if a matter cannot be resolved by the procedures and appeals set out in the legislation on the public service on a basis acceptable to the public official concerned, the public official should carry out the lawful instructions he or she has been given.

Leading program element[301]	Sint Maarten Government Code of Conduct	Council of Europe Model Code of Conduct	Gaps
	uniform and badges if this has been prescribed by the competent authority. Business trips: • After every business trip, you are obliged to account for the relevant costs incurred and to submit all receipts to the competent authority. Reaction to dishonest issues: • You shall discuss your doubts as regards the integrity of colleagues, with them to the extent possible. If this is not possible or if this does not lead to a satisfactory result, then you shall inform the supervisor or if there is one, the trusted representative. • You, yourself, are also accountable for your actions and expressions. Supervisor: • As a supervisor you must lead by example.	4. Where a matter cannot be resolved by the procedures and appeals set out in the legislation on the public service on a basis acceptable to the public official concerned, the public official should carry out the lawful instructions he or she has been given. 5. The public official should report to the competent authorities any evidence, allegation or suspicion of unlawful or criminal activity relating to the public service coming to his or her knowledge in the course of, or arising from, his or her employment. The investigation of the reported facts shall be carried out by the competent authorities. 6. The public administration should ensure that no prejudice is caused to a public official who reports any of the above on reasonable grounds and in good faith. Article 21 – Misuse of official position 1. The public official should not offer or give any advantage in any way connected with his or her position as a public	The GoSM's Code of Conduct does not mention that public officials should report to the competent authorities any evidence, allegation or suspicion of unlawful or criminal activity relating to the public service coming to his or her knowledge in the course of, or arising from, his or her employment. The GoSM's Code of Conduct does not state that the public administration should ensure that no prejudice is caused to a public official who reports any of the above on reasonable grounds and in good faith. The GoSM's Code of Conduct does not mention that public officials should not offer or give any advantage in any way connected with his or her position as a public official, unless lawfully authorized to do so. The GoSM's Code of Conduct does not state that public officials should not seek to influence for private purposes any person or body, including other public officials, by using his or her official position or by offering them personal advantages. The GoSM's Code of Conduct does not appear to include statements to ensure public officials who have responsibilities for recruitment, promotion or posting should ensure that appropriate checks on the

Leading program element[301]	Sint Maarten Government Code of Conduct	Council of Europe Model Code of Conduct	Gaps
	• You are open in regards to your working method. You are accountable for your method of working and your attitude to colleagues. • In the event of doubt or questions in regards to the correct procedure, colleagues are able to approach you. • You shall discuss doubts and questions about integrity in working relations and shall encourage colleagues to do the same. • You are alert to risk-sensitive situations that workers may end up facing, and you shall contribute to their defence in this. • You shall address colleagues as regards dubious conduct, make agreements and, if necessary take measures.	official, unless lawfully authorized to do so. 2. The public official should not seek to influence for private purposes any person or body, including other public officials, by using his or her official position or by offering them personal advantages. Article 24 – Integrity checking 1. The public official who has responsibilities for recruitment, promotion or posting should ensure that appropriate checks on the integrity of the candidate are carried out as lawfully required. 2. If the result of any such check makes him or her uncertain as to how to proceed, he or she should seek appropriate advice. Article 25 – Supervisory accountability 1. The public official who supervises or manages other public officials should do so in accordance with the policies and	integrity of the candidate are carried out as lawfully required. If the result of any such check makes him or her uncertain as to how to proceed, he or she should seek appropriate advice. The public official who supervises or manages other public officials should do so in accordance with the policies and purposes of the public authority for which he or she works. He or she should be answerable for acts or omissions by his or her staff which are not consistent with those policies and purposes if he or she has not taken those reasonable steps required from a person in his or her position to prevent such acts or omissions. The public official who supervises or manages other public officials should take reasonable steps to prevent corruption by his or her staff in relation to his or her office. These steps may include emphasizing and enforcing rules and regulations, providing appropriate education or training, being alert to signs of financial or other difficulties of his or her staff, and providing by his or her personal conduct an example of propriety and integrity.

Leading program element[301]	Sint Maarten Government Code of Conduct	Council of Europe Model Code of Conduct	Gaps
		purposes of the public authority for which he or she works. He or she should be answerable for acts or omissions by his or her staff which are not consistent with those policies and purposes if he or she has not taken those reasonable steps required from a person in his or her position to prevent such acts or omissions. 2. The public official who supervises or manages other public officials should take reasonable steps to prevent corruption by his or her staff relating to his or her office. These steps may include emphasizing and enforcing rules and regulations, providing appropriate education or training, being alert to signs of financial or other difficulties of his or her staff, and providing by his or her personal conduct an example of propriety and integrity.	
Compliance with the law	Disciplinary measures may be taken against civil servants who do not comply with the obligations imposed upon them, or who otherwise are guilty of dereliction of duty and may be punished for this by the competent authority.	Article 4 1. The public official should carry out his or her duties in accordance with the law, and with those lawful instructions and ethical standards which relate to his or her functions.	The GoSM's Code of Conduct does not state that Civil servants must comply with the law; Civil servants may not use their position to obtain outside employment; or that Civil servants may not give preferential treatment to former public officials. The GoSM's Code of Conduct also does not state that public officials should carry out his or her duties in

Leading program element[301]	Sint Maarten Government Code of Conduct	Council of Europe Model Code of Conduct	Gaps
	(P.B. 1964, no 159, chapter VIII). A report shall be made if there are strong indications that a punishable act has been committed.	2. The public official should act in a politically neutral manner and should not attempt to frustrate the lawful policies, decisions or actions of the public authorities. Article 6 In the performance of his or her duties, the public official should not act arbitrarily to the detriment of any person, group or body and should have due regard for the rights, duties and proper interests of all others. Article 7 In decision-making the public official should act lawfully and exercise his or her discretionary powers impartially, taking into account only relevant matters. Article 17 – Protection of the public official's privacy All necessary steps should be taken to ensure that the public official's privacy is appropriately respected; accordingly,	accordance with the law, and with those lawful instructions and ethical standards which relate to his or her functions. The GoSM's Code of Conduct does not state that public officials should act in a politically neutral manner and should not attempt to frustrate the lawful policies, decisions or actions of the public authorities. The GoSM's Code of Conduct does not mention that, in the performance of his or her duties, public officials should not act arbitrarily to the detriment of any person, group or body and should have due regard for the rights, duties and proper interests of all others. The GoSM's Code of Conduct does not state that in decision-making public officials should act lawfully and exercise his or her discretionary powers impartially, taking into account only relevant matters. The GoSM's Code of Conduct does not mention that all necessary steps should be taken to ensure that public officials' privacy is appropriately respected; accordingly, declarations provided for in this Code are to be kept confidential unless otherwise provided for by law.

Leading program element[301]	Sint Maarten Government Code of Conduct	Council of Europe Model Code of Conduct	Gaps
		declarations provided for in this Code are to be kept confidential unless otherwise provided for by law. Article 26 – Leaving the public service 1. The public official should not take improper advantage of his or her public office to obtain the opportunity of employment outside the public service. 2. The public official should not allow the prospect of other employment to create for him or her an actual, potential or apparent conflict of interest. He or she should immediately disclose to his or her supervisor any concrete offer of employment that could create a conflict of interest. He or she should also disclose to his or her superior his or her acceptance of any offer of employment. 3. In accordance with the law, for an appropriate period of time, the former public official should not act for any person or body in respect of any matter on which he or she acted for, or advised, the public service and which would result in a particular benefit to that	The GoSM's Code of Conduct does not state that public officials should not take improper advantage of his or her public office to obtain the opportunity of employment outside the public service. The GoSM's Code of Conduct does not include that public officials should not allow the prospect of other employment to create for him or her an actual, potential or apparent conflict of interest. He or she should immediately disclose to his or her supervisor any concrete offer of employment that could create a conflict of interest. Further the GoSM's Code of Conduct does not mention that public officials should also disclose to his or her superior his or her acceptance of any offer of employment. The GoSM's Code of Conduct does not state that, in accordance with the law, for an appropriate period of time, the former public official should not act for any person or body in respect of any matter on which he or she acted for, or advised, the public service and which would result in a particular benefit to that person or body. The GoSM's Code of Conduct does not state that the former public official should not use or disclose confidential information acquired by him or her as a public official unless lawfully authorized to do so.

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		person or body. 4. The former public official should not use or disclose confidential information acquired by him or her as a public official unless lawfully authorized to do so. 5. The public official should comply with any lawful rules that apply to him or her regarding the acceptance of appointments on leaving the public service. Article 27 – Dealing with former public officials The public official should not give preferential treatment or privileged access to the public service to former public officials.	The GoSM's Code of Conduct does not state that public officials should comply with any lawful rules that apply to him or her regarding the acceptance of appointments on leaving the public service. The GoSM's Code of Conduct does not include that public officials should not give preferential treatment or privileged access to the public service to former public officials.
Relations with the public		Article 9 The public official has a duty to always conduct himself or herself in a way that the public's confidence and trust in the integrity, impartiality and effectiveness of the public service are preserved and enhanced.	The GoSM's Code of Conduct does not mention that civil servants must conduct themselves in such a manner as to ensure the public trust.

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Acceptance of gifts	Relationship to third parties: • Accepting gifts, of which you know or should reasonably understand that something will be done in return, is not allowed. This also means gifts given to immediate family members. • Requesting a gift or a promise from a third party, of which he must reasonably understand that the civil servant shall be guided in his service by doing or neglecting to do something in the event the request is granted, is not allowed. • Presents which are sent to your home address are not allowed and must be returned. • If you are approached by a third-party, to accept a gift or a promise for a quid pro quo, you are obliged to inform the Executive Council of this;	Article 18 – Gifts 1. The public official should not demand or accept gifts, favors, hospitality or any other benefit for himself or his or her family, close relatives and friends, or persons or organizations with whom he or she has or has had business or political relations which may influence or appear to influence the impartiality with which he or she carries out his or her duties or may be or appear to be a reward relating to his or her duties. This does not include conventional hospitality or minor gifts. 2. Where the public official is in doubt whether he or she can accept a gift or hospitality, he or she should seek the advice of his or her superior. Article 19 – Reaction to improper offers If the public official is offered an undue advantage he or she should take the following steps to protect himself or herself:	The GoSM's Code of Conduct does not state that public officials should not demand or accept gifts, favors, hospitality or any other benefit for himself or his or her family, close relatives and friends, or persons or organizations with whom he or she has or has had business or political relations which may influence or appear to influence the impartiality with which he or she carries out his or her duties or may be or appear to be a reward relating to his or her duties. The GoSM's Code of Conduct does not mention that, where public officials are in doubt whether he or she can accept a gift or hospitality, he or she should seek the advice of his or her superior. The GoSM's Code of Conduct does not state that if public officials are offered an undue advantage he or she should take the following steps to protect himself or herself: - refuse the undue advantage; there is no need to accept it for use as evidence; - try to identify the person who made the offer; - avoid lengthy contacts, but knowing the reason for the offer could be useful in evidence; - if the gift cannot be refused or returned to the sender, it should be preserved, but handled as little as possible;

Leading program element[301]	Sint Maarten Government Code of Conduct	Council of Europe Model Code of Conduct	Gaps
		- refuse the undue advantage; there is no need to accept it for use as evidence; - try to identify the person who made the offer; - avoid lengthy contacts, but knowing the reason for the offer could be useful in evidence; - if the gift cannot be refused or returned to the sender, it should be preserved, but handled as little as possible; - obtain witnesses if possible, such as colleagues working nearby; - prepare as soon as possible a written record of the attempt, preferably in an official notebook; - report the attempt as soon as possible to his or her supervisor or directly to the appropriate law enforcement authority; - continue to work normally, particularly on the matter in relation to which the undue advantage was offered.	- obtain witnesses if possible, such as colleagues working nearby; - prepare as soon as possible a written record of the attempt, preferably in an official notebook; - report the attempt as soon as possible to his or her supervisor or directly to the appropriate law enforcement authority; - continue to work normally, particularly on the matter in relation to which the undue advantage was offered.
Conflicts of interest		Article 8 1. The public official should not allow his or her private interest to conflict with his or her public position. It is his or her responsibility to avoid such conflicts of interest, whether real, potential or apparent.	Conflicts of interest are not mentioned in the Sint Maarten Code of Conduct. Civil servants should avoid conflicts of interest between their own or their family's private interest and their public position; Civil servants should never take undue advantage of their position to benefit their private interest; Civil servants should disclose personal assets and liabilities.

Leading program element[301]	Sint Maarten Government Code of Conduct	Council of Europe Model Code of Conduct	Gaps
		2. The public official should never take undue advantage of his or her position for his or her private interest. Article 13 – Conflict of interest 1. Conflict of interest arises from a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties. 2. The public official's private interest includes any advantage to himself or herself, to his or her family, close relatives, friends and persons or organizations with whom he or she has or has had business or political relations. It includes also any liability, whether financial or civil, relating thereto. 3. Since the public official is usually the only person who knows whether he or she is in that situation, the public official has a personal responsibility to: - be alert to any actual or potential	

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		conflict of interest; - take steps to avoid such conflict; - disclose to his or her supervisor any such conflict as soon as he or she becomes aware of it; - comply with any final decision to withdraw from the situation or to divest himself or herself of the advantage causing the conflict. 4. Whenever required to do so, the public official should declare whether or not he or she has a conflict of interest. 5. Any conflict of interest declared by a candidate to the public service or to a new post in the public service should be resolved before appointment. Article 14 – Declaration of interests The public official who occupies a position in which his or her personal or private interests are likely to be affected by his or her official duties should, as lawfully required, declare upon appointment, at regular intervals thereafter and whenever any changes occur the nature and extent of those	

Leading program element[301]	Sint Maarten Government Code of Conduct	Council of Europe Model Code of Conduct	Gaps
		interests. Article 15 – Incompatible outside interests 1. The public official should not engage in any activity or transaction or acquire any position or function, whether paid or unpaid, that is incompatible with or detracts from the proper performance of his or her duties as a public official. Where it is not clear whether an activity is compatible, he or she should seek advice from his or her superior. 2. Subject to the provisions of the law, the public official should be required to notify and seek the approval of his or her public service employer to carry out certain activities, whether paid or unpaid, or to accept certain positions or functions outside his or her public service employment. 3. The public official should comply with any lawful requirement to declare membership of, or association with, organizations that could detract from his	

Leading program element[301]	Sint Maarten Government Code of Conduct	Council of Europe Model Code of Conduct	Gaps
		or her position or proper performance of his or her duties as a public official. Article 20 – Susceptibility to influence by others The public official should not allow himself or herself to be put, or appear to be put, in a position of obligation to return a favor to any person or body. Nor should his or her conduct in his or her official capacity or in his or her private life make him or her susceptible to the improper influence of others.	
Political activities		Article 16 – Political or public activity 1. Subject to respect for fundamental and constitutional rights, the public official should take care that none of his or her political activities or involvement on political or public debates impairs the confidence of the public and his or her employers in his or her ability to perform his or her duties impartially and loyally. 2. In the exercise of his or her duties, the public official should not allow himself or herself to be used for partisan	The GoSM's Code of Conduct does not state that civil Servants should not engage in activities that impair public trust in the official's ability to be impartial.

Leading program element[301]	Sint Maarten Government Code of Conduct	Council of Europe Model Code of Conduct	Gaps
		political purposes. 3. The public official should comply with any restrictions on political activity lawfully imposed on certain categories of public officials by reason of their position or the nature of their duties.	
Confidential information	Secrecy: • You shall not misuse anything that you have learned by virtue of your office; • You shall not leak any confidential information of the Government to the outside; • You shall not provide any information to the media without permission from your supervisor (in relation to third parties).	Article 11 Having due regard for the right of access to official information, the public official has a duty to treat appropriately, with all necessary confidentiality, all information and documents acquired by him or her in the course of, or as a result of, his or her employment. Article 22 – Information held by public authorities 1. Having regard to the framework provided by domestic law for access to information held by public authorities, a public official should only disclose information in accordance with the rules and requirements applying to the authority by which he or she is employed.	The GoSM's Code of Conduct does not mention that public officials should only disclose information in accordance with the rules and requirements applying to the authority by which he or she is employed. The GoSM's Code of Conduct does not mention that public officials should take appropriate steps to protect the security and confidentiality of information for which he or she is responsible or of which he or she becomes aware. The GoSM's Code of Conduct does not include language that states public officials should not seek access to information which it is inappropriate for him or her to have. The GoSM's Code of Conduct does also not state that public officials should not make improper use of information which he or she may acquire in the course of, or arising from, his or her employment. The GoSM's Code of Conduct does not mention that public officials have a duty not to withhold official

Leading program element[301]	Sint Maarten Government Code of Conduct	Council of Europe Model Code of Conduct	Gaps
		2. The public official should take appropriate steps to protect the security and confidentiality of information for which he or she is responsible or of which he or she becomes aware. 3. The public official should not seek access to information which it is inappropriate for him or her to have. The public official should not make improper use of information which he or she may acquire in the course of, or arising from, his or her employment. 4. Equally the public official has a duty not to withhold official information that should properly be released and a duty not to provide information which he or she knows or has reasonable ground to believe is false or misleading.	information that should properly be released and a duty not to provide information which he or she knows or has reasonable ground to believe is false or misleading.
Use of official property and services	Use of Government property: • It is not allowed to use Government property for the benefit of private interests of oneself or third parties.	Article 23 – Public and official resources In the exercise of his or her discretionary powers, the public official should ensure that on the one hand the staff, and on the other hand the public property, facilities, services and financial resources with which he or she is entrusted are managed and used	No major gap identified.

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		effectively, efficiently and economically. They should not be used for private purposes except when permission is lawfully given.	
Work environment		Article 10 The public official is accountable to his or her immediate hierarchical superior unless otherwise prescribed by law.	The GoSM's Code of Conduct does not contain rules regarding harassment, including sexual harassment, and appropriate professional conduct.

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