



Integrity Chamber Sint Maarten

Advice on the Ministerial Gift Policy

July 2020



Table of contents

Summary	3
1 Preface	4
1.1 Rationale for this advice	4
1.2 Methodology	4
2 Relevance.....	5
3 Legality Audit and Effectivity Audit.....	7
3.1 Legality audit.....	7
3.2 Effectivity audit	8
4 Advice	9
4.1 General advice	9
4.2 Specific advice based on the answers to the posed questions.....	11
5 Attachment: Analogous legislation	14

Summary

The Integrity Chamber is authorized to perform a number of tasks, one of them being: giving advice and making proposals on policies to generally improve integrity throughout government and its entities. This is such an advice.

The advice was requested by the Council of Ministers. The Integrity Chamber was asked to advise on establishing guidelines for the giving and receiving of gifts by ministers, in order to establish a specific ministerial policy.

The exchanging of gifts is commonplace in Sint Maarten (“the friendly island”), and the small-scale of the society plays an important role in considering what is an (in)appropriate gift. Although, under certain circumstances, giving or receiving a gift is permissible or even expected based on protocol or customs of various cultures. It must be clear that when the intent of the giver is to obtain favourable treatment from the recipient, the independence of this official, can no longer be guaranteed, and the semblance of a lack of independence creates an integrity risk, and consequently a risk to the good governance of a country. The establishment of a comprehensive ministerial gift policy would, therefore, serve several purposes:

- It serves as a point of clarification for ministers and the public;
- It protects ministers against false allegations of misconduct;
- It is considered as beneficial for the furtherance of the national integrity infrastructure; and
- It allows ministers to serve as role models for civil servants and employees of government entities.

In general, the Integrity Chamber advises the establishment of a comprehensive ministerial gift policy that includes the following components:

- A clear definition of the term ‘gift’;
- Establishing a monetary limit to the gift;
- Determining the intent of the giver;
- The establishment of a Ministerial Gift Register and a Policy Supervisor;
- Establishing a system for reporting breaches of the policy;
- Publishing the ministerial gift policy; and
- Including the essentials of the gift policy in a comprehensive Code of Conduct at a later point in time.

Specifically, the Integrity Chamber advises on the cost limit of the gift a minister can give or receive. The Integrity Chamber also advises that the protocol and customs of other countries should be considered when exchanging gifts. Finally, the Integrity Chamber advises on circumstances and gifts to avoid.

1 Preface

The Integrity Chamber is authorized to give advice and make proposals on policies to generally improve integrity throughout government and its entities. The basis for this authorization is found in Articles 16 through 18 of the *National Ordinance Integrity Chamber*.

These advices and proposals can be performed upon the Integrity Chamber's own initiative, or upon the request of the prime minister, the responsible minister, or Parliament, insofar as the nature of the tasks of the Integrity Chamber allows. The Integrity Chamber is further tasked with overseeing the implementation of its advices and proposals. Advices and proposals will be published in the *National Gazette*.

Through giving advices and making proposals, the Integrity Chamber strives to fill gaps and address procedures aimed at bettering the functioning of government and its entities and ultimately the overall administrative infrastructure of the country.

1.1 Rationale for this advice

On February 14, 2020, the Council of Ministers, via its Secretary-General, requested advice from the Integrity Chamber regarding the establishing of guidelines for the giving and receiving of gifts by ministers, in order to establish a specific ministerial policy.

Four (4) specific questions were asked:

- *Is there a limit on the cost of the gift a minister can provide to someone they are meeting with?*
- *Is there a limit on the value of a gift that a minister can accept?*
- *Are there any exceptions based on the country the recipient of the gift resides?*
- *Is there anything else that we should be aware of to assure the process remains ethical?*

On February 24, 2020, a follow-up email was sent with the decision of the Council of Ministers: *"Approval that the Secretariat of the Council of Ministers will conduct further research with the Integrity Chamber of Sint Maarten to establish clear integrity regulations for gift acceptance and reporting by the Council of Ministers and individual ministers including permissible gift thresholds, and what gifts are deemed 'reportable gifts' for both the acceptance and giving of gifts (this would be in accordance with PricewaterhouseCoopers report 'Integrity Inquiry into the functioning of the Government of Sint Maarten' – 2014)."*

1.2 Methodology

Before the Integrity Chamber makes the decision to work on a (solicited) advice or proposal, it first determines whether the subject falls within the scope of its tasks; more specifically, does it contribute to the promotion of integrity in the country. In addition, the Integrity Chamber will execute a legality audit and an effectivity audit for all advices and proposals as stated in the *National Ordinance Integrity Chamber*. These are executed via (desk) research and, if applicable, discussing the topic with the involved parties or experts.

2 Relevance

The giving and receiving of gifts are commonplace in the corporate world and in Government. Sint Maarten is no exception. Gifts can be anything of value and can take a variety of forms, such as products, services, or hospitality¹. However, no matter the form of the gifts, the objective remains the same - the giver hopes the gift can be used as a way to establish, maintain, or improve a relationship with the recipient.

Due to the small-scale of the Sint Maarten society, many inhabitants share familial, collegial, personal, social, or educational relationships with public officials, such as ministers. This, coupled with the known generosity of its inhabitants, may make it difficult to separate personal and professional relationships. Gifts provided may have a dual effect; the gift may be intended to maintain a personal relationship, while subsequently garnering favour (consciously or subconsciously) with a minister, in the event an official action or decision is required. It may not be clear for both parties to see the line between a professional or personal interaction.

Although the giving or receiving gifts often has good intentions, it can, in some cases, be inappropriate and even considered as a bribe. It must therefore be determined whether the gift is based on a common courtesy or someone seeking an improper benefit, such as influencing the performance of official duties. Considering the motive for a gift is, therefore, essential.

When the intent of the giver is to obtain favourable treatment from the recipient, the independence necessary for the effective performance of administrative duty, can no longer be guaranteed. This lack of independence, or perceived lack of independence, creates an integrity risk, and consequently a risk to the good governance of a country. Therefore, giving and receiving gifts should be handled with thoughtfulness. This is, particularly, important for ministers and other top officials, due to their positions.

An official ministerial gift policy would clarify the do's and don'ts of giving and receiving gifts by ministers and can protect ministers against allegations of misconducts. The official gift policy should also take the local customs and culture into consideration.

The confidence of the public in government can only be maintained and strengthened if the legitimacy, due care, and decency of the administrators is indisputable; in other words, if the integrity of the administration is assured. That assurance can be given when proper legislation and functional policy guidelines exist which describe the procedures and checks and balances for administrators. A comprehensive policy not only serves to clarify the issue at hand to the ministers, but also to the public and official visitors. It provides transparency for all and can be beneficial for the furtherance of the national integrity infrastructure.

By drafting and adhering to a gift policy, ministers will serve as role models for civil servants and employees of government entities. They may even seek to follow suit and adopt similar policies.

¹ Examples of hospitality include free offers of travel and lodging, meals, tickets to shows, and other entertainment or social amenities.



The potential integrity risks without a ministerial gift policy and the importance of the policy for the government and society, are adequate reasons for the Integrity Chamber to formulate the following advice. With this advice, the Integrity Chamber contributes to the promotion of the integrity in Sint Maarten.

3 Legality Audit and Effectivity Audit

The purpose of the legality audit is to examine all relevant legislation, regulations, and policy, and to determine whether the establishment of the ministerial gift policy conflicts with the existing legal framework. The effectivity audit examines whether based on the relevant legislation, regulations, and policy, the goal of the ministerial gift policy can or will be met.

3.1 Legality audit

The only legislation found that pertains to the subject of giving and receiving gifts on a ministerial level is Article 41 of the Constitution of Sint Maarten.

Article 41 of the Constitution:

On accepting appointment, ministers take the following oath of office (declaration and affirmation) before the Governor:

'I swear (declare) that I have not given or promised anything to anyone whatsoever, directly or indirectly, under any name or pretext whatsoever, in connection with obtaining my appointment as minister, nor shall I do so.

I swear (affirm), that I shall not accept any pledge or gift of any description from any person whatsoever, directly or indirectly, in order to take or refrain from any action of any description in this position. (...)

*So help me God
(This I declare and affirm)!'*

As for existing regulations, to date, no specific Ministerial Code of Conduct, or other directives for the ministers on the giving and receiving of gifts, exist within Sint Maarten.²

Analogous legislation, currently not applicable to ministers, that could give some valuable directives to a ministerial gift policy is listed in *Attachment: Analogous legislation*.

Conclusion

The current legislation and regulations for Sint Maarten do not hinder the establishment of a ministerial gift policy.

² The National Ordinance Material Civil Servants Law incorporates, inter alia in Articles 58, 59 and 60, specific provisions related to accepting gifts by civil servants, however ministers are excluded from this law.



3.2 Effectivity audit

As stated above, the only legislation with a component of giving and receiving “ministerial gifts” is Article 41, of the Constitution. However, this article is intended to prevent the bribery of ministers, as stated in the Memorandum of Elucidation, and does not regulate or prevent the regulation of the giving and receiving of gifts by or from ministers. Due to the absence of current legislation and regulations pertaining to the subject, it appears that no changes need to be made in existing legislation or regulations before the implementation of a ministerial gift policy.

Conclusion

No legislation or regulations exist that hinder the establishment of a ministerial gift policy.

4 Advice

In the previous chapters, the Integrity Chamber presented the importance of a gift policy for ministers. The results of the legality and effectivity audits do not hinder the implementation of such a policy.

National and international (desk) research has provided the Integrity Chamber with substantial insight into what is seen as acceptable; this is further elaborated in this chapter.

4.1 General advice

A ministerial gift policy will help to enhance the promotion of integrity in Sint Maarten and will help to protect ministers from any allegation of misconduct.

The Integrity Chamber advises the establishment of a ministerial gift policy and that it should be published online once established. That policy should consist of the following components³.

Definition of the Term 'Gift'

A clear definition of the term 'gift' provides ministers and the public with a detailed understanding of the subject. In addition, it ensures less ambiguities, loopholes, and less avenues where the policy can be circumvented.

The Integrity Chamber advises that the definition includes the following: anything of monetary value, including a gratuity, favour, discount, entertainment, training, transportation, lodging, meals and any other commonly given or received item, fully or partially paid for by the giver.

Excluded from this definition could be the following items: promotional gifts of low intrinsic value such as pens, notepads, calendars, mousepads, keychains and other similar items.

Monetary Value of a gift

Establishing a monetary limit helps ministers in determining what is acceptable. A limit gives the public a clear indication of what is acceptable in the society. The acceptance of gifts, valued at NAF 100,- or less, appears to be the value utilized in multiple regulations. The Integrity Chamber advises that this limit also be used for ministers. It is also recommended that ministers accept no more than NAF 200,- in gifts from the same source in a calendar year. Gifts in cash⁴ should never be accepted.

As it pertains to the giving of gifts and assigning a monetary limit, there seems to be little to no regulations utilizing such a limit. However, the Integrity Chamber recognizes that this omission may result in integrity risks. A minister, while showing appreciation to a person, entity or organization providing a service to the country, might give a gift that does not fall within the norms of what is seen as acceptable. This allows for misuse of government resources and the possible use of the gift

³ The components are based on our analysis and interpretation of, but not limited to, the National Ordinance Material Civil Servants Law, Employee Handbook, Dutch Ministerial Handbook and the myriad of existing regulations and legislation.

⁴ This includes cash equivalent gifts such as gift certificates.

as an (extraordinary) compensation. For the sake of simplification, a list of pre-approved gifts could be established that would assist ministers in adhering to acceptable norms.

Gift Intent

In addition to the monetary limit, it is important to determine the intent of the gift. Considering the giver's intent will allow ministers to circumvent the appearance of impropriety, even if the gift is valued within the monetary limit. A minister should not provide nor accept any gift, in his/her official capacity, when there is a reasonable suspicion that the gift was given because of or for an action executed in his capacity.

The intent of the gift can be determined by answering the following questions:

- Why was the gift given?
- When was the gift given (e.g. before or after an official duty)?
- Is the gift or service in direct correlation to a specific performance?
- Is the gift personal or is it a gift of state?
- Is there a risk of reciprocity?
- Was this an incidental case, or are gifts frequently received from the concerned party? Are there any other government officials who enjoy the same relationship and frequently receive gifts or services?

The Integrity Chamber advises to expound upon the importance of determining the intent of the gift in the gift policy. The above-stated questions can be used as a guide.

Ministerial Gift Register

The Integrity Chamber recommends the registering of all ministerial gifts in an "Ministerial Gift Register". The gift register will allow for transparency and will eliminate any perceived arbitrariness in deciding whether to accept a gift. The Ministerial Gift Register can serve as a systematic, documented process of gift registration and should contain a description of the gift, the sender, intended recipient, (estimated) value, occasion, date and whether the gift was accepted or denied (if denied, was it returned or disposed of).

All gifts, given or received, should be documented in the Ministerial Gift Register. It is recommended that gifts are registered as soon as possible, ultimately within one (1) week of receipt. The registry should be publicly available online.

Policy Supervisor

For the policy to have the desired results, it is important for it to be consistently applied and enforced. To achieve this, it is recommended to appoint a person or department to supervise the policy execution.⁵ This will create the centralization of the process of giving and receiving gifts and will ensure all gifts are handled in the same way. If it is unclear whether a gift is (in)appropriate, this

⁵ This can be an existing person or department within the organization.

can be decided by the Policy Supervisor. This removes the pressure from a minister to accept a potentially inappropriate gift from an acquaintance.

Reporting

It is possible that a minister (inadvertently) gives or receives a gift that could be inappropriate or otherwise does not adhere to the policy. For such breaches of policy, there should be a reporting system.

The Integrity Chamber, therefore, advises the development of a reporting system. This should be incorporated in the Ministerial Gift Policy.

Code of Conduct

Another necessary measure is the future incorporation of the gift policy into a more comprehensive Code of Conduct for ministers. There are several other aspects of behaviour that affect public trust and good governance that can be regulated, such as confidentiality and various conflicts of interests. The Integrity Chamber, therefore, advises to further develop the gift policy into a Code of Conduct for ministers.

4.2 Specific advice based on the answers to the posed questions

This section provides answers to the four questions posed and gives specific advice pertaining to the questions.

Is there a limit on the cost of the gift a minister can provide to someone they are meeting with?

There are currently no provisions in Sint Maarten that limit the cost of a gift a minister can give. However, as stated previously, there is a benefit to establishing such a limit. For simplification, the Integrity Chamber recommends that a list of pre-approved gifts is established, which would assist in adhering to acceptable norms. This would also bring uniformity throughout the ministries.

Is there a limit on the value of a gift that a minister can accept?

Just as with gifts provided, there are currently no provisions in Sint Maarten which limits the value of a gift a minister can receive. As previously stated, the Integrity Chamber recommends that a limit is established. The norm of NAf 100,-, or no more than NAf 200,- from the same source in a calendar year, should be maintained for ministers. This limit gives clarity to all parties involved and sends the message that lavish gifts are not acceptable.

Are there any exceptions based on the country the recipient of the gift resides?

It is possible that during an international meeting with a government official from another country, the protocol or customs of that country may lead to a receipt or exchange of gifts. It is desirable that the nature of gifts in relation to customs in other countries be explored. In China, for instance, if receiving a gift, there may be an expectation for a reciprocal gift or favour, while in Russia, it is inappropriate to give flowers bundled in even numbers or yellow flowers, lilies or carnations,

because of their association with funerals. In the Republic of France (which includes the Collectivité de Saint-Martin), it is customary to give intellectual gifts, such as books/art⁶.

Special attention should also be paid when a gift may be offered from what is considered a 'risk country'. There are certain countries that are known for their high level of corruption within government and for their unethical behaviour, such as trying to influence and/or spy on other countries. The Government of Sint Maarten should exercise caution when giving or receiving gifts from such countries.

It is recommended that prior to meetings with foreign officials, there is consultation on the (omission of) exchanging of gifts. It is ultimately up to Government to make clear to foreign officials, what the policy is concerning ministerial gifts and to evaluate on a case-by-case basis, the (in)appropriateness of exchanging gifts. If, based on protocol or custom, a gift above the norm of NAF 100,- must be accepted, this gift should be accepted as a gift of state, and should remain in possession of Government and not the individual minister.

Is there anything else that we should be aware of to assure the process remains ethical?

The section "General Advice" provides aspects that ensure the process remains ethical. In addition to the advice already provided, the following should also be taken in consideration.

Public perception

There are certain circumstances under which gifts should never be accepted as they could lead to the perception of impropriety, even if the intention were otherwise. For instance, gifts should never be given or accepted from a party involved in a bidding process, or in the waiting period for renewal of a government licence. The timing of such gifts could result in the perception of impropriety. The mere perception of impropriety can give a sense of corruption of public officials or undue outside influence and may result in a loss of public trust. Ministers should avoid such pitfalls at all costs.

Gifts to avoid

There are certain aspects and situations that should be considered whenever giving or receiving a gift.

- Gifts should not fall within the category of (inter)nationally protected animal and plant species such as ivory, coral, edelweiss, wild orchids.
- Gifts with significant cultural values, such as archaeological finds or relics, paintings, books.
- Gifts should not be counterfeit items (brand copies or a brand look-alikes) such as bags, wallets, perfumes.
- Gifts should not break common norms and values such as child-labour produced items, ecological hazards, discriminatory and/or insulting items.
- Food or refreshments should not be inappropriate for the accepting party such as culturally or religiously unacceptable products.

⁶ Guide to Gift Giving Around the World, <https://www.globesmart.com/blog/guide-to-gift-giving-around-the-world/>



- Gifts representing other countries such as Belgian/Swiss chocolates, French cheeses, Bachata music CDs.
- Gifts or services that may be known or affiliated with illicit or unlawful activities.

5 Attachment: Analogous legislation

Analogous legislation that could give some valuable directives to a ministerial gift policy:

Article 8, paragraph 5, of the United Nations Convention against Corruption⁷, states that 'Each State Party shall endeavour to establish Codes of conduct for public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and *substantial gifts* or benefits from which a conflict of interest may result with respect to their functions as public officials.'

Article 42, of the Constitution of Sint Maarten, refers to 'other monetary provisions of ministers' which require regulation by National Ordinance. The representation costs covering expenses made for official gifts, are presented in the annual budget of the Government of Sint Maarten for every minister⁸. No further provisions or elucidations are available concerning these yearly expenses as stated in the annual budget, which legally is considered a National Ordinance ('*Landsverordening Begroting -jaar-*').

Article 101, paragraph 1, of the Constitution of Sint Maarten, states that rules will be set by National Ordinance to guarantee the legality and integrity of administration and governmental activities, as well as the validity of the financial management. One of these elaborated National Ordinances, related to the integrity of administration and governmental activities is the *National Ordinance Integrity Advancement Ministers* ('*Landsverordening Integriteitsbevordering Ministers*').

The National Ordinance Integrity Advancement Ministers incorporates provisions related to undesirable secondary positions and interests of ministers and their right to privacy with regard to their commercial interests and other asset elements, secondary positions and secondary activities, and concerning those of their spouses, partners and children, at the start and end of their term of office and during that period. However, this ordinance does not mention any (monetary) provisions related to offering and receiving of gifts by ministers.

The National Ordinance Material Civil Servants Law incorporates inter alia in Articles 58, 59 and 60 specific provisions related to accepting gifts by civil servants, however ministers are excluded from this law⁹.

⁷ Entered into force via General Assembly resolution 58/4 of 31 October 2003.

⁸ For example, representation costs Minister of General Affairs, National budget 2019, '*kostenpost*' 30, '*Grootboekrekeningen*' nr. 43474: NAf 65.000,-.

⁹ Article 2, paragraph 1, sub b, of the National Ordinance Material Civil Servants Law.

