



The Council of Ministers of Sint Maarten  
Attn: The Honourable Mr. Roger Lawrence  
Government Administration Building  
Souluiga Road 1  
Pond Island, Sint Maarten

Ref. no.: IC-ADV/22.028

Subject: Advice on Supervisory Board position PJIAE

Philipsburg, June 28, 2022

Honourable Minister,

In your letter dated January 21, 2022 (reference no.: GOVTEZVT-22-022610), you requested advice from the Integrity Chamber pertaining to the position of a Supervisory Board member of the Princess Juliana International Airport Exploitiemaatschappij N.V. (PJIAE), on behalf of the Council of Ministers. In the request, the Council of Ministers expresses its concern that a court ruling could potentially damage the reputation of, and integrity at, the Princess Juliana International Airport (the Airport). The Council of Ministers requests advice on what the court judgment means for the Supervisory Board member's position within the Airport and/or what policies should be in place to deal with these kinds of matters.

The Integrity Chamber requested the Council of Ministers for additional information in order to provide advice. The information was received on March 4, and May 19, 2022.

### **Legal Basis**

Article 16, first paragraph of the National Ordinance Integrity Chamber, tasks the Integrity Chamber with giving advice and making proposals on policies to generally improve integrity throughout government and its entities. Based on Article 16, third paragraph of the Ordinance, advice can be requested from the responsible Minister.

### **Relevance**

In recent years, there has been growing national and international recognition regarding the importance of integrity within the public and private sector. Incorporating ethical and moral behaviour throughout government and its entities, is now considered necessary to build trust and a positive (inter)national image within

the community. It is also necessary for obtaining loyalty from the employees and attracting investors. Furthermore, societal reactions to several integrity-related incidents occurring in recent years involving leaders, politicians, or other persons holding high functions in society, has made it clear that certain moral standards are expected not only from government, but also from corporations and persons in positions of leadership.

Integrity issues can be the result of circumstances where morals, norms and values are not being adhered to. These circumstances can be the result of or lead to behaviour that harms the proper functioning of government or government-owned companies (hereafter: administrative bodies). The consequences of this behaviour are sometimes tangible and easily seen, e.g., in the form of financial consequences. The use of disciplinary actions in this regard can be easily justified.

There is also behaviour that indirectly or unintentionally harms the proper functioning of the administrative body. Examples of such behaviour include, dishonesty, activities that are not compatible with primary job functions, conflicts of interest, the manipulation of information, etc. The consequences of this behaviour may not be visible, or easily detectable. The behaviour may also not be in violation of legislation or regulations. However, while not legally wrong, it may be undesirable or morally incorrect.

Within this advice, the Integrity Chamber will therefore elaborate on the importance of personal and corporate integrity, present possible integrity risks for the corporation, and provide recommendations on the necessary policies, meant to improve the integrity infrastructure and deal with integrity issues.

### **The Importance of Corporate and Personal Integrity**

Corporate integrity is the practice of integrating ethical and moral behaviour throughout an organisation. This is also important for government-owned entities. Corporate boards, and the Supervisory Boards tasked with their supervision, are required to display transparent, honest, and accountable behaviour. This is considered a key component to a positive public perception of the corporation. When there is a (perceived) lack of corporate integrity, it puts the (inter)national reputation of the corporation at stake. It also affects the trust of (potential) investors and the shareholder's trust in the Supervisory Board's ability to properly execute their role.

Personal integrity is of importance when selecting persons to be on Supervisory Boards, and during their tenure. In addition to the educational and professional requirements, individuals should have the characteristics that showcase the norms, values, and image of the organisation. If Board members do not display the required characteristics, it can be harmful to the reputation of the Board and the corporation.

## Existing Regulatory Framework

The following documents were analysed for this advice and are considered the current regulatory framework.

- Book 2 of the Civil Code of Sint Maarten
- National Ordinance Corporate Governance (Eilandsverordening Corporate Governance)
- Corporate Governance Code (as mentioned in article 3 of the National Ordinance Corporate Governance)
- Articles of Incorporation PJIAH (Statuut wijziging PJIAH 2009)
- Articles of Incorporation PJIAE (Statuut PJIAE 1996)
- The Appointment Resolution of the Supervisory Board member

The Articles of Incorporation of PJIAE determine that in the execution of its tasks and competencies, the Supervisory Board is exclusively led by the interests of the corporation and its enterprises. The execution of the responsibilities of the Supervisory Board should always be conducted in accordance with the corporation's norms, values, and legislative framework, as well as corporate globally recognized practices.

In addition, the Corporate Governance Code has several provisions that are specifically related to integrity. Examples include, Article 8 (Premature Retirements), Article 9 (Conflicts of Interest) and Article 12 (No Personal Advantages).

While the basic regulatory framework is in place, there are certain policies and procedures lacking, that would ensure a more comprehensive integrity infrastructure.

## Requested Advice

In this paragraph the Integrity Chamber will answer the questions posed in the request: (1) what the court judgment means for the Supervisory Board member's position within a government-owned company, and (2) what policies should be in place to deal with these kinds of matters.

### 1. Court Judgment

The Integrity Chamber is not tasked with determining the legal consequences of the court judgment for the Supervisory Board member's position, but can advise on possible integrity risks. The court judgment as such, does not necessarily imply an integrity issue. However, the judgment can lead to the perception of integrity issues for the individual involved, which can in turn negatively affect the Supervisory Board, and the corporation as a whole.

Possible consequences for the Airport due to perceived (personal) integrity issues of Supervisory Board members are:

- Damage to the reputation of the Supervisory Board and the Corporation
- Damage to the perceived independence and impartiality of the Supervisory Board

- The susceptibility of the Supervisory Board and the corporation to allegations and rumours of misconduct
- The promotion of an atmosphere of non-compliance within the corporation
- The loss of trust from employees, stakeholders, shareholders, and society
- The loss of potential suppliers and investors
- An increase in occurrences of integrity-related misconducts

#### Advice 1

Anything that raises questions about the integrity of an individual, the Board, or the corporation, must be managed and handled as an integrity issue. If there are negative effects for the corporation, the Princess Juliana International Holding Company (PJIAH), as shareholder of PJIAE, is authorized to decide the consequences for all Board members of PJIAE. Based on the Corporate Governance Code, the following decisions can be made: (1) Allow the individual member to remain in their function, (2) Request a premature retirement of the individual member, or (3) Not renew the appointment of the individual member.

The assessment to determine the consequences should be done in a manner that is fair and impartial to all parties involved. Board members should be given the opportunity to respond to allegations made against them. The assessment procedure and the outcome should be as transparent as possible to maintain the trust of the public. Transparency will also help to suppress any rumours and rectify negative public perception.

## 2. Recommended Integrity Infrastructure

As mentioned above, the basic regulatory framework at the Airport is in place. However, to ensure a comprehensive integrity infrastructure, and to lay the foundation of expected behaviour that represent the norms and values of the corporation, additional policies are necessary.

#### Advice 2

The Integrity Chamber recommends the following policies are established, implemented, and enforced.

**Code of Conduct:** From the information provided to the Integrity Chamber, the Supervisory Board does not utilise a Code of Conduct. A Code of Conduct for Supervisory Board members will provide guidance to the members on prevailing and essential norms and values, the associated governing rules, and expected behaviour within the execution of their tasks.

**Conflict-of-Interest Policy:** General and specific conflicts are discussed and outlined as necessary, in a Conflict-of-Interest policy. This policy can specify how Board members should avoid conflicts, what constitutes a conflict and what to do when a conflict arises.

**Compliance/Integrity evaluation:** Board members and their noted employments and activities (paid or unpaid) should be regularly evaluated, to ensure the lack of possible integrity-related risks in the execution of their tasks, before and after their appointment. New ancillary activities attained during the tenure of the Board member should be reported and vetted.

The above recommended policies can be compiled into the by-laws of the Supervisory Board.

**Integrity Trainings/Workshops:** Trainings and workshops that focus on the necessity and awareness of integrity are essential for Supervisory Board members in understanding the parameters of acceptable and ethical behaviour. It allows for the promotion and improvement of integrity within the Supervisory Boards of the Airport and creates a 'top-down' atmosphere regarding integrity. Trainings also enable discussions on the importance of a Supervisory Board, that is free of internal or external influences and interests, that conflict with the interests of the corporation.

**Guidelines for Integrity Incidents:** Guidelines for integrity incidents will ensure that all integrity issues are handled in a fair and consistent manner and is to be utilised when a Supervisory Board member violates the established regulations or when there are allegations of misconduct. Compliance with policies and procedures within the Airport are essential for promoting and maintaining personal and corporate integrity. Components of the Guidelines for Integrity Incidents should include:

- The definition of an integrity incident
- How to report an integrity incident
- To whom an integrity incident should be reported
- The regulatory basis for reporting an integrity incident
- How to investigate an integrity incident
- Sanctions for violations

The Integrity Chamber can play a role in the implementation of the advised integrity infrastructure.

## Conclusion

The Integrity Chamber provides the above advice at the request of the Minister of TEATT, on behalf of the Council of Ministers of Sint Maarten. It should be noted that the advice is based on an analysis of the information provided relating to the request.

Administrative bodies have an obligation to ensure integrity in their functioning. The trust and reputation of corporations can be at stake when there are (perceived) integrity issues. Administrative bodies must prevent not only unlawful, but also undesirable or morally incorrect behaviour occurring in the personal lives of their Supervisory Board members during their tenure.

When this behaviour occurs, the (perceived) harm done to the functioning of the person and the corporation, needs to be properly determined and handled.

The regulatory framework determines the rules, applicable procedures, and the consequences or sanctions related to the occurred behaviour. The implementation and enforcement of the regulatory framework is imperative to ensure awareness of the framework, consistency in its application, and trust within the corporation. In the event of an integrity incident, transparency of the procedure and the outcome is important to restore and maintain the confidence of the public.

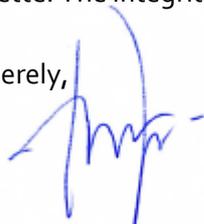
The Integrity Chamber advises that anything that raises questions about the integrity of an individual or the corporation be managed and handled as an integrity issue. The Integrity Chamber also advises the establishment, implementation, and enforcement of the recommended policies to ensure a comprehensive integrity infrastructure within the Airport.

The Integrity Chamber trusts that this advice will provide insight into the importance of corporate and personal integrity in corporations and on methods to improve the integrity infrastructure of the Airport.

### **Motivated Response**

You are kindly requested to provide a motivated response to this advice within six (6) weeks of the date of this letter, no later than August 9, 2022. A copy of this advice will also be submitted to Parliament, and to the administrative body, in accordance with Article 18 of the National Ordinance Integrity Chamber and published in the National Gazette. The written response to this advice will also be published in the National Gazette. The Integrity Chamber will follow-up on the implementation of this advice.

Sincerely,



**The Integrity Chamber**

H.W. Vogels, President

R.A. Boasman

H.R. Lodder

CC: Princess Juliana International Holding Company (PJIAH)