



Prime Minister of Sint Maarten
The Honourable Dr. Luc Mercelina
Soualuiga Road 1
Philipsburg, Sint Maarten

Ref.no.: IC-ADV/25.016

Subject: Advice on recommendation Candidate Member Council of Advice and possible conflict of interest

Cay Hill, March 21, 2025

Honourable Prime Minister,

On February 14, 2025, you requested advice from the Integrity Chamber. The request concerned the recommendation of a candidate member to the Council of Advice and a possible conflict of interest (hereafter: the Request).

One of the tasks of the Integrity Chamber is giving advice and making proposals on policies to generally improve integrity throughout government and its entities. In accordance with Article 16, paragraph 3, of the National Ordinance Integrity Chamber (hereafter: 'Ordinance'), the Prime Minister, the responsible Minister, or Parliament, may request an advice or proposal from the Integrity Chamber.

Based on the above, the Integrity Chamber hereby provides advice on the request. The advice is outlined as follows. Paragraph 1 outlines the legislative framework used for this advice. Paragraph 2 emphasizes the importance of avoiding actual or perceived conflicts. Paragraph 3 answers the questions specifically raised in the Request. Finally, paragraph 4 provides advice on the topic of conflicts of interest.

1. Legislative Framework

For the purpose of this advice, the Integrity Chamber reviewed the following (legislative) framework.

- Article 70 of the Constitution of Sint Maarten.
This article regulates the composition of the Council of Advice (hereafter: 'Council') and the positions that are incompatible with its membership.

- The National Ordinance of the Council of Advice.
The regulations regarding the appointment the vice-chair and the other members of the Council, and incompatibilities with the function can be found in the National Ordinance of the Council of Advice.
- Paragraph 3 of the National Ordinance Substantive Civil servants Law (*in Dutch: 'Landsverordening Materieel Ambtenarenrecht'*).
The paragraph sets out the rules concerning the engagement of civil servants in ancillary activities.
- The Rules of Order of the Council of Advice.
Paragraph 3 of the Rules of Order sets out rules on safeguarding the impartiality and independence of the Council.

2. Importance

A conflict of interest can occur if an individual's personal, financial, relational, or other interests, conflict with their role within an organisation. This can occur through (paid or unpaid) ancillary activities, or any other activities, that may clash with their professional duties in the organisation. It is crucial to avoid any actual or perceived conflict of interest when appointing individuals to maintain the integrity and credibility of the organisation. A conflict of interest, whether real or perceived, can undermine trust in the organisation's objectivity and impartiality, potentially affecting the outcomes of its decisions.

When an individual has a personal, financial, or other interest in a matter being discussed or decided, their ability to make unbiased decisions may be compromised. This could lead to decisions that prioritize private interests over the best interest of the organisation or the country. Even if the individual can genuinely remain impartial, the perception of a conflict of interest can damage the reputation of the organisation and reduce confidence in its governance. Moreover, perceived conflicts of interest can open the door to questions of fairness, transparency, and accountability, which are essential elements of good governance.

3. Specific Advice

In the Request, the Integrity Chamber is asked to provide advice on two specific points, namely:

- (1) Should the recommendation, as regulated in Article 3 of the National Ordinance of the Council of Advice, be seen as a binding recommendation?
- (2) Is membership of the Council compatible with regularly performing tasks for the Government of Sint Maarten. In other words, does the incompatibility as stated in Article 6, paragraph 3 of the National Ordinance of the Council of Advice apply?

Point 1:

Article 3 of the National Ordinance of the Council of Advice states: *"The Council shall be heard for the appointment of the Vice-Chair, and for the appointment of the other members the Council shall make a recommendation."*

In the case of appointments, "heard" and "recommendation" refer to different degrees of influence that the Council has in the appointment process. Being 'heard' in the case of appointing the vice-chair means that the Council is consulted before a decision is taken. Government must give the Council the opportunity to give an opinion but is not obliged to follow this advice.

'Recommending' the appointment of a member means that the Council actively takes the lead in nominating a member, providing an explicit positive advice. This is not a binding recommendation, but there must be compelling reasons to deviate from this advice. This is especially the case given the Council's position as a High Council of State and its position in Sint Maarten's democracy.

Point 2:

Article 6, paragraph 3, of the National Ordinance of the Council of Advice states that *"The function of member of the Council of Advice is incompatible with positions that are undesirable for the proper performance of the member or for maintaining their impartiality and independence, or the confidence therein"*.

This article refers to situations in which certain relationships or activities of an individual would affect their ability to perform their duties in a correct and effective manner; without being influenced by other interests. When assessing whether membership to the Council is compatible with (regularly) performing tasks for the Government of Sint Maarten, the following must be taken into account.

The Council has the authority and the responsibility to assess and nominate candidates based on the applicable legislation and regulations, as well as any additional requirements and criteria established by the Council, that would ensure that the candidate is the right fit for the position. This includes an assessment of their ancillary activities, relationships and other connections they may have, as well as the public perception of the member.

In the current situation, an individual regularly performing tasks or services for Government while also providing advice as a member of the Council can potentially lead to a conflict of interest, therefore measures must be (put) in place to prevent an actual conflict. The Council must, and should be expected to, take the necessary measures to guarantee their impartiality and independence at all times.

4. General Advice

The public sector is inherently at risk of conflicts of interest, as the private interests of public officials can often conflict with public interests. Discretionary authority, influence, access to privileged information, and the risk of nepotism are all factors that play a role in a public official's vulnerability to conflicts. The public perception is often fed by news, whether fact or fiction, on cabinet appointments, the appointments of civil servants, and the hiring of third parties like consultants and advisors.

Preventing and managing conflicts of interest in the public sector is crucial in helping Governments strengthen public integrity and maintaining the trust of the public and other stakeholders. The following measures can be taken to mitigate actual and perceived conflicts of interest:

1. Establish clear policies: Develop and communicate clear conflict of interest policies, including codes of conduct, outlining what constitutes a conflict and how it should be handled. Ensure these policies cover both actual and perceived conflicts.
2. Disclose potential conflicts: Require individuals to disclose their ancillary activities, financial interests, personal relationships, and other potential conflicts of interests. When officials are not required to disclose their private interests and relationships, conflicts of interest are more difficult to identify. To enhance transparency, particularly in cases concerning top officials and decision-makers, ancillary activities should be published.
3. Provide training and awareness sessions: Provide regular training on recognizing and managing conflicts of interest. Emphasize the importance of integrity, impartiality, and the duty to serve the public interest above private interests. This helps to ensure that everyone understands the importance of transparency and ethical behaviour.
4. Ensure compliance: Ensure compliance to established conflict of interest policies. Impose penalties for violations, such as fines, suspensions, or removal from office. An oversight committee can be established to monitor and independently review potential conflicts. If policies are not strictly enforced, individuals will be more likely to engage in conflicts of interest.
5. Recusal or Resignation: Ensure the establishment and implementation of recusal agreements when there are (potential) conflicts of interests. If there is a prolonged period where an individual's activities cause conflict with their position, resignation should be considered.
6. Complaint procedures: Implement (anonymous) reporting systems where potential conflicts of interest can be reported without fear of retaliation.

By implementing these standards, Government can avoid conflicts of interests and ensure that decisions are made in the public interest.

5. Response

In accordance with Article 18, paragraph 4, of the Ordinance, you are kindly requested to provide a written motivated response to this advice within eight (8) weeks of the date of this letter, no later than May 16, 2025.

As further stipulated in Article 18 the Ordinance, a copy of this advice will be submitted to Parliament and published in the National Gazette. Your response will also be published in the National Gazette.

If you have any questions regarding this advice, do not hesitate to contact the Integrity Chamber.

Sincerely,
On behalf of the Integrity Chamber

A handwritten signature in blue ink, consisting of a large, stylized 'G' followed by a horizontal line and a small flourish.

G.R. (Rik) Bergman,
President

Cc: Parliament of Sint Maarten