

COUNCIL OF ADVICE

RAAD VAN ADVIES

Strengthening our Democracy

MISSION:

The Council of Advice will guard the democracy and constitutional state of Sint Maarten by providing Independent, Qualitative, Accurate, Sound, Just and Fair advice to the Government and Parliament.

VISION:

The Council of Advice is a professional advisory body functioning in a representative setting that provides Independent, Effective, Academic and Just advice to the Government and Parliament with the aim to stimulate them to enact qualitative legislation in the benefit of a good functioning democratic society for the people and the Sint Maarten community as a whole.

ANNUAL REPORT 2015



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FOREWORD



Dear Reader,

This year report serves to provide the reader with insight into the activities and observations of the Council of Advice during the year 2015.

The Council received in total 30 advice requests. This is the highest amount of requests in a year to date. Furthermore you will find an overview in numbers and illustrations of meetings held, the costs made and the advices given. The Council has also chosen 3 complete advices for your reading pleasure.

Regarding the Country's finances, Sint Maarten has not yet succeeded in adhering to the rules of the Kingdom law financial supervision Curaçao & Sint Maarten (Rft) and in presenting a realistic and balanced budget. The Council has therefore brought to your attention the very interesting theme titled: "The challenges pertaining to Public Finance".

Based on a sample the Council took via the additional reports, of 10 advices given in 2013 and 2014, the results show that the government follows the advice of the Council in 92% of the time. This noteworthy high percentage is in the opinion of the Council mostly due to the professional and objective approach the Council applies via its assessment tools.

Further it should be mentioned that the Council worked on building its public awareness and awareness of its functioning in the reporting year by organizing meetings with the various Ministers and Parliament as well as by organizing various lectures on relevant topics such as "Legal English in a Dutch Legal System" and "Dollarization". The Council also organized along with the Ombudsman and the General Audit Chamber an Information Village themed: "Good governance and Propriety" where topics such as "The Role of the Public in governance" and "Morality, Integrity & Corruption" were expounded on.

The Council continues to broaden and deepen the knowledge of the Council members and the Secretariat in order to continue to produce high quality advice.

Mrs. M. Brooks-Salmon, LL.M., MA.
Vice Chair Council of Advice St. Maarten.



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1. LEGAL BASIS OF THE COUNCIL OF ADVICE

The Council of Advice is a High Council of State, meaning that its independent position has constitutional foundation. Articles 69 to 73 in the fifth chapter of the Constitution of Sint Maarten regulates the constitutional embedding of the Council.

Based on article 69, second paragraph of the Constitution, the Council is required to give advice to the Government:

- a. on all proposals of national ordinances and national decrees, containing general measures;
- b. on proposals as referred to in the Charter of the Kingdom of the Netherlands regarding approval and termination of treaties which concern Sint Maarten;
- c. on proposals of Kingdom laws and administrative orders of the Kingdom;
- d. in extraordinary cases and in all other cases deemed necessary by the Government.

The Council is required to give advice to Parliament on proposals for initiative laws, the so called draft initiative ordinances.

The Council is also authorized to provide Government with unsolicited advice whenever the Council deems it necessary.

1.1 The assessment framework

The Council examines draft legislation on the basis of an assessment framework similar to the assessment framework of the Council of State in the Netherlands. This framework consists of a policy analysis, legal analysis and a technical legal analysis. The assessment framework is the Council's tool to ensure a high standard of quality, accuracy and fairness of the advices.

The Council's assessment framework is included in annex 1.

1.2 Advisory time

The Council strives to complete an advice within three months, however the necessary time to complete an advice, depends on the complexity of an advice request and the amount of pending (urgent) advice requests to be handled by the Council. The Council received thirty requests for advice in 2015, this is the largest number of advice requests in a year that the Council has received so far. Besides the large number of requests for advice in 2015, the Council also received a number of complex advice requests to advise on in the past year. The average processing time is partly because of this higher in 2015 than it was in 2014.



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1.3 Dictums of the Council of Advice on draft national ordinances and draft decrees, containing general measures

At the end of an advice, the Council provides a final formal statement (dictum). Depending on the observations made by the Council in its advice, the Council can consider using one of the following dictums.

Types of dictums for an advice request regarding a draft ordinance:

- To send the draft ordinance to Parliament (the Council does not have any material remarks, the so called blank advice);
- To send the draft ordinance to Parliament after attention has been given to the observations of the Council;
- To send the draft ordinance to Parliament after the observations of the Council have been considered;
- Not to send the draft ordinance to Parliament, until the observations of the Council have been considered;
- Not to send the draft ordinance to Parliament (harshest conclusion).

Types of dictums for an advice request regarding a decree, containing general measures:

- To adopt the draft decree, containing general measures (the Council does not have any material observations on the content, the so called blank advice);
- To adopt the draft decree, containing general measures after attention has been given to the observations of the Council;
- To adopt the draft decree, containing general measures after the observations of the Council have been considered;
- Not to adopt the draft decree, containing general measures, until the observations of the Council have been considered;
- Not to adopt the draft decree, containing general measures (harshest conclusion).

1.4 Draft initiative ordinances

Advices on draft initiative ordinances do not have dictums. In this case the Council gives a brief summarizing conclusion.



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2. OPERATIONAL MANAGEMENT OF THE COUNCIL OF ADVICE

2.1 Composition of the Council of Advice in 2015

His Excellency, the Governor of Sint Maarten, *drs.* Eugene Holiday, is the constitutional chair of the Council of Advice. The Governor can exercise the chairman's function in the meeting of the Council as often as he deems it necessary; on those occasions he has an advisory voice.

Article 1 of the Council of Advice ordinance states that the Council consists of five members, including a vice-chair and, at most, five extraordinary members.

On the 1st of January as well as on the 31st of December 2015, the composition of the Council was as follows:

Chair:	His Excellency, the Governor of Sint Maarten, <i>drs.</i> E. B. Holiday
Vice-chair, also member:	Mrs. Mavis Brooks-Salmon LL.M. MA.
Members:	Mr. Jan Beaujon Mr. Gaston Bell LL.M Mr. Louis Duzanson Mrs. Marcella Hazel MA.
Extraordinary members:	Mr. Rik Bergman LL.M. Mr. Miguel Alexander LL.M.

The composition of the Council did not change during 2015. The secondary activities of the members of the Council of Advice are included in annex 2.

2.2 Composition of the secretariat in 2015

Article 11, first paragraph of the Council of Advice ordinance states that the Council has a secretariat with at the head the secretary director of the Council. The staff of the secretariat is appointed by national decree based on the recommendation of the Council. They are suspended and dismissed by national decree, after the Council is heard.



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The secretariat supports the Council in the broadest sense of the word. It is responsible for preparing and recording the meetings of the Council, to carry out research on a high academic-level for various advice requests. It is also responsible for the preparation of draft advices. The secretariat assists the Council in maintaining and enhancing working relationships with Government, Parliament, the Councils of Advice of Aruba and Curaçao and the Council of State. The secretariat also encourages contacts with other institutions/advisory bodies.

On January 1st 2015, the composition of the secretariat of the Council of Advice was as follows:

Secretary Director:	Mr. Ajamu Baly LL.M.
Legal advisor(s):	Mr. Richard Jackson LL.M. Mr. Keith de Jong LL.M.
Office Manager:	Mrs. Florencia Wilson
Allround Administrative Assistant:	Mrs. Mireya Ostiana-Wijman

2.2.1 Mutations in the composition of the secretariat in 2015

The Secretariat took leave of Legal advisor, Mr. Keith de Jong in January 2015, Office Manager, Ms. Florencia Wilson in May 2015 and Allround Administrative Assistant, Mrs. Mireya Ostiana-Wijman at the end of December 2015. The Board thanks them for their contribution. In June a new Legal advisor, Ms. Eefje Janson was hired and in July 2015 a second Legal Advisor, Ms. Jessica Weeks was hired. Ms. Sheritsa Stroop joined the secretariat as Office Manager in July 2015.

The Council had a HBO Law student as an intern from the Hanze University of Applied Sciences Groningen for the period of February to July 2015 and September to December 2015. In the summer of 2015 the Council had a student intern for a month, via the Business Outreach and Placement Program (BOPP) of the Department of Youth Affairs. The interns were mainly tasked with supporting the Secretary Director, the Legal Advisors and the administration.



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On December 31st 2015, the composition of the secretariat of the Council of Advice was as follows:

Secretary Director:	Mr. Ajamu Baly LL.M.
Legal advisor(s):	Mr. Richard Jackson LL.M. Ms. Eefje Janson LL.M. Ms. Jessica Weeks LL.M.
Office Manager:	Ms. Sheritsa Stroop
All-round Administrative Assistant:	Mrs. Mireya Ostiana-Wijman

The Rules of Order for the members and the secretariat of the Council of Advice are included in appendix 3.

2.3 Knowledge policy and training

The Council values the development of knowledge for the staff of the Secretariat, as well as for the members themselves. For the proper performance of its tasks, the Council is dependent on the extent to which knowledge is available. In addition to the library, which is supplemented as much as possible with current literature, the Council and the secretariat have attended various trainings and courses. The most important ones are listed below:

- in April the Allround administrative assistant attended a course in the Netherlands on Protocol relating to receiving dignitaries;
- one of the Council members and the deputy Secretary attended a training in May in Curaçao on Anti-Corruption -Procurement & Integrity;
- two Legal advisors attended a course in the Netherlands organized by the Academie voor de Wetgeving in June on the topic of advising effectively on complex matters;
- one Legal advisor completed an internship at the Council of State in the Netherlands;
- the secretariat took part in a Protocol training at the end of August/beginning of September;



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In addition, during the year the Council and the secretariat completed the training the Leergang Sint Maarten by following the last five modules of the Leergang:

- Analyses of legal texts;
- Writing advices;
- Legal English;
- To effectively convince;
- Politics and Government.

This training provided by the Academie voor de Wetgeving in the Hague offers the members, the Secretary Director and the legal advisors training in the field of personal effectiveness, namely the analyses of legal texts, writing advices, legal English and how to effectively convince. Given the interest from both inside and outside Government, the Council decided to make it possible for other interested parties to follow the course as well.

2.4 Financial Management

Based on article 26, second paragraph of the Council of Advice ordinance and articles 35, 40, 41 and 42 of the National Government Accounting Ordinance (in Dutch: Comptabiliteitslandsverordening) the vice-chair is in charge of the financial management of the Council. Article 26, first paragraph of the ordinance states that Parliament has to make all relevant facilities available to the Council so that the Council can properly and independently execute its duties, this in agreement with the Council and the relevant Minister. The Council submitted its draft budget for the year 2015 to the Minister of Finance and Parliament in accordance with the National Government Accounting Ordinance.

2.5 Communication

The Council held meetings during the year with all Ministers¹, the President of Parliament and the entire Parliament. The purpose of these meetings is to promote cooperation and to get an idea of what the Council can expect in terms of draft legislation and the possibility to coordinate this.

The public can keep abreast of all important information, events and opinions of the Council via the website of the Council www.councilofadvicesxm.com.

1. A meeting with the Minister of Public Health, Social Development and Labor and the Minister of Public Housing, Spatial Planning, Environment and Infrastructure did not occur because of the time when these ministers were appointed.



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2.5.1 National Ordinance open Government (Landsverordening openbaarheid van bestuur)

The manner in which the Council performs its tasks should be known to Government, Parliament, other institutions and the people of St. Maarten. The publication of the advices of the Council in line with the National ordinance open Government is one of the available means of communication. Based on the ordinance the Minister of General Affairs publicizes the advices of the Council. Advices on draft ordinances may be publicized simultaneously with the submission of the draft ordinance to Parliament by Government or by the initiative takers. A copy of the advice of the Council, as well as the explanatory report from Government on the advice of the Council is sent to Parliament by Government. This is also done in the case it involves a draft initiative ordinance. Advices on all other draft legislation other than ordinances, where publication in the Official Publication (in Dutch: *Afkondigingsblad*) is mandatory, are published simultaneously with that publication. Advices in any other cases are published within six weeks after the advice is issued.

2.5.2 Lectures

The Council held a lecture in early March with the theme, 'Legal English in the Dutch legal system'. This topic is quite relevant particularly because of the two official languages of Sint Maarten Dutch and English. Keynote speaker for the lecture was Mr. Eric Mijts of Aruba.



At the end of March the Council organized yet another lecture. The theme was 'The advantages and disadvantages of Dollarization'. With so much American Dollars in circulation on Sint Maarten one may ask if Dollarization has not already taken place. Keynote speakers for this lecture were Ms. Jane Semeleer MA from Aruba and Dr. Terrence Farrell from Trinidad and Tobago. The MC and moderator was Mr. Richard Gibson Sr. LL.M.



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The Council, together with the Ombudsman and the General Audit Chamber organized an 'Information Village' for the general public in October. All government ministries were given the opportunity during this event to share information pertaining to their ministry in an informal setting with the public. The theme for this event was 'Good Governance and Propriety'. The goal of the event was to inform the public of their rights and responsibilities as citizens and to share information on good governance and propriety. Guest speaker, Judge Jacob Wit gave a presentation on 'The Role of the Public in Governance'. The theme of the presentation of the second guest speaker, Dr. Terrence Farrell was 'Morality, Integrity & Corruption'.





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2.5.3 Four-Councils consultation

On October 9th 2015 the Four-Councils consultation was held in Curaçao. The Four-Councils consultation is a meeting held every two years between the Councils of Advice of Aruba, Curaçao and Sint Maarten and the Council of State of the Netherlands. During the Four-Councils consultation various areas of common interest are discussed and the Councils exchange knowledge and experiences amongst each other. The main theme of the consultation was 'What role do the Councils play in maintaining Good Governance and how can that role be strengthened'. The Council is of the opinion that aside from the advices, as an extension of its Constitutional task as advisory body for the Government and Parliament of Sint Maarten, the Council has an information and educational task that the Council fulfills through lectures, trainings & courses, symposia and the like. Through all these media the Council plays a role in maintaining Good Governance.



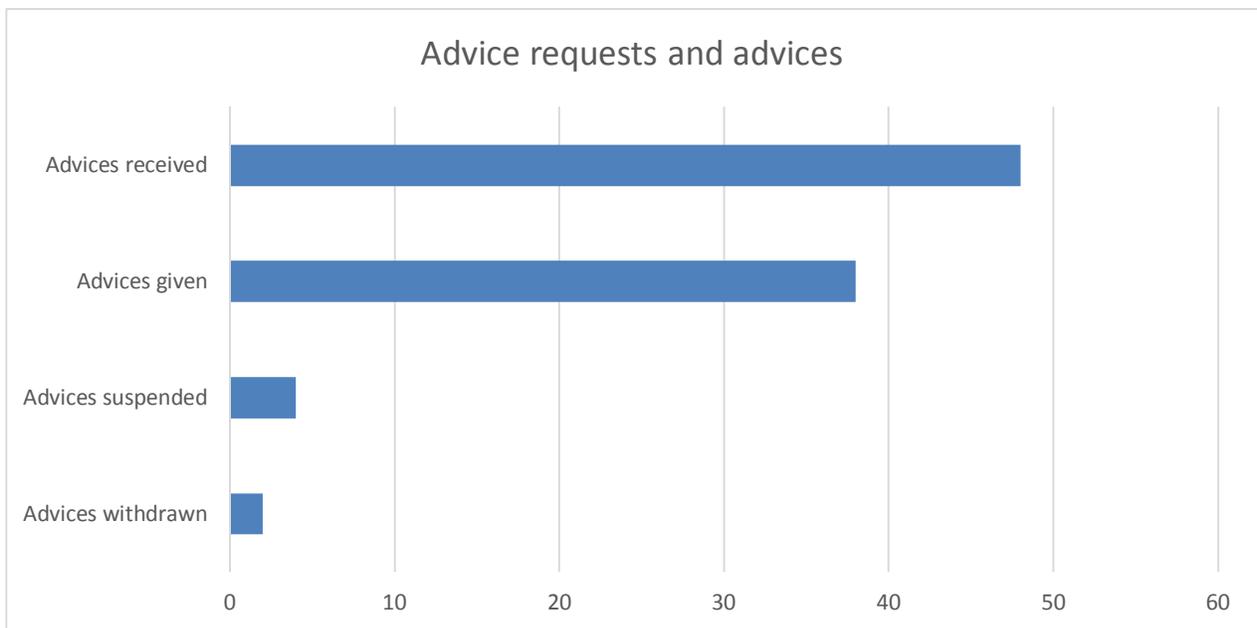


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3. OUTPUT OF THE COUNCIL OF ADVICE

3.1 Advice requests and advices

In 2015, the Council received 30 advice requests and had 48 advice request in total to advise on. The Council gave 38 advices. There were 4 advice requests suspended due to the lack of a legally required advice that should have been sought by Government and 2 advice requests were withdrawn by Government. This is depicted in the staff diagram below. The Pie chart below shows the ratio between the advices received and the advices given.



At the end of the year 4 advice requests that were pending were transferred to the new year.

Overview inflow / outflow requests for advice in 2015	
Total number of received requests	30
Pending requests from the previous year	18
Total to be handled	48
Number of handled advice requests in 2015	38
Number of advice requests transferred to the new year	4



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Below is a list of advice requests for 2015:

Government	
CoA Number	Subject
LB/05-12 SM/09-12- LB	Adjustments to different national decrees (AWW, AOV and ZV/OV) pertaining to the price index number of family consumption.
SM/07-13- LB	Draft national decree of general order (ND) retracting the general decree of June 7th 1961 regulating the awarding of voyage c.q. to pay for voyage expenses to or on behalf of Antillean youngsters who do not qualify for a student grant based on the legal regulations regarding granting student grants to study at educational institutions or to follow a study outside of the Netherlands Antilles. (AB. 1961, nr. 95).
SM/02-14- LB	Draft ND of general order pertaining to rules concerning the execution of the Ordinance Care institutions.
SM/15-14- LB	Draft ND of general order amending the Function Book Public Housing, Spatial Regulation, Environment and Infrastructure resulting from changes in the formation plan.
SM/16-14- LB	Draft ND of general order to establish the Council of Education and Labor market.(Establishment Decree Council for Education and labor Market)
SM/17a-14- LB	Draft ND of general order Execution Decree BIG.
SM/17b-14- LB	Draft ND of general order Committee to evaluate the training and professional skills of medical practitioners.
SM/18-14- LB	Draft ND of general order to establish rules concerning the salary of Educational Personnel. (Salary decree Educational Personnel)
SM/19-14- LB	Draft ND of general order regulating the models and administration of privileged persons. (ND identity cards privileged persons).



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Government	
CoA Number	Subject
SM/20-14-LB	Draft ND of general order concerning further rules regarding the procedure for depositing and renewing of trademarks and the owed compensation thereof.(Trade mark Decree)
SM/21-14-LB	Draft ND of general order establishing the Organization Decree to change the Organization Decree Education, Culture, Youth and sport in connection with the splitting of the department Youth and sport Affairs into two departments.
SM/22-14-LB	Draft ND of general order to establish the commemoration coin in honor of the abdication of Her Royal Majesty Queen Beatrix of the Kingdom of the Netherlands, whereby the kingship is transferred to His Royal Highness Prince of Orange, Prince Willem-Alexander.
SM/23-14-LB	Draft ND of general order amending the ND comparative research cellular material in connection with the automated mutual comparing of DNA profiles among the countries of the Kingdom.
SM/09-14-LV	Draft NO establishing the Criminal Procedure Code.
SM/11-14-LV	Draft NO Labor Contracts.
SM/12-14-LV	Draft NO public health.
SM/13-14-LV	Draft NO to amend the Constitution in connection with regulating the legal personality when representing the Country, embedding the function of the deputy Minister Plenipotentiary and to adjust a few technical inadequacies.
SM/14-14-LV	Draft NO Identity Cards in connection with the introduction of identity cards for privileged persons.
SM/01-15-LB	Draft ND of general order establishing the Organization Decree to change the Organization Decree of the Secretariat of the SER in connection with the change in the Formation Plan.
SM/02-15-LB	Draft ND on the expansion of the AVBZ-care and senior citizens care



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Government	
CoA Number	Subject
SM/03-15 LB	Draft ND on the legal position of the detention Facility Sint Maarten
SM/04-15 LB	Draft ND rules on the legal position of the police civil servant of the Police Corps Sint Maarten
SM/05-15 LB	Draft ND of general order amending the Decree on National UNESCO committee Sint Maarten in accordance with the amount of members in the committee, de increase in remunerations for attending meetings, along with the rules on establishing and suspension or dismissal of Members.
SM/06/15 LB	Draft ND of general order amending the control of the international airport in accordance with the establishment of the International Airport tariffs for services and works
SM/07-15 LB	Draft ND of general order on sanctions levied on certain Countries, territories, individuals, groups and organizations
SM/08-15 LB	Draft ND of general order amending the tariffs for transport of individuals with a taxi (ND taxi tariffs)
SM/01-15 LV	Draft National government Accounting Ordinance in connection with the enhancement of the execution of the procurement regulations
SM/02-15 LV	Draft NO establishing the Integrity Chamber
SM/03-15 LV	Draft NO on the establishment of the National Annual accounts 2012
SM/04-15 LV	Draft NO amending the NO turn-over tax in connection with the introduction of a tax exemption for commercial education
SM/05-15 LV	Draft NO Administrative Enforcement



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Government	
CoA Number	Subject
SM/06-15 LV	Draft NO implementing Constitution Day as a Holiday
SM/07-15 LV	Draft NO amending the function of Notary for the purpose of functioning as Notary on Saba and St. Eustatius by the Notary of Sint Maarten
SM/08-15 LV	Draft NO amending the Sanction Ordinance in execution of special recommendations by the Caribbean Financial Action Task Force (CFATF)
SM/09-15 LV	Draft NO amending the tariffs for Motor vehicle tax in order to structurally help the Government finances
SM/10-15 LV	Draft NO on amending the National Budget 2015
SM/11-15 LV	Draft NO increasing and introducing charges and fees for establishment- and transport-licenses
SM/12-15 LV	Draft NO on the National Budget 2016
SM/13-15 LV	Draft NO on the National Budget 2016 last version
SM/01-15 DIV	Advice request based on article 3, subsection 2 of the NO on enhancement of integrity of Ministers (advice request withdrawn)
SM/02-15 DIV	Advice on the 'AMVRB' on integrity based on article 51 of the Statute
SM/03-15 DIV	Advice request based on article 3, subsection 2 of the NO on enhancement of integrity of Ministers



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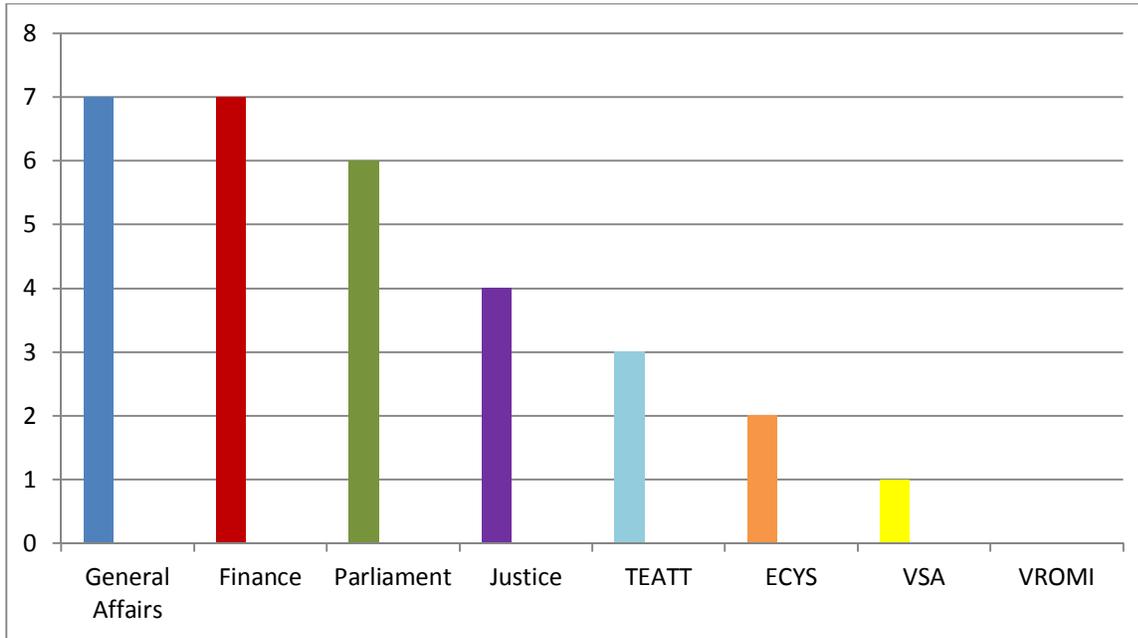
Below is a list of draft initiative law requests by Parliament in 2015

Parliament	
CoA Number	Subject
SM/ 01-15 ILV	Draft Initiative National Ordinance (INO) amending the Ordinance on admission and expulsion
SM/ 02-15 ILV	Draft INO amending the NO restricting tobacco use
SM/03-15 ILV	Draft INO amending article 50, subsection 2 of the License Ordinance adjusting the age limit for selling alcoholic beverages
SM/04-15 ILV	Draft INO amending the Election Ordinance and the Ordinance database for administration of personal records
SM/05-15 ILV	Draft INO introducing a Small Claims Court for Sint Maarten
SM/06-15 ILV	Draft INO amending the Movie Ordinance in connection with the change of duties, composition, term of office and other changes to the Inspection Committee

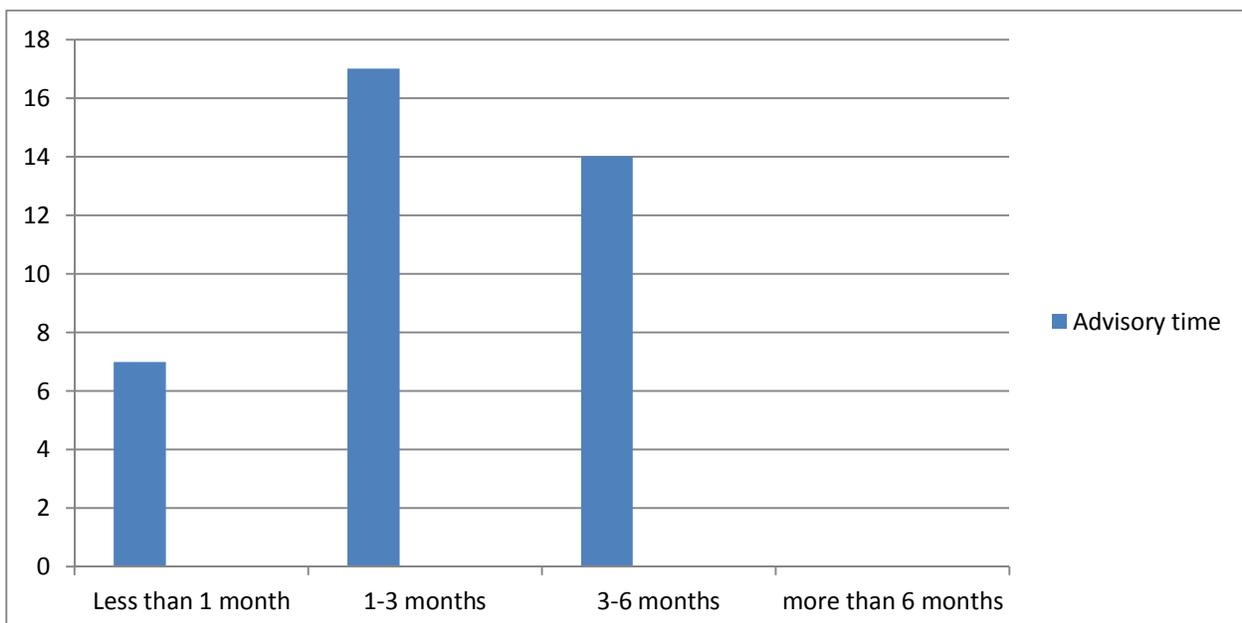


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The chart below gives a list of advice requests in 2015 divided per ministry (including draft initiative laws of Parliament):



The average time spent advising on a request for advice in 2015 was 88 days. See below for an overview of the advisory time for 2015.





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Below is an overview of the issued advices in 2015:

Government				
CoA Number	Subject	Date of Advice	Conclusion (in short)	Explanatory report
SM/09-14-LV	Draft NO establishing the Criminal Procedure Code.	January 27th 2015	To send to Parliament, after consideration	No
SM/11-14-LV	Draft NO Labor Contracts.	February 3rd 2015	To send to Parliament, after consideration	Yes
SM/ 12-14-LV	Draft NO public health.	January 6th 2015	To send to Parliament, after consideration	Yes
SM/15-14-LB	Draft ND of general order amending the Function Book Public Housing, Spatial Regulation, Environment and Infrastructure resulting from changes in the formation plan.	January 20th 2015	To adopt, after consideration	No
SM/16-14-LB	Draft ND of general order to establish the Council of Education and Labor market.(Establishment Decree Council for Education and labor Market)	January 20th 2015	Not to adopt, until consideration	No
SM/17a-14-LB	Draft ND of general order Execution Decree BIG.	March 17th 2015	To adopt, after consideration	No
SM/17b-14-LB	Draft ND of general order Committee to evaluate the training and professional skills of medical practitioners.	March 17th 2015	To adopt, after consideration	No
SM/13-14-LV	Draft NO to amend the Constitution in connection with regulating the legal personality when representing the Country, embedding the function of the deputy Minister Plenipotentiary and to adjust a few technical inadequacies.	March 3rd 2015	To send to Parliament, after consideration	No
SM/18-14-LB	Draft ND of general order to establish rules concerning the salary of Educational Personnel. (Salary decree Educational Personnel)	March 17th 2015	To adopt, after attention	No
SM/19-14-LB	Draft ND of general order regulating the models and administration of privileged persons. (ND identity cards privileged persons).	March 3rd 2015	To adopt, after consideration	No
SM/14-14-LV	Draft NO Identity Cards in connection with the introduction of identity cards for privileged persons.	March 3rd 2015	To send to Parliament, after consideration	No
SM/20-14-LB	Draft ND of general order concerning further rules regarding the procedure for depositing and renewing of trademarks and the owed compensation thereof.(Trade mark Decree)	February 3rd 2015	To adopt	Yes



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Government				
CoA Number	Subject	Date of Advice	Conclusion (in short)	Explanatory report
SM/21-14-LB	Draft ND of general order establishing the Organization Decree to change the Organization Decree Education, Culture, Youth and sport in connection with the splitting of the department Youth and sport Affairs into two departments.	March 17th 2015	To adopt, after attention	No
SM/22-14-LB	Draft ND of general order to establish the commemoration coin in honor of the abdication of Her Royal Majesty Queen Beatrix of the Kingdom of the Netherlands, whereby the kingship is transferred to His Royal Highness Prince of Orange, Prince Willem-Alexander.	March 17th 2015	To adopt, after attention	No
SM/23-14-LB	Draft ND of general order amending the ND comparative research cellular material in connection with the automated mutual comparing of DNA profiles among the countries of the Kingdom.	April 7th 2015	To adopt	Yes
SM/01-15-LV	Draft National government Accounting Ordinance in connection with the enhancement of the execution of the procurement regulations	April 7th 2015	To send to Parliament, after consideration	No
SM/02-15-LV	Draft NO establishing the Integrity Chamber	March 3rd 2015	To send to Parliament, after consideration	Yes
SM/02-15-DIV	Advice on the AMVRBqon integrity based on article 51 of the Statute	January 9th 2015	N.A.	No
SM/01-15-LB	Draft ND of general order establishing the Organization Decree to change the Organization Decree of the Secretariat of the SER in connection with the change in the Formation Plan.	May 5th 2015	To adopt	Yes
SM/03-15-LV	Draft NO on the establishment of the National Annual accounts 2012	May 5th 2015	To send to Parliament, after attention	No
SM/04-15-LV	Draft NO amending the NO turn-over tax in connection with the introduction of a tax exemption for commercial education	July 7th 2015	Not to send to Parliament, until consideration	No
SM/05-15-LB	Draft ND of general order amending the Decree on National UNESCO committee Sint Maarten in accordance with the amount of members in the committee, the increase in remunerations for attending meetings, along with the rules on establishing and suspension or dismissal of Members.	June 16th 2015	To adopt, after consideration	No
SM/06-15 LV	Draft NO implementing Constitution Day as a Holiday	July 1st 2015	To send to Parliament, after consideration	Yes



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Government				
CoA Number	Subject	Date of Advice	Conclusion (in short)	Explanatory report
SM/05-15 LV	Draft NO Administrative Enforcement	November 17th 2015	To send to Parliament, after consideration	No
SM/07-15 LV	Draft NO amending the function of Notary for the purpose of functioning as Notary on Saba and St. Eustatius by the Notary of Sint Maarten	August 18th 2015	To send to Parliament, after consideration	No
SM/08-15 LV	Draft NO amending the Sanction Ordinance in execution of special recommendations by the Caribbean Financial Action Task Force (CFATF)	October 6th 2015	Not to send to Parliament, until consideration	No
SM/06-15 LB	Draft ND of general order amending the control of the international airport in accordance with the establishment of the International Airport tariffs for services and works	October 6th 2015	Not to adopt, until consideration	No
SM/07-15 LB	Draft ND of general order on sanctions levied on certain Countries, territories, individuals, groups and organizations	October 6th 2015	To adopt	No
SM/09-15 LV	Draft NO amending the tariffs for Motor vehicle tax in order to structurally help the Government finances	August 18th 2015	To send to Parliament, after consideration	Yes
SM/10-15 LV	Draft NO on amending the National Budget 2015 in connection with the financing of several amended policy goals and a re-numbering, as well as in connection with a revision of the multiannual estimates based on amended policy goals in that context	September 15th 2015	Not to send to Parliament, until consideration	Yes
SM/11-15 LV	Draft NO increasing and introducing charges and fees for establishment- and transport- licenses	December 17th 2015	To send to Parliament, after consideration	No
SM/08-15 LB	Draft ND of general order amending the tariffs for transport of individuals with a taxi (ND taxi tariffs)	December 17th 2015	To adopt, after consideration	No



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Staten				
RvA Nummer	Onderwerp	Status Advisering	Dictum	Nader Rapport
SM/01-15 ILV	Draft Initiative National Ordinance (INO) amending the Ordinance on admission and expulsion	July 7th 2015	To give attention to the comments made	Yes
SM/02-15 ILV	Draft INO amending the NO restricting tobacco use	August 18th 2015	Take the comments made into consideration	No
SM/03-15 ILV	Draft INO amending article 50, subsection 2 of the License Ordinance adjusting the age limit for selling alcoholic beverages	October 20th 2015	Take the comments made into consideration	No
SM/04-15 ILV	Draft INO amending the Election Ordinance and the Ordinance database for administration of personal records	November 17th 2015	Take the comments made into consideration	No
SM/05-15 ILV	Draft INO introducing a Small Claims Court for Sint Maarten	November 17th 2015	Take the comments made into consideration	No
SM/06-15 ILV	Draft INO amending the Movie Ordinance in connection with the change of duties, composition, term of office and other changes to the Inspection Committee	October 20th 2015	Take the comments made into consideration	No

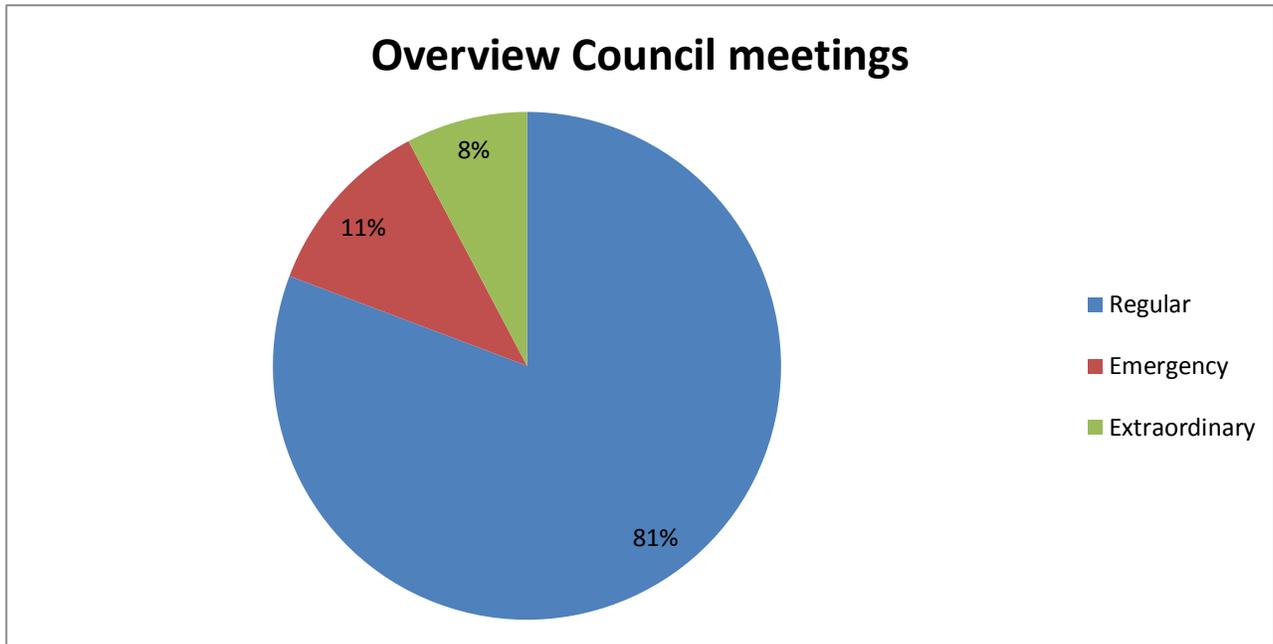
A selection of issued advices in 2015 is found in annex 4.



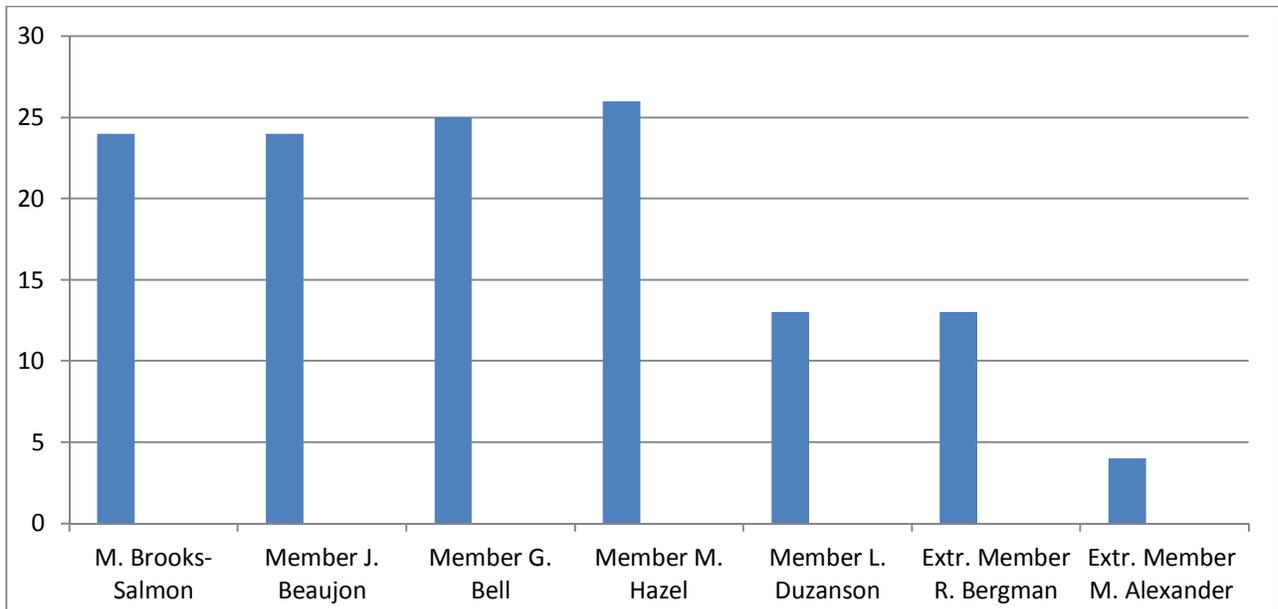
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3.2 Meetings

A total of 26 council meetings were held during the year, including 21 regular meetings, 3 emergency meetings and 2 extraordinary meetings chaired by the Governor.



Below is an overview of the attendance of the Members and Extraordinary members of the Council:

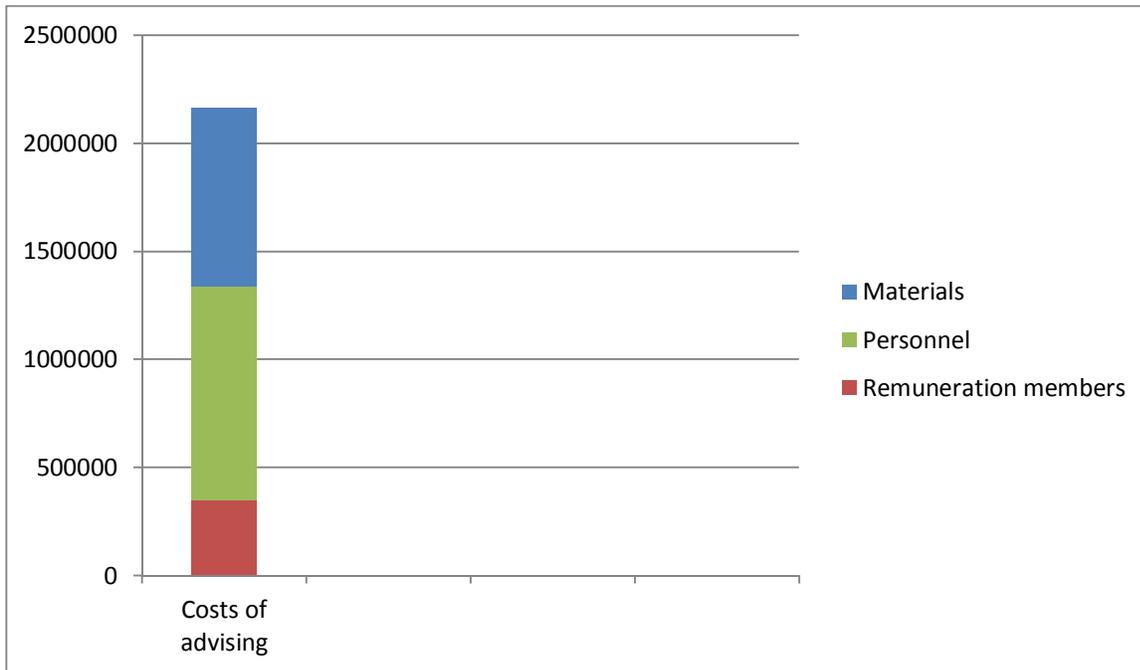




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3.3 Expenditures

The total cost of advising by the Council was budgeted in 2015 at NAf. 2,158,593.00.



Notes:



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4. Theme: The challenges pertaining to Public Finance

At the start of Round Table conference which took place on November 26, 2005, it was clear that the debt position of the Netherlands Antilles and the island territories individually would be an obstacle, obstructing the achievement of a sound financial starting point for the new soon to be constitutional entities. The island territories had been experiencing years of difficulties in the field of public finance. The budget alone did not serve as a sufficient financial policy tool and the debt positions and payment arrears were proving to be problematic.

In preparation to acquiring the autonomous status by Sint Maarten it was agreed upon that Sint Maarten should start off its new constitutional relations in a financially secure position. In order to prevent financial difficulties, joint arrangements would have to be made on a comprehensive budget policy, bringing order to the financial management of the island and effective financial supervision to prevent new debt accumulation.

It was agreed in the Final Declaration of November 2, 2006 that the countries Curaçao and Sint Maarten would comply with financial standards by consensus Kingdom law, anchored in the Kingdom Law Financial Supervision Curaçao & Sint Maarten (Rft). The Kingdom Council of Ministers would supervise compliance and a Financial Supervision board established on Curaçao and Sint Maarten (Cft) would have a monitoring and advisory role to play on the island territories.¹

The Council of Advice has an advisory role with regard to the budget and annual accounts as they are established in the form of National Ordinances. Contrary to the Cft the Council also reviews the budget and annual financial statements based on the National Government Accounting Ordinance. The content of both the National Government Accounting Ordinance and the Rft prescribe that expenditures in the budget and the multi-annual budget are to be covered by the ordinary and capital services. With regards to acquisition of loans, both legislations advocate that interest burden norm should not exceed 5%.² The budget, the multi-annual budget and the annual financial statements, together with the explanatory memorandum, should give insight into both the financial position and the income and expenses of the public sector, in order to provide accountable insight with respect to the state of the Public sector.

¹ Explanatory Note of the Kingdom law financial supervision Curaçao & Sint Maarten pag. 1 & 2.

² The interest burden norm pertains to the interest charge that is equal to 5% of the average realized combined income of the public sector of a country, over the three years preceding the year in which the budget is or will be filed.



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Since gaining the status as a country within the Kingdom on October 10, 2010 St. Maarten received for the first time in 2015 a Financial Instruction from the Kingdom Council of Ministers to bring the budget of 2015 and multi annual budgets in order. The Kingdom Council of Ministers followed the advice of the Cft, which stated that the budget did not meet the standards of the Rft. Despite this instruction, the year was nevertheless concluded without a budget approved by the Cft which also meant that it was not permissible for St. Maarten to take on any new loans in 2015.

As a result of the National Ordinance amending the 2015 budget not being adopted the legal status of the 2015 budget became uncertain. The provision regarding the entry into force of the National Ordinance 2015 budget dictated a different date of entry into force, in case the Cft was of the opinion that the budget should have been amended because it did not meet the standards of the Rft. Normally the budget would enter in to force on the first day of the seventh week after the ratification of the budget but with a negative assessment of the Cft, the budget would only enter into force on the date the amending Ordinance would have come into force amending the budget retroactively to 1 January 2015. A national ordinance amending the 2015 budget has to date, not been established so that the legal status of the budget in 2015 remains unclear.

As in previous years, the government in 2015 again failed to adhere to the schedule regarding the budget and the annual financial statements, set in the Constitution and the National Government Accounting Ordinance. The budget was offered to Parliament much later than the statutory deadline of September 1, 2014. The annual financial statements were submitted even later than legally prescribed to Parliament for discharge of the previous government. Only in April 2015, the Council received the annual financial statements for the year 2012 for advice, while based on the Constitution and the National Government Accounting Ordinance, government is accountable for the annual submission to Parliament for the executed financial management, by presenting the annual financial statements in a timely manner.

The right of the Parliament to review the budget loses its value if the accountability for the financial management takes place much later then right after the closing of the financial year. By the late preparation of the annual financial statements, it is also not possible to use the financial information in the annual financial statements in preparation for the next budget. In addition, both the Foundation Government Accountants (SOAB) and the General Audit Chamber have made it clear that the annual accounts of the year 2012 did not give a true and fair representation of the financial position of the country as required by the National



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Government Accounting Ordinance. A Part of the annual financial statements were unlawful because the expenditures are not in accordance with the budget or in violation of relevant regulations.

Looking over the years 2010 to 2015 it seems that little progress has been made in solving the problems that have prompted the attention of the Council's recommendations. A recurring comment made by the Council and the Cft for example, is that the estimated revenues of the current accounts are not realistic. Pre-emptively the measures that are to be taken by the tax department to increase tax compliance, are factored into the revenue for the country bringing the estimated revenues higher than revenues achieved in the past year. Each year, however, has shown that this expected additional revenues are hardly realized. The revenue-enhancing measures and expenditure cutting measures are either never implemented or have insufficient effect.

The Council notes that the budgets are still not adequately prepared with the policy plans of the government as a starting point. The Council is given the impression that the figures are only adjusted from the budget of the previous year for the new year on the basis of expected actual figures for the past year. Long-term vision on spending and revenues are not reflected in the budget.

Other recurring problems are the payment arrears to, amongst others, the General Pension Fund Sint Maarten (APS) and the Executing Agency Social and Healthcare Insurance (SZV) of approximately ANG 190 million, the budget deficits of previous years of approximately ANG 60 million, the delay with the liquidation of the estate of the Netherlands Antilles and the weak liquidity position of the Country. Also the lack of a dividend policy for Government owned entities and the lagging revenues from for example casino fees remain a concern.

These issues being unresolved in the budget of fiscal year 2015 led to the Kingdom Council of ministers deciding by decree of September 8th 2015 to give an Instruction to Sint Maarten to:

- 1. solve the payment arrears in the period 2015-2018**
- 2. compensate the realized deficits in the current account of the past, in the period 2015-2018**
- 3. include the full expenditures for healthcare and pension in the budget of 2015 and in the multi annual budget**



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4. take measures to ensure a sustainable pension and social healthcare system in order to prevent new payment arrears by the end of 2016

The first three measures were to be taken up in a budget amendment before November 1st 2015. The negotiations on the transfer of the Government building to APS or SZV in order to repay a portion of the debt were mired up until the Instruction and ultimately did not produce any results in 2015. Also there was no consensus on the amount of the payment arrears partly because the Government, in violation of the law, for years had been contributing too little pension premium to APS.

While working on a budget amendment the Minister of Finance filed for appeal (Kroonberoep) in order to fight the Instruction from the Kingdom Council of ministers. A first draft budget amendment was submitted to the Council of Advice in August 2015 for advice whereby the estimated revenue of the current account for the year 2015 as well as for the multi annual budget were significantly increased in anticipation of amongst others, measures by the Tax department.

The Council did not consider it realistic to expect that the measures pertaining to tax compliance would increase the revenue so dramatically. The Council also noted that there were still no concrete agreements made in order to eliminate the payment arrears. Reports of cancellation of portions of the payment arrears were not concrete and the Cft has in the past already been very negative about eliminating the payment arrears via long-term payment arrangements. These long-term payment arrangements are considered by the Cft to be ordinary loans because they exhibit all the characteristics of a loan.

Based on the Rft, loans may not be used to pay expenses on the current account (such as pension premiums). In the opinion of the Cft, a solution must therefore be sought within the existing financial management.

Around the end of the year, the government fell because of a no confidence vote from Parliament. The budget amendment did not proceed because of this. The new government decided not to pursue the appeal against the Instruction and to adhere to the Instruction from the Kingdom Council of ministers in the budget of fiscal year 2016 instead of amending the budget for fiscal year 2015, due to a lack of time.

Finally, it is worth noting that the 5th Report of Findings PEFA assessment financial management Sint Maarten was released in 2015. For both St. Maarten and Curaçao it applies that since 2010 based on the PEFA methodology (Public Expenditure and Financial



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Accountability, an initiative of the World Bank, the IMF and the EU) the progress of the improvement of the financial management is being monitored. In doing such, on the basis of the objectives that St. Maarten and Curaçao have set for themselves and on the basis of minimum scores that apply to comparable countries, insight is regularly given on the progress. It is a method that is based on self-analysis in which the countries together with the Cft, assess financial management.

The 5th Report of Findings PEFA assessment financial management Sint Maarten, contains a representation of the results of an inventory on the status of the financial management of St. Maarten in the budget year 2014. Therefore, the scope relates to creation and adoption of the annual accounts 2013, budget implementation 2014 and the 2015 budget preparation.

The inventory of the report shows that St. Maarten in recent years has made a slight improvement in the area of financial management.³ Substantial improvements need to be achieved if there is to be a sound financial management.

The scores were insufficient on issues like payment arrears, completeness of information in the budget, insight into financial risks of independent administrative bodies and holdings, policy multi annual estimates, effectiveness in collecting tax assessments and managing the payroll. A deterioration even occurred at one indicator, namely the frequency and punctuality of financial closure and connection procedures.

Conclusion:

It is clear, as stated in the PEFA report, that major adjustments are needed to improve the financial position of St. Maarten. These adjustments should not only take place across the board but should also have a long-term perspective. Surely and perhaps only with such an approach will Sint Maarten bring its financial management to such a level which is necessary for a structurally sound financial housekeeping.

³ Cft message to the MinFin November 11th 2015 number 201500256.



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5. ANNEXES

5.1 Annex 1: Assessment tools Council of Advice

The policy-analytical assessment

The policy-analytical assessment deals with the critical analysis of the policy proposal.

An important point of interest is the elucidation to the proposal. Is the reason for this new law or measure clearly defined? And is this line of reasoning convincing?

The policy-analytical assessment consists of three sections:

1. **Description of the problem:** What is the problem? Why is this a problem? And for whom? What is the context? These and other questions come up for discussion.
2. **Approach to the problem:** is this regulation a(n) (effective) solution for the defined problem?
3. **Execution and enforceability:** is the proposed execution adequate and can the regulation be enforced? Are there sufficient means and manpower available to execute and enforce the regulation?

When dealing with the policy-analytical assessment, the Council though not necessarily exclusively, shall examine the question whether or not and if so, to what extent the measures which are encountered in the draft law are proportional and effective for the intended purpose. The Council respects the fact that the development of the chosen policy is the prerogative of Government and/or Parliament, and therefore exercises restraint while analyzing the policy.

The judicial assessment

The judicial assessment evaluates the judicial quality of the proposal. It concerns two main divisions:

1. **Review against higher laws:** is the proposal in conflict with (international) higher laws? The Council examines written as well as unwritten laws.
2. **Does it fit within the existing law:** does the proposal fit within the existing legal system? Furthermore, is the draft proposal even necessary within this framework?

The legal technical assessment

With the legal technical assessment the technical quality of the proposal and the elucidation to the proposal are evaluated. Technical aspects such as logical and systematic structure, consistency and terminology are assessed. This assessment is effectuated on the basis of the Instructions for regulation of Sint Maarten (in Dutch: *Aanwijzingen voor de regelgeving*) and the manual for the development of laws and regulations of St. Maarten (in Dutch: *Draaiboek voor de regelgeving*).



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5.2 Annex 2: Secondary activities of the members in 2014

Name	Secondary activities
Mrs. Mavis Brooks-Salmon LL.M. MA (Vice-chair also member)	- Director children's Catholic choir
Mr. Jan Beaujon (Member)	- Chairman of the Board of Directors of the Nature Foundation Sint Maarten - Member of the supervisory board of the Foundation Cooperative Funds - Board member of the Foundation for the Conservation of monuments. - Board member of the Windward Islands Bank N.V. and of the Windward Islands Bank International Ltd.
Mr. Gaston Bell LL.M. (Member)	- Member of the St. Maarten Bar Association - Substitute Member of the Disciplinary Board of Lawyers - Board member of the Foundation for Hope & Music Development - Board member Diamond Avandero Corporation N.V. - Congregational Steward Methodist church St. Maarten - Member of the Taskforce Methodist Church Building Project
Mr. Louis Duzanson (Member)	-
Mrs. Marcella Hazel (Extraordinary member)	- President of the Foundation Advanced Vocational and Adult Education (NIPA) - Official translator by Federal Decree - Advisor of the Community Council of Reward
Mr. Rik Bergman LL.M. (Extraordinary member)	- Partner at BSZE Attorneys at Law/ Tax Lawyers St. Maarten - Board member of de University of St. Martin - Board member of the Parkinson's Foundation Sint Maarten - Member of the Disciplinary Board of



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	Lawyers - Member of the St. Maarten Bar Association
Mr. Miguel Alexander LL.M. (Extraordinary member)	- Commissioner of: <ul style="list-style-type: none">• Maduro & Curiel's Bank N.V. in Curaçao;• Reon Investments N.V. in Curaçao;• Samsom Curaçao N.V. in Curaçao;• United International Bank N.V. in Curaçao;• The Windward Islands Bank N.V. and• The Windward Islands Bank International N.V. - Director of eighteen (18) offshore partnership companies and one belonging to the BCD/BORON Group. - Director/owner of: <ul style="list-style-type: none">• Cazalex Holding B.V.;• Notarispraktijk Alexander N.V.;• Cazalex Pensioenen N.V.• Alexander Corporate Legal Advisors B.V.;• Alexander & Baaten Legal Services B.V. (10% shareholder) - Director of: <ul style="list-style-type: none">• Foundation SONA;• Foundation Cazalex;• Foundation private fund Cazalex;• Foundation financing Task Force Tax Treaties• Foundation pension fund Chr. A. Peterson - Advisor to Notary Kleinmoedig Alexander on Curaçao



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5.3 Annex 3: Rules of Conduct

The Council of Advice strives to guarantee the principles of democracy and the Rule of Law in St. Maarten, by providing independent advice to Government and to Parliament, which is effective, accurate, and of high quality. In order to realize this, the core values of the Council are taken into account at all times. These values relate to: integrity⁴, soundness⁵ and justice⁶.

The integrity, soundness and justice aspects of these rules of conduct are already included in the Rules of Order of the Council of Advice. More specifically, these rules ensure that the independence and the impartiality of the Council, its vice-chair, members and extraordinary members are guaranteed individually. These rules are discussed in the paragraph below titled 'Guaranteeing Impartiality and Independence of the Council' and are the foundation for the proper and reliable functioning of the Council.

In short, the Council of Advice is an independent body, which in spite of possible external pressure shall not give advice in any other way than for which it stands. In the rules of conduct, an explanation is given regarding the manner in which the Council of Advice shall preserve its independence. Furthermore, in the rules of conduct in question, attention has been given to avoiding (political) partiality and the semblance of such. This entails that the vice-chair, the members and the extraordinary members of the Council of Advice shall state their views regarding the topics of advice, without (political) prejudice. The vice-chair, the members and the extraordinary members are also expected not to publicly propagate any political preferences, for example by affixing party-political stickers to their cars or attaching such flags to their cars.

In order to strive for the highest quality and impartiality in its advice, the Council will utilize assessment tools previously agreed upon covering three areas, namely (1) the policy-analytical assessment, (2) the judicial assessment and (3) the legal technical assessment. The advice shall not be realized on any other grounds than these. By using these assessment tools one is not only acting impartially in this case, but it further promotes the quality of the advice. After all, the Council derives its authority from the quality and impartiality of its advice.

Prior to compiling the advice the Council uses these assessment tools in order to produce high academic-level advices. The rules of conduct to enhance the quality of the advice shall be discussed below.

4 By integrity is understood: adhering to the legislation because one is convinced that this is the proper manner in which to act, not because of external influences.

5 By soundness is understood: well founded

6 By justice is understood: acting in accordance with democratic and constitutional principles, guaranteeing the fundamental human rights, including social civil rights.



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Guaranteeing Impartiality and Independence of the Council

By definition, membership of the Council is a part-time function and is therefore often performed in addition to a main function and/or another job. One must not lose sight of the fact that performing other functions promote the social involvement of the members, which in turn helps the advisory process. The following should, however, be taken into account:

1. **Functions incompatible with the vice-chairship and the membership of the Council**
 - a. The members and extraordinary members of the Council do not fill any offices or functions which are incompatible with membership and of which performance is undesirable in view of a proper fulfilment of the membership in the Council or the confidence therein.
2. **Reporting main and other functions**
 - a. Every (extraordinary) member must submit a written report to the vice-chair of his main or other functions, paid or not paid, at the time of or after his appointment.
 - b. The vice-chair submits a written report of his main or other functions, paid or not paid, which he holds at the time of or after his appointment, to the Council.
3. **Criteria for main or other functions and other issues, which could cause a conflict of interest.**
 - a. A conflict of interest constitutes a situation in which a person serves more than one interest, which could influence each other to such an extent, that the integrity of either one is at risk. Establishing of conflict of interest is therefore tantamount to the question, whether or not in the case of a(n) (extraordinary) member, other interests play such a role, thereby causing the possibility that an advice may not be realized objectively and impartially.
 - b. As criteria for the other offices or functions to be performed by the vice-chair and the other members of the Council, the following shall be used:
 - The risk that the vice-chair or the (extraordinary) member must excuse himself as a result of another function, personal or business interests;
 - The degree in which the organization or comparable organizations to which the main or other function is related, is a stakeholder, in a topic of advice;
 - The risk of conflict of interest.
 - c. The vice-chair or, as the occasion arises, the Council, subjects the main or other functions to be performed by the (extraordinary) member in question to the criteria mentioned in the abovementioned point.



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4. Reporting conflict of interest
 - a. Every (extraordinary) member who is of the opinion that there is a matter of conflict of interest involving himself or another member shall bring this to the attention of the vice-chair.
 - b. In cases whereby there is a matter of conflict of interest involving the vice-chair, the (extraordinary) member brings this to the attention of the oldest appointed member of the Council.

5. Maintaining independence and impartiality
 - a. The vice-chair or the other member in question of the Council shall not participate in the deliberations and shall not cast a vote, if this could be harmful to the impartiality and independence of the Council or if there is the appearance that the impartiality and independence of the Council could be damaged. The (extraordinary) member in question shall not take part in the deliberations in the abovementioned case.
 - b. The vice-chair shall notify the (extraordinary) member in question as soon as possible in writing whether or not, in connection with the impartiality and independence of the Council, there are objections to occupying the main or other function; the (extraordinary) member in question neither be able to participate in the deliberations nor vote in regard to the topic at hand. In that case the (extraordinary) member in question shall be heard by the Council.
 - c. If it concerns the vice-chair, the notice meant in the previous sentence shall be effectuated by the oldest appointed member. In that case the vice-chair shall be heard by the Council.
 - d. If the vice-chair, in connection with the impartiality and independence of the Council has objections to the (extraordinary) member occupying a main or other function, the (extraordinary) member in question will neither be able to participate in the deliberations nor to vote regarding a topic of advice. If this (extraordinary) member persists in occupying the position or function in question, the entire Council shall decide.
 - e. If a member or extraordinary member, in connection with the impartiality and independence of the Council has objections to the vice-chair occupying a main or other function or participating in the deliberations and participating in the voting with regard to an advice topic and the vice-chair persists in the exercising of the office in question or the function in question, the entire Council shall decide.

Rules of conduct for promoting quality of the advice.

6. Research.



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- a. Before the Council of Advice arrives at a standpoint on the draft proposal for which advice will be given, a thorough research shall be conducted with regard to the topic of the proposal. The Council shall strive to maintain an academic level.
- b. In order to guarantee the objectivity of the Council's advice, the Council of Advice shall rely solely on facts, or on views, which are widely shared academically/based on academic research.

7. Participation of members and extraordinary members

The members and extraordinary members shall make their expertise available before the start of the research and before a draft advice is drawn up.

8. Guaranteeing the quality of the advice

The Council of Advice shall take the time necessary to come to an advice.

9. Foundations for assessments

The Council of Advice reviews a draft or proposal solely on the basis of the previously established assessment tools, consisting of a policy- analytical, judicial and legal technical assessment. These assessment tools are analogous to those of the Council of State in the Netherlands.

Policy-analytical assessment

The policy-analytical assessment (Du: BAT) deals with the critical analysis of the policy proposal.

An important point of interest is the elucidation to the proposal. Is the reason for this new law or measure clearly defined? And is this line of reasoning convincing?

The policy-analytical assessment consists of three sections:

1. **Description of the problem:** What is the problem? Why is this a problem? And for whom? What is the context? These and other questions come up for discussion.
2. **Approach to the problem:** Is this regulation a(n) (effective) solution for the defined problem?
3. **Execution and enforceability:** Is the proposed execution adequate and can the regulation be enforced? Are there sufficient means and manpower available to execute and enforce the regulation?



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When dealing with the policy-analytical aspect, the Council though not necessarily exclusive, shall examine the question whether or not and if so, to what extent the measures which are encountered in the draft law are proportional and effective for the intended purpose. The Council respects the fact that the development of the chosen policy is the prerogative of Government and/or Parliament, and therefore exercises restraint while analyzing the policy.

Judicial assessment

The judicial assessment evaluates the judicial quality of the proposal. It concerns two main divisions

1. Review against higher law: Is the proposal in conflict with (International) higher law? The Council of Advice looks at the written and unwritten law.
2. Does it fit within the existing law: Does the proposal fit within the existing legal system? And, is the draft proposal even necessary within this framework?

Legal technical assessment

With the legal technical assessment the technical quality of the proposal and the elucidation to the proposal are evaluated. Technical aspects as logical and systematic structure, intrinsic consistency and terminology are scrutinized. This assessment is effectuated on the basis of the Instructions for regulation of Sint Maarten and the Guidelines for the realization of legislation and regulation for Sint Maarten.

10. Drawing up the advice

The task of the Council of Advice is to think along constructive lines with the legislator and regulator. The advice must therefore be effective and concentrated on the relevant issues which the topic or proposal is related to. If appropriate, the Council may endorse the vision of the legislator or the regulator.

In conclusion

Even though it falls outside of the scope of the rules of conduct, the Council concludes with the following points, which are taken into account for promoting the core values and enforcing the relevant rules of conduct.

These rules of conduct are equally applicable to the Secretariat.

The Council of Advice shall act as transparent as possible. The Council shall publish its advices in its annual report, on its website and in the media, when the advices have been made public by Government. In this way, everyone is able to take note of the activities of the Council. Indirectly these publications moreover, may contribute to the compliance with the rules of conduct. After all transparency offers the possibility of verifying if the Council has complied with the rules of conduct. In order to make the work of the Council as accessible as possible for



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the local population, advices shall be translated where possible or an English summary shall be provided.

In conclusion the Council of Advice, shall as stated in article 22 of the Rules of Order, execute a self-evaluation, once a year, prior to July 1st, which is solely intended for internal use of the Council, in order for the Council to remain vigilant at all times regarding compliance with the rules of conduct as such. On the basis of this self-evaluation the rules of conduct may be revised if there is reason to do so.



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5.4 Annex 4 Selection of the issued advices

5.4.1 Advice on the draft National Ordinance establishing the Integrity Chamber (Integrity Chamber National Ordinance)

Subject: Draft National Ordinance establishing the Integrity Chamber (Integrity Chamber National Ordinance), your consecutive number LV-15/0001.

Advice: With reference to your request dated January 27, 2015 for the opinion of the Council of Advice on the abovementioned subject and the discussion thereof during the meeting of the Council on February 3, 2015, February 17, 2015 and March 3, 2015, and the adoption thereof during the meeting of the Council on March 3, 2015, the Council informs you as follows.

The purpose of the draft is to establish an Integrity Chamber that will be responsible for advising the Government on the integrity policy and for advising the Council of Ministers on investigations into alleged integrity breaches.

The Council has some reservations about one or more aspects of the proposal. It believes that, in connection therewith, some adaptation of the proposal is desirable.

1. Policy analytical assessment

1.1 Definition of breach of integrity

Article 1, subparagraph c, of the draft defines the term “breach of integrity”. According to this definition, breach of integrity occurs, if a formal rule on holding a public office or a public position has been breached by an action that is predominantly motivated by the position in an informal relational network.

Given the definition of breach of integrity, the Integrity Chamber cannot investigate actions that are harmful to the confidence in and the functioning of public administration, if no formal rules have been breached by these actions, because the definition limits the breach to an action that is in breach of a formal rule.



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The Council asks that this be substantiated and refers to the definition as stated in the draft Kingdom decree, containing general measures establishing an Integrity Committee in Sint Maarten¹.

1.2 The integrity rules contained in the National Substantive Civil Servant Ordinance

The explanatory Memorandum to Articles 3 and 4 on page 19 states that the investigation into an alleged breach of integrity is, in principle, aimed at the minister concerned, the Council of Ministers as a whole, a member of Parliament or Parliament as a whole, as, after all, it should concern a breach of a formal rule on holding a public office or a public position. If it is found that the integrity breach has been committed by a civil servant or another subordinate person, the prevailing rules intended for that purpose apply to the handling thereof, such as the Substantive Civil Service Law National Ordinance (hereinafter: “Lma”).

Under Chapter IV, paragraph 14, of the Lma, the civil servant should report a suspected breach of integrity to the head of service who reports this to the minister concerned. Within eight weeks, the minister should take a substantive position. If a report is based on the truth, the necessary measures will be taken.

In the opinion of the Council, the Explanatory Memorandum suggests that this draft does not apply to integrity breaches committed by civil servants, because the integrity rules of the Lma would apply to such breaches. However, having regard to the definition of “breach of integrity”, civil servants are also able to breach integrity. It also is not clear to the Council how a report within the framework of the Lma reaches the Integrity Chamber.

The Council advises to explain further how the integrity rules of the Lma relate to this draft.

1.3 The Integrity Chamber as an independent administrative body

The Explanatory Memorandum states that it has been decided to establish the Integrity Chamber as an independent administrative body (hereinafter: IAB) to guarantee an independent formation of opinions protected from political influence. As also indicated in the Explanatory Memorandum, the minister remains politically responsible in outline for a proper performance of duties by the IAB. However, the minister can only account for the powers granted to him in respect of the IAB. In the opinion of the Council, the minister therefore has

¹Request for advice dated February 4, 2015, with consecutive number BU-15/0023.



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to have a minimum number of powers to be able to live up to this responsibility with regard to the IAB².

However, the Council notes that the Supervisory Board is given some far-reaching powers in the draft, which are normally vested in the minister. At the same time, the draft does not show that the Supervisory Board has to account in any way for these powers³. The explanatory notes to Articles 6 through 15 on page 21 state that a strong role is proposed for the Supervisory Board to exclude the possibility of political intervention as much as possible. The Government deems it necessary that the body does not fall directly under the authority of a minister and, therefore, can operate impartially and independently of the National Government. The Council reminds the Government that there will be a gap in the constitutional control of public administration, if the responsible minister has no powers to give substance to his responsibility, and the Supervisory Board does not have to account for its powers⁴.

Given the need for an independent and impartial body as mentioned in the Explanatory Memorandum, the Council asks the Government to consider giving the Integrity Chamber an independent position in the Constitution of Sint Maarten as a High Council of State.

Under Article 22, third paragraph, of the draft, the Integrity Chamber, as an independent administrative body, has to send Parliament an annual plan and a budget for the following calendar year, each year before September 1. Given the ultimate ministerial responsibility of the minister, the Council asks to substantiate why it was not decided to send the budget of the

² The “Begeleidingsteam Kaderwet Zelfstandige Bestuursorganen” [Monitoring Team Framework Act on Independent Administrative Bodies] (hereinafter: the Committee) states in its report “Zbo’s binnen kaders” [Independent Administrative Bodies within Frameworks], paragraph 3.2, that the minister should have at least the power to appoint, suspend and dismiss the person who is charged with the administrative duties, as well as the power to determine the remuneration or compensation of the members of an independent administrative body.

³ The Supervisory Board has inter alia the power to take the necessary measures, if the Integrity Chamber seriously neglects its duties, to reconsider a decision of the Integrity Chamber on whether or not to conduct an integrity investigation, to make a binding proposal for the dismissal and suspension of a (deputy) member or secretary and to determine that the importance of an investigation by the Integrity Chamber outweighs a duty of confidentiality.

⁴ By way of example, the Council refers to Article 15, sixth paragraph, of the Implementing Body Social and Health Insurances National Ordinance, providing that the Supervisory Board is accountable to the minister and reports to the minister on the duties performed each year.



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Integrity Chamber to the minister for approval, before sending the budget to Parliament⁵. In this regard, the Council notes that, under Article 37 of the draft, in conjunction with Article 35 of the National Government Accounting Ordinance, the Minister of Finance should take into account the estimates of the expenses of the Integrity Chamber when drawing up the national budget. The Council also considers it desirable that the annual plan is sent to the minister, and that the draft indicates what should be in the annual plan.

The financial paragraph of the Explanatory Memorandum contains a description of the allowances of the remuneration of the members of the Supervisory Board and the members of the Integrity Chamber. However, the Council notes that the draft itself, in contrast to the Explanatory Memorandum, does not provide for the manner in which the remuneration of the members of the Supervisory Board and the members of the Integrity Chamber should be determined. In addition, the Council notes that the allowances of the three deputy members of the Integrity Chamber (Naf. 120,000) in the financial paragraph have been estimated higher than the allowances of the three permanent members (Naf. 80,000). The Council asks that attention be paid to this.

1.4 Powers of the Integrity Chamber and the Supervisory Board

Article 27 of the draft stipulates that the Integrity Chamber adopts a binding opinion after an investigation into an alleged breach of integrity has been concluded. The Council is of the opinion that the use of the term “binding opinion” is incorrect, as the Council of Ministers may deviate from such an opinion by giving reasons in writing under Article 29, second paragraph. The Council asks that attention be paid to this.

The Council notes that the opinion of the Integrity Chamber is not provided to Parliament. The Council believes that it may be important to inform Parliament of integrity breaches found, so that Parliament can call the Government to account for them. The Council asks that attention be paid to this.

Article 5 of the draft grants the Integrity Chamber some administrative powers, which can be used in the investigations into alleged integrity breaches. These powers are derived from Articles 5:15 through 5:17 of the Dutch General Administrative Law (hereinafter: “Awb”). Thus,

⁵ Compare Article 20 of the Implementing Body Social and Health Insurances National Ordinance and Article 49 of the General Audit Chamber National Ordinance.



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the Integrity Chamber may demand inspection of business data and enter any place, with the exception of a house, without the consent of the occupant, bringing the necessary equipment.

The Council asks that attention be paid to the fact that it could be important to the investigation into an alleged integrity breach to also demand inspection of data that is not of a business but of a personal nature.

The Dutch interpretation of the power to enter as established in Article 5:15 of the Awb is independent of any power of investigation and does not imply searching places in the sense that random cupboards, drawers and other storage spaces can be opened⁶. The Council advises to explain further whether the Dutch interpretation of the power to enter of Article 5:15 Awb also applies to the power to enter of Article 5, first paragraph, subparagraph b, of the draft.

The phrase “bringing the necessary equipment” has been inserted in Article 5:15 Awb to ensure that supervisors who want to examine objects or take samples are allowed to bring the equipment necessary for this purpose⁷. After all, supervisors have the power to examine objects, to inspect them and to take samples thereof under Article 5:18. The Council notes that no power is granted to the Integrity Chamber to examine objects.

The Council therefore advises to substantiate why the phrase “bringing the necessary equipment” has been inserted in Article 5, first paragraph, subparagraph b, of the draft.

The Council notes that the possibility of applying to the administrative court for an administrative review of the powers of the Integrity Chamber depends on whether there is an individual decision within the meaning of Article 3 of the Administrative Justice National Ordinance. Under Article 3 of the Administrative Justice National Ordinance, an individual decision is a written ruling of an administrative body constituting a legal act under public law that does not have general application. In general, the supervisory acts are not considered legal acts but acts without an intended legal effect⁸. However, appeal may be lodged against such acts to the civil court that exercises more caution, in its assessment than the administrative court. The Council asks that attention be paid to this⁹.

6 P.J.J. van Buuren & T.C. Borman, “Tekst en Commentaar Algemene wet bestuursrecht” [Text and Commentary General Administrative Law Act], Deventer: Kluwer, 2011, commentary on Article 5:15 Awb. Also see “HR” [Supreme Court of the Netherlands] March 17, 1987, “NJ” [Dutch Law Reports] 1988.155, and HR December 21, 2010, NJ 2011, 24 and AB 2011/293.

7 Further report, Parliamentary Papers II 23700, A, paragraph 8.6.2.

8 Explanatory Memorandum, Parliamentary Papers II 1994/95, 23700, No. 3, page 142 and Parliamentary Papers II 1994/95 23700, No. 5, pages 52-55.

9 The Council also notes that it was held in the Colas Est judgment that, under certain circumstances, the power to demand information and seize documents can be contrary to Article 8 of the ECHR, if adequate safeguards against abuse of this power are lacking. In the case of Colas



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Under Article 5, third paragraph, of the draft, any person is obligated to give the Integrity Chamber assistance in the exercise of its powers. The failure to give assistance carries no sanctions. The Explanatory Memorandum states in paragraph 6.1.3. of the general part on page 13 that attaching sanctions to the failure to give assistance is not obvious, because the investigations into alleged integrity breaches are conducted at bodies funded by the Government. Thus, the payment of a fine would boil down to a payment from the country to the country. The Council notes that the Integrity Chamber also has the power to demand information from persons who are not working for the Government. The Integrity Chamber is also empowered to enter places that are not owned by the Government. In view of this, the Council asks that it be substantiated why no sanction has been included in the draft for the failure to comply with the obligation to give assistance.

Under Article 34 of the draft, a decision of the Integrity Chamber on whether or not to conduct an integrity investigation can be reconsidered by the Supervisory Board on request. The Council advises to amend Article 34 of the draft, because, under Article 98, fourth paragraph, of the Constitution, only the Government is authorized to reverse decisions of independent administrative bodies for being in conflict with the law¹⁰. The Council should be heard prior to the reversal. The Council also notes that Article 34 does not indicate who is authorized to request a reconsideration. The Council asks for your attention in this matter.

1.5 Appointment of the members of the Integrity Chamber

Paragraph 5.1 of the Explanatory Memorandum provides more detailed information on the appointment of the members of the Integrity Chamber on a binding nomination of the Supervisory Board. The Explanatory Memorandum states that the Government is obligated to make a choice from the nomination of the Supervisory Board. If none of the nominated candidates is considered suitable by the Council of Ministers, a new nomination is required before proceeding to appointment by national decree. The Council considers the Explanatory Memorandum to be in conflict with the draft, because, in the opinion of the Council, the nomination cannot be qualified as binding, if the Supervisory Board is forced to make a new nomination. To avoid legal uncertainty, the Council advises to adjust the draft and/or the Explanatory Memorandum.

Est, the French minister alone was empowered to assess the necessity, number, duration and scope of the measures. Moreover, the measures could be taken without a prior court order and without a police inspector being present.

10 L.J.J. Rogier, "Beginselen van Caribisch Bestuursrecht" [Principles of Caribbean Administrative Law], The Hague, Boom Juridische Uitgevers 2012, Chapter 8, paragraph 4, page 89.



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1.6 Appointment members of the Integrity Chamber and legal status of the staff of the secretariat

In order to be eligible for appointment as a member or deputy member of the Integrity Chamber, sufficient affinity with the local situation of Sint Maarten is required under Article 9 of the draft. Now that it cannot be determined objectively that there is sufficient affinity, the Council asks the Government to consider replacing the word “required” in Article 9 by: desired.

The Council notes that the draft does not contain any other requirements for being eligible for appointment as a member or deputy member of the Integrity Chamber other than the affinity requirement. The Council deems it important that a screening is conducted in order to assess whether a proposed member of the Integrity Chamber is of irreproachable conduct. The Council advises to adjust the draft for this purpose, as well as to stipulate in the draft that residency is required to be eligible for appointment as a member, deputy member or secretary. After all, the loss of residency leads to dismissal under Article 14, subparagraph h, of the draft.

The Council notes that Article 14 of the draft does not offer the possibility to dismiss a (deputy) member of the Integrity Chamber or a secretary on the grounds of unsuitability, incompetence or other compelling reasons¹¹. Therefore, the Council advises to adjust Article 14 of the draft.

Article 17 of the draft stipulates that the staff of the secretariat is appointed by the Integrity Chamber. The Council advises to clarify whether the appointment, suspension and dismissal of the staff take place by national decree or whether an employment contract under civil law is concluded with the Integrity Chamber.

1.7 Incompatibilities

Article 10 of the draft provides an exhaustive list of positions that are incompatible with the membership and deputy membership of the Integrity Chamber. The Council notes that a member of the Integrity Chamber cannot be dismissed, if he occupies an additional position that is undesirable for the correct fulfillment of the membership, and this additional position is not mentioned in Article 10. Therefore, the Council advises to adjust Article 10, for which Article 6, second paragraph, of the General Audit Chamber National Ordinance can be used as an example. In order to prevent members of the Integrity Chamber from occupying undesirable additional positions unnoticed, the Council proposes to stipulate in the draft that a member of

¹¹ Compare Article 12, first paragraph, subparagraph f, of the National Ordinance on the Implementing Body Social and Health Insurances.



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the Integrity Chamber has to report his intention to accept an additional position on penalty of dismissal.

Under Article 10, subparagraph e, of the draft, the position of civil servant on active duty is incompatible with the membership of the Integrity Chamber. The Council notes that persons working for the Government, who are not employed in the capacity of civil servant, could be a member of the Integrity Chamber. The Council advises to amend Article 10 in such a way that persons working for the Government (and companies owned by the Government), who are not employed as a civil servant, are also excluded from the membership of the Integrity Chamber.

Family relations to the second degree between members, deputy members and the secretary of the Integrity Chamber is prohibited¹². The person by whose marriage the family relation is created should resign. However, the draft does not contain any sanction for the person who refuses to resign. The Council advises to stipulate in the draft that the person who refuses to resign will be dismissed. By way of example, the Council refers to Article 9, first paragraph, subparagraph e, of the General Audit Chamber National Ordinance.

The Council notes that the President of the Joint Court of Curaçao, Sint Maarten and Aruba, and of Bonaire, Saba and Sint Eustatius is a member of the Supervisory Board. The Council believes that the President of the Joint Court could possibly find himself in an awkward position, if an alleged integrity breach leads to legal proceedings. The Council asks that attention be paid to this.

2. Legal assessment

2.1. Appointment of the third member of the Supervisory Board

The Supervisory Board consists of three members, of whom the third member is appointed by Kingdom Decree on the nomination of the Council of Ministers of the Kingdom of the Netherlands under Article 18, subparagraph c, of the draft. The Council of Ministers of the Kingdom of the Netherlands will consult on this with the Council of Ministers of Sint Maarten.

The Council advises to take into account Article 52 of the Charter, stipulating that, only with the approval of the King, powers may be granted by national ordinance to the King, as head of the Kingdom, with regard to matters of national interest.

¹² Article 11 of the draft.



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Given the fact that the third member is appointed by Royal Decree, the Council also asks to substantiate why this candidate member is nominated by the Council of Ministers of the Kingdom of the Netherlands itself. After all, it is not customary that the body making the appointment also nominates the candidate.

3. Legal-technical assessment

The annex contains comments of an editorial and legal-technical nature. These comments are deemed to form an integral part of this advice.

4. Conclusion

In conclusion, the Council asks the Government to send the draft ordinance to Parliament after the observations of the Council have been considered.

Thus adopted during the meeting of the Council of March 3, 2015.

ANNEX to the advice of March 3, 2015, RvA No. SM/02-15-LV

Comments of an editorial and legal-technical nature

The draft contains a number of editorial and legal-technical imperfections. The Council gives the following non-exhaustive examples.

The draft:

- a. Article 1, subparagraph h, incorrectly refers to Article 32, first paragraph, instead of Article 33 for the registration in the register.
- b. The Council proposes to change the title of Chapter 4, “reporting of suspected integrity breaches”, because of the seven Articles of that Chapter, only one Article (Article 30) actually discusses the reporting of suspected integrity breaches.
- c. Under Article 34, a decision of the Integrity Chamber on whether or not to conduct an integrity investigation can be reconsidered by the Supervisory Board. The Council proposes to move the provisions of Article 34 from Chapter 5 to Chapter 4, because the decision of the Integrity Chamber to initiate an investigation into an alleged integrity breach has been provided for in Chapter 4.



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- d. The title of Chapter 5 of the draft is “other activities Integrity Chamber”. The Council proposes not to consider the activities mentioned as “other activities”, as these activities fall under the duties mentioned in Article 3, first paragraph, just like the activities mentioned in Chapter 4. In the Explanatory Memorandum, Chapter 6, advising the Government on the integrity policy is considered to be the second main task.
- e. The Council advises to move Chapter 3 “Management and resources” after Chapter 5.
- f. In article 12 it states “plaatsvervangend leden” however it should be “plaatsvervangende leden”.
- g. Article 3, second paragraph, should be finished with a period.
- h. Article 6 stipulates that the Integrity Chamber has three members, including a Chair. The Council suggests to specify in the draft that the Chair will be appointed by the members from among their midst.

The Explanatory Memorandum:

- a. Paragraph 4.3, page 8, of the Explanatory Memorandum states that legal obligations are violated, if a “binding” opinion of the Integrity Chamber is not responded to, stating the reasons, within two weeks. The Council notes that, under Article 29, the Integrity Chamber does not have two weeks but six weeks to respond to a “binding” opinion.
- b. In Chapter 3, page 5, of the Explanatory Memorandum and paragraph 4.3, page 8, reference is wrongly made to Article 34 instead of Article 35 of the draft.
- c. Paragraph 5.3, page 10, incorrectly states that the Council of Advice (instead of the Supervisory Board) has a leading role in the suspension and dismissal of the members of the Integrity Chamber. Furthermore, reference is erroneously made to Article 33 instead of Article 34 of the draft.
- d. Footnote 15 refers to paragraph **. It is proposed to mention the number of the paragraph.



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5.4.2 Advice on the draft National Ordinance adopting the financial statements of Sint Maarten for the year of service 2012 (National Ordinance adopting the Financial Statements 2012)

Subject: Draft National Ordinance adopting the financial statements of Sint Maarten for the year of service 2012 (National Ordinance adopting the Financial Statements 2012). Your consecutive number LV-15/0002.

Advice: With reference to your request dated April 10, 2015 for the opinion of the Council of Advice on the abovementioned subject and the discussion thereof during the meeting of the Council on May 5, 2015, and the adoption thereof during the meeting of the Council on May 5, 2015, the Council informs you as follows.

The purpose of the draft is to adopt the financial statements of the Country by national ordinance, in order to discharge the ministers from liability for the financial policy pursued and the financial management conducted by them.

Based on the report of the General Audit Chamber and the adverse opinion of the national accountant, the Council concludes that the Government infringed various provisions of the National Government Accounting Ordinance during the implementation of the budget and the preparation of the financial statements. In the opinion of the Council, this infringement of rules has negative effects on the budgetary right and the monitoring role of Parliament. Furthermore, the Council is of the opinion that the Explanatory Memorandum insufficiently indicates how the shortcomings in the financial management will be improved in the future.

Exceeding the statutory periods

The budgetary right allows Parliament to supervise the spending of public finances. It is appropriate for the execution of the budgetary right of Parliament that the Government periodically renders account to Parliament for the financial management¹. After all, the Government may only incur expenses up to amounts and for purposes approved in advance by Parliament during the adoption of the budget². Under the Constitution and the National

¹ The explanatory notes to Article 100 of the Constitution.

² Article 6 of the National Accountability Ordinance stipulates that the budget authorization by Parliament takes place for the estimated income and expenses at the level of economic categories per ministry or advisory body, as well as for the obligations to be entered into, which are necessary for investments in a year of service.



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Government Accounting Ordinance, the Government has to render account to Parliament each year in a timely manner for the financial management conducted by timely submitting the financial statements, the report of the General Audit Chamber and the report of the national accountant to Parliament³. The Council notes that the statutory periods for the preparation and submission of the financial statements have been exceeded considerably. In the opinion of the Council, this affects the monitoring role of Parliament.

The Minister of Finance has to prepare the financial statements in respect of the previous year of service before September 1⁴. The Council reads in the report of the General Audit Chamber that the financial statements were prepared five months late by the Minister of Finance⁵. Furthermore, the period for submitting the financial statements to Parliament was largely exceeded. Under Article 54, first paragraph, of the National Government Accounting Ordinance, the Government is obligated to submit a draft national ordinance adopting the financial statements to Parliament for granting the ministers discharge within one month after the issue of the report by the General Audit Chamber. The General Audit Chamber issued its report on the financial statements 2012 in a timely fashion, viz.: on May 19, 2014. Consequently, the Government should have submitted the draft national ordinance adopting the financial statements to the Council for advice and to Parliament before June 19, 2014⁶. However, the draft national ordinance adopting the financial statements was not submitted to the Council until April 10, 2015⁷.

In the opinion of the Council, the budgetary right of Parliament loses its value, if the account for the financial management conducted is rendered so late after the closing of the year of service. The financial statements 2012 have a reduced news value in 2015; this leads to the risk that the granting of discharge from liability becomes merely an administrative process. Due to the late preparation of the financial statements 2012, it also was not possible to use the

³ Article 100, fourth paragraph, of the Constitution and Article 54 of the National Accountability Ordinance.

⁴ Article 52, first paragraph, of the National Government Accounting Ordinance.

⁵ Figure 1 from the report of the General Audit Chamber, "Rechtmatigheidsonderzoek 2012: jaarrekening 2012 van Sint Maarten" [Regularity audit 2012: financial statements 2012 of Sint Maarten].

⁶ The General Audit Chamber has to issue its report on the financial statements within a period of one and a half month after receiving the report of the accountant on the financial statements. The General Audit Chamber has complied with this statutory period, the report of the accountant was received by the General Audit Chamber on April 9, 2014.

⁷ The Council also notes that the draft National Ordinance adopting the Financial Statements 2013 has not yet been submitted to the Council for advice, whereas the General Audit Chamber did timely issue its report on the financial statements 2013 on December 3, 2014.



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financial information in the financial statements for the preparation of the following budgets. The Council asks that attention be paid to this.

The annual financial statements

Both the accountant (“SOAB”: National Accountant Office Foundation) and the General Audit Chamber are of the opinion that the financial statements 2012 do not give a true and fair view of the financial position of the Country, as required by the National Government Accounting Ordinance⁸. To be able to exercise the budgetary right adequately, reliable and accessible accounting documents are essential. The General Audit Chamber indicates that the financial statements contain material errors amounting to Naf. 45.7 million, uncertainties and budget overruns and underruns. The Council notes, however that the General Audit Chamber did not file an official objection within the meaning of Articles 28 and 29 of the General Audit Chamber National Ordinance. Furthermore, the SOAB is of the opinion that some of the amounts accounted for in the financial statements have not been spent regularly, because the expenditure is not in accordance with the budget or is contrary to relevant regulations. Thus, there are budget overruns without previous budget amendments, and the regulations concerning public procurement and grants for significant amounts have not been complied with⁹.

Based on Article 48, third paragraph, of the National Government Accounting Ordinance, the Government is obligated to lay down further rules by national decree containing general measures, intended to strengthen fiscal discipline. The Council notes that such a national decree containing general measures has not yet been adopted.

In this context, the Council also notes that deviating from the budget prior to the adoption of a national ordinance amending the budget under Article 50 of the National Government Accounting Ordinance is only permitted, if the national interest immediately so demands, or in case of unexpectedly occurring urgent needs in the year of service not provided for in the budget. “Immediately” is understood to be the circumstance that the impact of war or threat of war, a disaster or any other exceptional incident should be cushioned by the country. Parliament has to be informed in writing of the resulting financial consequences as soon as possible after the relevant decision.

⁸ See Article 2, Article 20, first paragraph, and Article 23, first paragraph, of the National Accountability Ordinance.

⁹ It concerns Article 47 of the National Government Accounting Ordinance and the provisions of the Government Grants Ordinance.



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When submitting financial statements rejected by the national accountant to Parliament for the granting of discharge, the Council considers it important that Parliament is at least given some understanding of the manner in which the shortcomings in the financial management will be improved in the future. The Council therefore advises to explain in more detail why the provisions concerning public procurements and grants have not been complied with, and how the Government will ensure that these provisions will be complied with in the future. The Council also considers it desirable to explain in more detail why the expenditure frameworks included in the budget have been exceeded without a previous budget amendment.

The General Audit Chamber and the SOAB detected errors and uncertainties with regard to the following items. The Council advises to indicate in the Explanatory Memorandum how the errors and uncertainties in these items will be corrected in the future.

- Income from taxes, licenses, license fees and balance Bureau of Telecommunications and Post St. Maarten
- Valuation participating interests
- Amount personnel costs
- Valuation debt to General Pension Fund Sint Maarten
- Valuation provision for early retirement scheme and cost-of-living allowance
- Amount liquid funds
- Amount accounts payable and other current liabilities
- Amount accounts receivable and long-term student loans
- Valuation tangible fixed assets

Given the fact that the national accountant also rejected the financial statements 2011, the Council advises the Government to make every effort to improve the shortcomings in the financial management as soon as possible, in particular, to avoid an official objection by the General Audit Chamber in the future.

Conclusion

In conclusion, the Council asks the Government to send the draft ordinance to Parliament after the observations of the Council have been considered.

Thus adopted during the meeting of the Council of May 5, 2015.



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5.4.3 Advice on the draft National Ordinance amending some national ordinances in connection with the introduction of the day of the Sint Maarten Constitution, or Constitution Day, as a public holiday

Subject: Draft National Ordinance amending some national ordinances in connection with the introduction of the day of the Sint Maarten Constitution, or Constitution Day, as a public holiday (your consecutive number LV-15/0004).

Advice: With reference to your request dated June 15, 2015 for the opinion of the Council of Advice on the abovementioned subject and the discussion thereof during the meeting of the Council on July 7, 2015, and the adoption thereof during the meeting of the Council on July 7, 2015, the Council informs you as follows.

According to the recitals, the purpose of the draft is implement or introduce the day of the Sint Maarten Constitution, or Constitution Day, as a public holiday on October 10. By adopting October 10 as a public holiday, the public holiday of December 15, being Kingdom Day, or “Dia del Reino”, will also cease to exist.

The Council endorses the purpose of the legislative proposal, but it makes one comment regarding the amendment to Article 245 of the Code of Commerce.

Legal assessment

Article III, part A, second paragraph, of the draft stipulates that a paragraph is added to Article 245 of the Code of Commerce, as a result of which, if the day of the Sint Maarten Constitution, or Constitution Day, is celebrated annually on October 10, and that day falls on a Sunday, this day will be celebrated on the following business day. In this regard, the Council notes that the Code of Commerce does not provide for public holidays. Therefore, the addition of this paragraph is not necessary.

The Council therefore advises to omit Article III, part A, second paragraph, in the draft.

Legal-technical assessment

The annex contains the comments of an editorial and legal-technical nature. These comments are deemed to form an integral part of this advice.



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Conclusion

In conclusion, the Council asks the Government to send the draft ordinance to Parliament after the observations of the Council have been considered.

Thus adopted during the meeting of the Council of July 7, 2015.

ANNEX to the advice of July 7, 2015, RvA No. SM/06-15-LV

Comments of an editorial and legal-technical nature

The draft contains a number of editorial and legal-technical imperfections. The Council gives the following non-exhaustive examples.

- a. In accordance with the English translation used, and because it can only relate to one Constitution in the opinion of the Council, it is proposed to replace “the day of the Sint Maarten Constitution” by: the Constitution Day in the entire draft.
- b. As the Council found a manifest clerical error in the proposed Article III, part A, first paragraph, it is advised to reletter Article 245, third paragraph, of the Code of Commerce as follows:
 - i. the day on which Labor Day (May 1) is officially celebrated;
 - J. the date of July 1, being Emancipation Day;
 - k. the date of October 10, being the day of the Sint Maarten Constitution or Constitution Day;
 - l. Christmas Day and Boxing Day; or
 - m. the date of November 11.
- c. It is proposed to remove the extra space in Article I, first paragraph, after the words “shall read”.
- d. It is proposed to change the semicolon in Article V, first paragraph, at the end of subparagraph a, into the same font as the rest of the draft.
- e. It is proposed to omit the period in Article V, first paragraph, at the end of subparagraph h.
- f. It is proposed to omit the first colon in Article VI, in accordance with instruction 171 of the Instructions for Legislation of Sint Maarten.