



Parliament of Sint Maarten
Attn: President of Parliament,
The Honourable Mrs. S.A. Wescot-Williams
Wilhelminastraat 1
Philipsburg, Sint Maarten

Ref. no.: IC-ADV/24.045

Subject: Advice on the Integrity Screening of Ministers

Cay Hill, August 9, 2024

Honourable President of Parliament,

Integrity is one of the most important pillars to ensure the quality of public administration. Incorporating ethical and moral behaviour throughout government, is necessary to build trust in the government and the democratic rule of law. Society expects that the government is transparent and trustworthy and has public officials that have integrity and are qualified for the job.

The formation of Government, after the elections in January 2024, revealed shortcomings in the process of the selection, nomination, and appointment of ministers. Considering the upcoming snap elections on August 19, 2024, the Integrity Chamber believes that more light should be shed on the integrity norms and values that must be in place during the process of forming the Government, as well as the necessity for increased transparency and accountability.

Based on the above, the Integrity Chamber is providing this advice.

1. Relevance

Integrity risks and issues can be found in every field, whether in the private or public sector. However, public officials are particularly susceptible to integrity risks and issues which may emerge during a convergence of their private interests and public functions. While it may initially seem harmless, incompatible positions, ancillary activities, and external interests, such as board memberships, business and property ownership, personal networks, etc., may become a source of conflict during the execution of their function. Additionally, risks arise during the execution of tasks, such as procurement procedures and the issuance of permits.

Ministers hold a prestigious position and have an exemplary function. Citizens trust that the minister will work in their best interests and will execute their tasks in a way

that does not jeopardize the functioning of the minister or disadvantage the country. It is important that ministers have integrity and display this in their day-to-day decision-making, or they risk damaging the credibility of themselves, government, and the country.

The benefits of ministers having integrity include increased public trust and trust between public officials and a stable economy, political, social and cultural system. The consequences of ministers not having integrity include a lack of public trust, negative effects to the national and international image, the economy, and the political system. It is therefore important to properly assess the norms and values of ministers prior to their nomination and appointment.

This advice from the Integrity Chamber provides the Government and Parliament of Sint Maarten with measures to strengthen the (legislative) framework of the current screening process by adding additional integrity aspects. Due to the role of political parties in the nomination of candidate-ministers, this advice should also be utilized by political parties to determine key integrity values that form the basis for selecting candidates for the function of minister.

2. Legislative Framework

Below is the current applicable legislative framework pertaining to the screening of ministers.

- Articles 34, 35, 41, and 101 of the Constitution of Sint Maarten (hereinafter: 'Constitution').¹
- Kingdom Decree designating Governor of Sint Maarten to suspend the adoption of national decrees appointing ministers [...] (hereinafter: 'Kingdom Decree').²
- National Ordinance Promotion of the Integrity of Ministers (hereinafter: 'National Ordinance').³
- National Decree on the appointment procedure for candidate Ministers and candidate Minister Plenipotentiary (hereinafter: 'National Decree').⁴

Constitution

The Constitution of Sint Maarten regulates, in Articles 34, positions that are incompatible with that of the role of a minister. Actions that are prohibited as a minister are described in Article 35 of the Constitution, while Article 41 of the Constitution regulates the minister's oath. Article 101 states that rules are laid down

¹ Staatsregeling van Sint Maarten (AB 2010, GT no. 1)

² Rijksbesluit aanwijzing Gouverneur Sint Maarten tot het aanhouden van de vaststelling van de landsbesluiten tot benoeming van ministers en de Minister-President totdat onderzoek is gedaan naar de benoembaarheid van de voorgedragen kandidaat-ministers, kandidaat-Minister-President en kandidaat-Gevolmachtigde Minister (17 oktober 2014)

³ Landsverordening integriteitsbevordering Ministers (AB 2010, GT no. 22)

⁴ Landsbesluit benoemingsprocedure kandidaat-Ministers en kandidaat Gevolmachtigde Minister (22 mei 2013, LB-13/0442)

in a national ordinance to guarantee the legality and integrity of the administration and administrative actions, as well as the soundness of financial management.

Kingdom Decree

The Kingdom Decree designates the Governor the right to suspend the adoption of national decrees for the appointment of candidate-ministers, Prime Ministers, and Ministers Plenipotentiary, until an investigation has been conducted into the suitability of the nominated candidate-ministers.

National Ordinance

The National Ordinance on the Promotion of Integrity of Ministers regulates the declarations that a minister must submit concerning, e.g. their business interests, assets, and ancillary activities. The declarations must be submitted to the Prime Minister within thirty (30) days after being appointed as minister (Article 2 of the National Ordinance). Any interim changes during their tenure must also be submitted (Article 4 of the National Ordinance). The submission of a declaration is also required within thirty (30) days of the minister no longer being in function (Article 6 of the National Ordinance). The basis for this national ordinance is Article 101 of the Constitution.

National Decree

The National Decree on the appointment procedure for candidate Ministers determines the documents used in the assessment (screening) of the suitability of a candidate-minister, which form an integral part of the decision to nominate.

Reference should also be made to the draft National Ordinance (Candidate-) Ministerial Integrity⁵ submitted to Parliament in 2016, and the advice of the Council of Advice on the draft National Ordinance⁶ also submitted in 2016 to Parliament. The purpose of the draft was to adjust the current National Ordinance and to incorporate the National Decree on the appointment procedure into one law.

3. Screening of Candidate-Ministers

The screening process for candidate-ministers currently consists of a judicial background check by the Attorney General and a fact-finding investigation done by the National Security Service (Article 3 Kingdom Decree). Candidate-ministers are also asked to provide an Integrity Declaration and fill in a questionnaire based on Articles 34 and 35 of the Constitution pertaining to ancillary activities, business interests, and assets.

The Integrity Chamber understands and underscores the importance of the above screening process in the selection and nomination of ministers, however based on a review of the legislative framework, it is apparent that the screening process lacks

⁵ Ontwerplandsverordening integriteit (kandidaat-)ministers, ingediend door lid Van Hugh C. de Weever, 20 januari 2016, volgnummer IS/434/2015-2016

⁶ Advies van 12 april 2016, kenmerk RvA no. SM/01-16-ILV

sufficient attention to the desired norms and values of (candidate-) ministers. Furthermore, the process does not provide the criteria and (integrity) risks to be considered before the candidate is appointed. Additionally, there is a lack of transparency regarding the screening process and a lack of awareness regarding the requirements of the ministerial role.

The Integrity Chamber therefore believes that the current screening process should be adjusted to include additional integrity aspects. The Integrity Chamber also believes that the current process on ministerial integrity as stipulated in the National Ordinance can be strengthened by separating the process into three (3) screening phases: 1) a pre-screening 'recruitment' phase, 2) a screening phase, and 3) a post-screening 'monitoring' phase.⁷

In the pre-screening or 'recruitment' phase, the candidate-ministers should be assessed based on integrity norms and values for ministers. The recruitment phase also consists of various steps the political party / coalition should take to ensure that they are nominating a suitable candidate for the role of minister. There are also self-assessment questions which can help the candidates to determine their suitability for the position.

The screening and post-screening 'monitoring' phases are regulated by the legislative framework. The Integrity Chamber believes that the behaviour of the minister should be actively monitored on matters relating to integrity, during and after their tenure, with a focus on behaviors and possible conflicts that may interfere with the effective execution of ministerial tasks.

The three (3) screening phases can also assist in detecting behaviour that can indirectly or unintentionally harm the proper functioning of government. Harmful behaviour may not always be visible, or easily detectable, and may not be in violation of laws or regulations. However, while not legally wrong, if the behavior is undesirable, or morally incorrect, it can lead to a negative public perception. (Perceived) integrity issues put the trust and reputation of the country at stake, therefore (rumored) issues that may harm the functioning of Government, need to be properly investigated and handled in a transparent manner to restore and maintain the confidence of the public.

Transparency is also important when it comes to the screening process. There should be openness and clarity in the processes and procedures. The public should be aware of the process and criteria for the screening of candidate-ministers. This will ensure that all persons involved in the process are held accountable. During the screening process, it is however important that the privacy of the candidate-minister is respected as much as possible. Sensitive information, personal data, and

⁷ Reference is made to the "*Handleiding basisscan integriteit voor kandidaat-bestuurders*" of the Ministry of Foreign Affairs and Kingdom Relations.

information vital to the national security should not be disclosed to unauthorized individuals or entities.

3.1 Recruitment Phase

A pre-screening of candidates should begin before the names are submitted for nomination as a minister. The political party and the candidate have an important role to play in this process.

3.1.1 Role of the Political Party

Ministers are nominated by a political party. Because of this, political parties play a significant role in selecting persons that will govern with integrity. Integrity should be a key component of every political party and should play a role in the party's selection and nomination of political candidates and candidate-ministers. For this to occur, parties should establish key integrity norms and values, and codes of conduct that form the basis of party member behaviors. Party leaders should utilize the integrity norms as recommended by the Integrity Chamber (see Annex A), to establish their party values and select political candidates. To aid in the selection of candidate-ministers, the following steps can be useful in this process: (1) Request information from the candidate (resume, work history, ancillary activities, external interests). (2) Have a conversation with the candidate concerning the information provided and possible integrity risks. (3) Determine the suitability of a candidate based on steps 1 and 2. A detailed overview of these steps are provided in Annex B.

The provided integrity norms and the above selection process can be utilized to nominate candidate-ministers from on and off the party list.

Candidates that display behaviour contrary to the integrity norms, or that are not deemed suitable based on the selection process, should not be considered as candidate-ministers. Only when the political party is convinced that a candidate is qualified for the position and believes that the candidate would meet the requirements for the screening, should they be recommended as a candidate-minister.

3.1.2 Self-assessment candidate-minister

The candidate-minister has an obligation to carefully consider and determine whether they are the right person for the role of a minister. This aspect is particularly important as the candidate-ministers themselves are the most capable of determining whether they are suitable for the role or not. As such, they are responsible for undertaking a self-assessment. Examples of self-assessment questions can be found in Annex C.

If candidates have any doubts that they can meet the requirements for the role, or if they believe that they will not be able to pass the screening, they should disclose this and/or withdraw from the process. This will avoid any potential embarrassment for the candidate, the political party, and the government.

After the candidate-minister has conducted a self-assessment and has agreed to comply with the integrity norms, and the screening and post-screening requirements, they can be considered as a potential candidate-minister.

3.2 Screening Phase

The candidates selected in the recruitment phase must follow the screening process as outlined in the legislative framework. The role of the formateur and the Governor is paramount in this regard.

The current process can be improved and strengthened by consolidating the various screening requirements into a national ordinance and incorporating additional integrity-related investigations. Examples of these investigations can be found in the 2016 draft National Ordinance (Candidate-) Ministerial Integrity. In addition, it is important to consider the reputation of the candidate-minister in the community and how the candidate-minister and their surroundings are perceived as it relates to integrity issues/norms.

The formateur has an important role to play in assessing the candidate's suitability. The formateur has the responsibility to consider whether the appointment of the selected candidate-ministers, would harm the functioning of government, or the confidence placed in it. To aid in this process, the formateur should have an established list of criteria and norms and values to assess candidate-ministers. This will help in determining when a candidate-minister should be accepted or rejected, based on the results of the (pre)-screenings.

The Governor also has a responsibility to ensure that the soundness of the government is guaranteed. If the Governor has doubts regarding the suitability of a candidate, this must be discussed with the formateur or Prime Minister.

There must be a well-functioning system of checks and balances between the formateur and the Governor to ensure that the most suitable candidate is selected to become a minister. This will reduce the possibility of integrity issues which, when left unchecked, can have a negative effect on the country.⁸

Transparency towards the candidate-ministers is of the utmost importance in the screening phase. The candidate should be informed of the process from start to finish, including the duration of the screening, as well as the results.

3.3 Monitoring Phase

The final phase of the screening is the monitoring phase. This phase is applicable once the minister is appointed, during their tenure, but also the period thereafter. During the monitoring phase, the behaviour of the minister is monitored, specifically on matters relating to integrity. The ministers, the Prime Minister, and

⁸ Reference is made to the "*Rapport van de Commissie inzake de toetsing van benoembaarheid van Arubaanse ministers, maart 2000*".

Parliament have a role to play in this regard. In addition, the political parties and its members are responsible for ensuring that the party's integrity norms and values are complied with.

3.3.1 During ministerial tenure

As stipulated in the National Ordinance, the minister is obliged to submit a declaration to the Prime Minister concerning e.g., business interests, assets, ancillary activities and their payments and benefits, within thirty (30) days of them being in function, and in the interim thereafter, if they are any changes to their situation. As an extension of their coordinating role in the evaluation of a minister's business interests and ancillary activities, the Prime Minister should regularly create opportunities to discuss the minister's performance on a one-on-one basis, when necessary. Additionally, as a way to ensure integrity during the tenure of the minister, integrity sessions should be provided regularly.

In case of an integrity breach during the tenure of the minister, this should be properly addressed, and measures must be taken. Transparency in the handling of the integrity breach and the outcome thereof is important to restore and maintain the confidence of the public. The cabinet of the minister should also be subject to scrutiny concerning the execution of their function with integrity.

Parliament supervises the manner in which ministers execute their tasks and has the right to inquire and ask questions about a minister's policies. Parliament is also informed by the Prime Minister when a minister fails to provide the necessary declarations, as stated above, or when the minister's interests or ancillary activities conflict with their role. The role of Parliament is very important and should be fulfilled in cooperation with existing institutions in the country that also have an integrity function. If the minister loses the trust of Parliament, they can be dismissed from their role.⁹ When Parliament and the applicable institutions properly fulfil their role as mandated by law, the vulnerability of government is reduced.

3.3.2 After ministerial tenure

The National Ordinance does not mandate the continued monitoring of ministers' behaviour. Therefore, after the minister's tenure, the Integrity Chamber believes that the minister's behaviour, specifically on matters relating to integrity, should continue to be monitored for at least one (1) year. Ministers should be mindful not to use their ministerial role or connections to facilitate employment opportunities, or any other personal benefits, after their tenure. During this period, the former minister should continue to act with integrity and not engage in situations that might create a (potential or perceived) conflict of interest.

Examples of specific areas that can cause a (potential or perceived) conflict of interest or integrity issues for (current and former) ministers, and should be actively monitored, are ancillary activities, gift-giving and receiving, dealing with

⁹ By means of a vote of no confidence (Article 3, paragraph 2, of the Constitution)

confidential information, bidding and tendering processes and personal financial and business interests. Detailed descriptions of these possible conflicts can be found in Annex D.

4. Advice

Based on the above, the Integrity Chamber advises the following:

- a. Strengthen the current process for the nomination and appointment of candidate-ministers by differentiating three (3) screening phases, namely the recruitment, screening, and monitoring phases.
 1. **Recruitment phase:** (1) Utilize integrity norms and values as a guideline when selecting candidate-ministers from on or off a political party list (Annex A). (2) Request the candidate-ministers to submit information, have a conversation with the candidates, and determine their suitability (Annex B). (3) Encourage potential candidate-ministers to conduct a self-assessment (Annex C).
 2. **Screening phase:** Reinforce the current screening process by consolidating the various screening requirements into a national ordinance and strengthening the process by incorporating additional integrity-related investigations. Establish a list of criteria and norms and values by which candidate-ministers must be assessed.
 3. **Monitoring phase:** Monitor the behavior of ministers on matters related to integrity, during and after their tenure. Specifically in the areas that can cause a (potential or perceived) conflict of interest (Annex D).
- b. Ensure transparency and awareness of the screening process and the criteria while respecting the candidate-ministers' privacy.
- c. Review and modify current laws and procedures to include additional integrity aspects based on this advice.

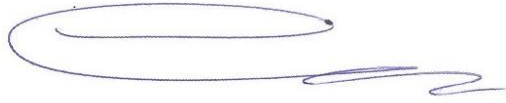
5. Response

The Integrity Chamber trusts that this advice will be beneficial to government to improve the screening process of ministers and that the three (3) phased approach will be utilized during the forming of Government after the upcoming snap elections.

In accordance with Article 18 of the National Ordinance, you are kindly requested to provide a motivated response to this advice within eight (8) weeks of the date of this letter, no later than October 7, 2024. A copy of this advice will be submitted to Parliament and published in the National Gazette. Your written response to this advice will also be published in the National Gazette.

If you have any questions or if you require any assistance in the implementation of this advice, do not hesitate to contact the Integrity Chamber.

Sincerely,

A handwritten signature in blue ink, consisting of a large, loopy initial followed by a surname.

The Integrity Chamber

G.R. Bergman, President

R.A. Boasman

H.R. Lodder

Cc: - Council of Ministers Sint Maarten
- Governor of Sint Maarten

Annex A: Integrity Norms

A list of integrity norms that can help to determine the norms and values for candidate-ministers are provided below. The list is not exhaustive.

- **Independence:** The candidate-minister must ensure that their independent position cannot be questioned or challenged. This will ensure the objectivity of the candidate-minister when making decisions.
- **Confidential:** The candidate-minister will have access to information that must be handled with integrity. The candidate-minister should not share (confidential) information with third parties, provide false information or use non-public information obtained in the exercise of the office for their (or a third party's) benefit.
- **Respect:** The candidate-minister should actively and passively show respect towards others in word, attitude, (body) language, attentiveness, and appearance.
- **Honesty:** The candidate-minister must be honest, verify facts before they speak, stay clear of repeating rumours, and hold themselves accountable when a mistake is made.
- **Work ethic:** The candidate-minister should be seen as dedicated, a hard worker, and as an effective and efficient person who gets their work done.
- **Public perception:** The candidate-minister should actively guard against negative public perceptions. The candidate-minister should be mindful of where they go and what they say and do. The candidate-minister should not be involved or accused of breaking the law or having integrity issues.
- **Competent:** The candidate-minister should be skilled, effective, knowledgeable, humble, and confident.
- **Recurring patterns:** Attention should be paid to recurring patterns of behaviour in the candidate-minister in different situations over time. Particularly, attention should be paid to behaviour displayed when candidate-ministers are under pressure, as it then becomes more difficult to mask true feelings and motives.
- **Leadership:** The candidate should have leadership qualities. Previous results in leadership should bear consideration.

When observed in candidate-ministers, the following attributes should be avoided:

- **Biases:** Biases concerning age, race, gender, nationality, etc.
- **Unwanted behaviours:** Behaviours that are dishonest, manipulative, abusive of power, lack of care for others, and reckless.
- **History of integrity issues:** Previously displayed irregularities concerning corruption, embezzlement, fraud, mismanagement of resources, leaking confidential information, performing favours for family and friends.
- **Impression management:** Overbearingly seeking to present their policies, political parties and themselves in a positive light while ignoring negative public perceptions.
- **(Potential) Conflicts of Interest:** Any connections with legal entities, third-parties, vendors/suppliers, or businesses, which may prove to be problematic.

Annex B: Selection Process for Candidate-Ministers

The below three (3) steps can aid political parties in the process of selecting a candidate-minister.

Step 1:

Request information from the possible candidate-minister such as a resume, an in-depth list of ancillary activities and external interests, and any other integrity prerequisite from the party (questionnaire, signed Code of Conduct), etc. The candidate should report all ancillary activities and external interests prior to the acceptance of their role. It should then be determined if the candidate's activities (potentially) conflict with the effective execution of the minister position.

Examples of ancillary activities and external interests include, board positions, volunteer work, financial and business interests, land and property, shares, debts, various sources of income, etc.

The information provided should cover a sufficient period of time (5-10 years).

Step 2:

Have a conversation with the candidate concerning the information provided. The conversation should include a discussion on the candidate's motivation to be a minister, their network, their view on integrity, their personal qualities (strengths and weaknesses), and any irregularities that were encountered based on the received information, etc.

The following questions can be posed to the candidate as part of step 2 in the selection phase:

1. How do you define integrity, and why do you believe it is important?
2. Describe a situation where your integrity was challenged. How did you handle it?
3. How do you balance transparency and confidentiality?
4. Do you currently have any potential conflicts that may hamper the effective execution of your tasks as a minister?
5. Are there situations where there might be a conflict between your personal interests and your professional responsibilities?
6. Has there ever been a complaint or legal procedure started against you?
7. Have you ever been arrested, convicted, or sentenced for a crime?
8. Have you ever declared bankruptcy or been placed under financial supervision? Do you have any outstanding debts that you currently cannot pay?
9. Is there any reason that you would not pass the screening for a minister?

The party can also utilize the self-assessment questions in Annex C as a reference.

Step 3:

Based on the above steps and after careful review of the candidate's profile, a decision can be made whether someone is suitable for recommendation as a candidate-minister to the formateur.

Annex C: Self-Assessment Questions for Candidate-Ministers

Examples of self-assessment questions for possible candidate-ministers.

1. Am I able to uphold the integrity values of the party that selected me?
2. Has there ever been a complaint or integrity procedure started against me in my work history, related to my performance? Have I been confronted in any other way for unethical behavior?
3. Are there persons in my network who can pose an integrity risk to me in the fulfillment of my role as minister?
4. Have I ever been involved in any (criminal) legal proceedings in the past, and/or in any upcoming or ongoing legal proceedings in any form?
5. Have I made any public statements (for example in interviews, publications, or social media) that could pose a risk in relation to my position as a minister?
6. Have I shared messages and/or photos in the past that would now be seen as controversial or inappropriate or that might otherwise pose a risk to the execution of my role as a minister?
7. Have I or someone in my immediate family ever been the subject of controversy in the media?
8. Have I (or someone in my circle of family or friends) engaged in activities in my personal or political life, that could hinder my role as a minister, or that could make me susceptible to blackmail?
9. Do the organisations associated with my external interests or ancillary activities have a financial relationship with the government or the ministry that I have been selected for?
10. Are any of my current positions incompatible with the role of minister? If so, am I willing to resign from these positions? (Article 34 of the Constitution)
11. Do I understand that I cannot make any decisions as minister that can, for example, benefit my personal or business interests, or those of my family, friends, and (business) partners? (Article 35 of the Constitution)
12. Can I abide by the oath as regulated in Article 41 of the Constitution?

Annex D: Areas of Potential Conflicts of Interest for Ministers

Examples of specific areas that can cause a (potential or perceived) conflict of interest or integrity issue for (current and former) ministers, and should be actively monitored, include:

- **Ancillary Activities:** Ancillary activities can become a source of conflict for ministers during the execution of their function. Ancillary activities include all (non)professional, paid, and unpaid activities carried out by a minister, which are not related to their appointment, whether these activities are carried out within, or outside, working hours, in the context of conducting a trade or business or in order to fulfill an administrative, management or supervisory position. All ancillary activities and external interests should be disclosed prior to appointment via a "Disclosure of External Interests" form. During the tenure of the minister disclosure should be done yearly, and under specific circumstances, including any changes throughout the year that are relevant to disclose. In this way, the administration is regularly updated and any form of (perceived) conflict can be detected in an early stage.
- **Gift-giving and receiving:** For the sake of integrity and transparency, it is crucial to have clear and consistent guidelines for giving and receiving gifts. Ministers must always exercise restraint when giving or receiving gifts. Gifts in the form of services, cash, vouchers or other cash equivalents, should not be accepted. Gifts given with the apparent intention of obtaining a political favor, contract, or service should also not be accepted. If a gift cannot be accepted, it should be returned with an accompanying letter stating the reason. For more guidelines on gifts, see the Integrity Chamber's Advice on the Ministerial Gift Policy (2020).
- **Confidential information:** Ministers have a considerable amount of (confidential) information at their disposal. It is not ethical for a minister to use information that is not (yet) public to benefit themselves or others. Examples include the availability and issuance of long-lease land or the awarding of contracts.
- **Bidding and tendering processes:** Every government makes purchases for assets and services, for example, road construction, government vehicles, catering, research, etc. Ministers are the ultimate decision-makers as it pertains to bidding and tendering procedures within their ministries. As a result, they are vulnerable to integrity risks such as unfairness and corruption. A robust (legal) framework is necessary to prevent integrity issues.
- **Personal financial and business interests:** Ministers must be objective and avoid any appearance that decisions are made to benefit their financial and business interests. It is not only the ministry for which a minister is directly responsible, that is relevant. As a member of the Council of Ministers, a minister is involved in decision-making on all topics discussed. Therefore, strict rules of conduct should be established to which candidate-ministers should commit themselves.