



Parliament of Sint Maarten
Attn: President of Parliament,
The Honourable Mr. S.M. Bijlani
Wilhelminastraat 1
Philipsburg, Sint Maarten

Ref. no.: IC-ADV/23.061

Subject: Advice on the draft Code of Conduct of Parliament

Philipsburg, August 31, 2023

Honourable Member of Parliament,

On June 13, 2023, the Integrity Chamber received a request from Parliament to provide feedback and input on Article 10 - Enforcement & Sanctions - of the draft Code of Conduct of Parliament (hereinafter: 'CoC'). The CoC will be applicable to all Members of Parliament (hereinafter: 'MPs'). The Integrity Chamber received a copy of the draft CoC, however, the annexes, were not included and not available upon request.

In accordance with Article 16, first paragraph of the National Ordinance Integrity Chamber, the Integrity Chamber is tasked with giving advice and making proposals on policies to generally improve integrity within government and its entities.

The Integrity Chamber hereby provides an advice on the CoC that is outlined as follows. Paragraph 1 sets out a general overview of the framework that was used as a reference for this advice. Paragraph 2 provides the Integrity Chamber's advice on article 10 CoC – Enforcement & Sanctions. A general advice on the CoC is provided in paragraph 3. Paragraphs 4 and 5 include a conclusion and a deadline for the required response.

1. Framework

For the purpose of drafting this advice, the Integrity Chamber reviewed the following regulations:

- Article 56 of the Constitution of Sint Maarten,
- The National Ordinance Promotion of the Integrity of Ministers (In Dutch: '*Landsverordening integriteitsbevordering ministers*'),
- The National Ordinance Substantive Civil Servants Law (In Dutch: '*Landsverordening materieel ambtenarenrecht*'),
- Integrity Codes of Conduct within the Kingdom, the region, and internationally.

While the ordinances are not directly applicable to MPs, they can provide guidance concerning the topic at hand.

2. Article 10 CoC - Enforcement & Sanctions

Article 10 CoC includes the concept of a Handling Committee that would exist as an external committee and would be comprised of one (1) representative of the Ombudsman and two (2) representatives of the Integrity Chamber. The article can be summarized as follows. First, the article puts in place rules concerning the enforcement of the CoC. Enforcement of the CoC will be guaranteed by the Permanent Committee for Integrity, who will receive complaints and/or concerns of breaches of the CoC. Thereafter, the complaints and/or concerns will be sent to the Handling Committee, for further handling. Second, the article sets out a list of sanctions for the Handling Committee to consider in the event that a MP breaches the CoC.

The Integrity Chamber advises the following:

- a. *Establish an internal complaint procedure:* According to Article 10 CoC, anyone can file a complaint and/or concern. However, the procedure for doing this is not clear. The format in which the complaint should be submitted, the information that is required for processing, and whether a complaint can be submitted anonymously, are some points to be considered.

The procedure should also describe how complaints will be handled internally, prior to being sent to the Handling Committee. The Permanent Committee must ensure that complaints and/or concerns are handled in an objective manner. The MP involved in a suspected breach of the CoC should also have the opportunity to be heard. The Permanent Committee can make a decision or send the complaint for further handling to the Handling Committee. Examples of reasons to send the complaint or concern to the Handling Committee are when the objectivity of the Permanent Committee cannot be guaranteed or if additional expertise is needed.

- b. *Outline the authorities of the Handling Committee:* Article 10 refers to 'Annex A – Complaints Procedure' where the functioning of the Handling Committee is further outlined. The Integrity Chamber did not receive Annex A as part of the Request and could therefore not provide an advice on its content. Insofar this is not specified in the Annex, the Integrity Chamber recommends that the authorities of the Handling Committee are clearly outlined. The Handling Committee should only play an advisory role and should not be authorized to apply sanctions. The authority to apply sanctions on breaches to the CoC should be an exclusive right of Parliament.

3. General Advice

The Integrity Chamber would like to make use of this opportunity to advise on the following articles of the CoC as it believes that this reinforces the implementation and execution of the CoC.

- a. Article on 'Definitions':
- Gift: For clarification purposes, it is advisable to broaden the definition of "a gift". In general, a gift is anything of monetary value that is given or received without compensation. The examples should include, but not be limited to, favors, savings or discounts, hospitality service, and any other item fully or partially paid for by the giver. Gifts should never be solicited by an MP.
 - Ancillary activity: It is advisable to broaden the term to include unpaid activities. Unpaid activities can also cause a (actual, potential, or perceived) conflict of interest. MPs should also not engage in any ancillary activity that detracts from the proper performance of their duties as a Parliamentarian.
- b. Article on Principles – 'respect': The Integrity Chamber recommends expanding the principle of respect. Respect does not only entail active but also passive behaviour towards other MPs, government officials, guests of parliament and/or the public. Passive behavior can be reflected in (body) language, attentiveness, appearance, and meeting attendance.
- c. Article on 'Disclosure of External Interests': The article currently requires for information on external interests to be disclosed following election and under specific circumstances. The Integrity Chamber advises to also have this done yearly by filling out an annual disclosure form and to include under 'specific circumstances' 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. The examples mentioned in the article such as land, property, shares, sources of income, and ancillary activities, should be considered the minimum required information to be annually disclosed by the MPs and their spouses or (long-term) partners. There should also be an (internal) advisor who can provide advice when there are doubts on whether an interest must be disclosed.
- d. Article on 'Registration of Gifts':
The Integrity Chamber advises to lower the monetary limit for the registration of gifts from USD 500 to USD 50 (Naf 100). This would be more in line with other codes of conduct for parliamentarians and government officials.¹ Gifts in cash, cash equivalents (e.g., gift vouchers), or shares should never be accepted. The Integrity Chamber also refers to its Advice on the Ministerial Gift Policy², which can be used as a reference for creating general standards for receiving and giving gifts.
- e. Article on 'Conflicts with the Public Office': Exception C of this article reads: "*Gifts or benefits that, due to their meager value, depending on the circumstances, could not reasonable be considered as a means to affect the right will of the Member of Parliament.*". The Integrity Chamber advises to remove this exception from the

¹ The amount is also recommended based on the limit that is regulated for civil servants and proposed for the Ministers which is Naf 100.

² This advice was submitted to the Government of Sint Maarten on July 23, 2020 and can be found on the website of the Integrity Chamber.

list. No matter the form or value of a gift, the intent remains the same – the giver hopes the gift can be used to establish, maintain, or improve a relationship with the recipient which can have (perceived) influence on the MP.

Other observations / recommendations

- f. Add a general introduction to the CoC:* The CoC should start with a separate introduction on the purpose and scope of the document. In the introduction it can be emphasized that the CoC must be seen as the minimum standard of conduct for the MPs. By adhering to the CoC- standards, the MPs can maintain and strengthen the openness and accountability that is necessary for trust and confidence in Parliament.
- g. Add a clause on confidentiality:* The nature of the work of an MP allows access to confidential information. MPs are under the strictest obligations to safeguard this information at all times. Therefore, it is important to 1) properly define the term 'confidential information' in order to avoid any misunderstanding regarding which information is to be kept strictly confidential and 2) include an article in the CoC that emphasizes the importance of keeping certain information confidential. The Integrity Chamber also advises to establish a 'Document Classification Policy' for all documents that are received and handled in Parliament.
- h. Incorporate the signing of an 'Integrity Declaration':* It is recommended that all MPs sign a yearly Integrity Declaration. This will further commit the MPs to their responsibility of strengthening integrity and good governance within Parliament and can serve to hold them accountable for their actions while performing their duty as a MP.
- i. Add a review clause of the CoC:* The Integrity Chamber recommends adding a clause to review the CoC at least once every three (3) years. This allows Parliament the opportunity to evaluate the functioning of the CoC and improve where necessary. It is also advised to consult the Handling Committee in this process as they play a role in the execution of the CoC.

4. Conclusion

Based on the request from Parliament concerning Article 10 of its CoC to include the concept of an external Handling Committee comprised of members of the Ombudsman and the Integrity Chamber, the Integrity Chamber recommends the following:

- Establish an internal procedure for filing and handling complaints and/or concerns internally by the Permanent Committee. Complaints and/or concerns must be handled in an objective manner and can be sent to the Handling Committee when the objectivity of the Permanent Committee cannot be guaranteed or if additional expertise is needed; and
- Outline the authorities of the Handling Committee. The committee should play an advisory role and should not have the authority to apply sanctions.

To further contribute to a more comprehensive CoC and reinforce the implementation and execution of the CoC, the Integrity Chamber advises to:

- Broaden the definition of 'gift', 'ancillary activity', and the principle 'respect';
- Incorporate the submission of an annual disclosure form for the external interests of the MPs;
- Establish general standards for receiving or giving gifts by MPs that are more in line with other codes of conducts for parliamentarians and government officials;
- Define confidential information and include an article that emphasizes the importance of keeping certain information confidential; and
- Add a general introduction to the CoC, incorporate the signing of an Integrity Declaration, and add a clause to periodically review the CoC.

The Integrity Chamber finally advises Parliament to apply the recommendations and implement the CoC before the end of 2023. It is of utmost importance to have a functioning CoC in place as a Parliament. The current Parliament has ample knowledge on the topic and is close to finalizing the process. The Integrity Chamber is willing to assist Parliament in this process. Based on the implementation of the recommendations above, and after receiving the details of Annex A and providing input, the Integrity Chamber is also willing to participate in the Handling Committee of the CoC of Parliament.

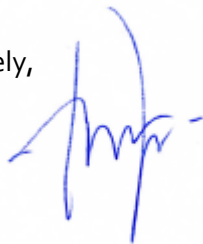
5. Response

In accordance with Article 18, paragraph 4, of the National Ordinance Integrity Chamber, you are kindly requested to provide a written motivated response to this advice within eight (8) weeks of the date of this letter, no later than October 26, 2023. The response will be published in the National Gazette.

A copy of this advice will be submitted to the Government of Sint Maarten and published in the National Gazette as stipulated in Article 18, paragraphs 1 and 2.

If you have any questions or if you require any clarification on this advice, do not hesitate to contact the Integrity Chamber.

Sincerely,



The Integrity Chamber

H.W. Vogels, President

R.A. Boasman

H.R. Lodder

Cc: Government of Sint Maarten