

# Baseline Study Sint Maarten

State of affairs institutional  
integrity management 2014



March 2014



General Audit Chamber

Algemene Rekenkamer

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## Summary

Integrity is a prerequisite for confidence in government. Integrity among public officials and civil servants is *especially* required to secure the trust of the public (and the media) for government (public administration). The General Audit Chamber considers integrity, along with effectiveness, efficiency and a customer orientation, to be essential prerequisites for good governance. Together, these factors determine the quality of the government organization. It is essential that citizens trust the functioning of government. That trust can only be earned, maintained and strengthened if the quality, honesty and prudence of government and thus also government's integrity, are beyond reproach.

The contribution of the General Audit Chamber for drawing the necessary attention for the creation of preventative integrity policy, along with the development of a thorough system of integrity management, is provided by means of this investigation (based on article 33 of the National Ordinance on the General Audit Chamber); **Baseline Study Institutional Integrity Management**.

With the Baseline Study, the General Audit Chamber seeks to answer the following questions:

- To what extent has article 101 of the Constitution been further developed in terms of regulations relating to the management of integrity?
- To what extent has government complied with the requirements (as stipulated by law) to further develop certain aspects of integrity, to develop (integrity) norms in national decrees containing general measures, and to issue ministerial regulations etc.?
- To what extent are the regulations containing aspects of integrity, and which dictate rules for implementation actually executed and enforced?

To answer the aforementioned questions, an inventory of all published laws (national ordinances) related to (aspects) of integrity since October 10, 2010, was developed per institution of government (Parliament, Council of Ministers, Ministries, Police, High Councils of State). In addition, an inventory (catalogue) was made of all articles (from national ordinances) that require further implementation rules and norms. A review was done to determine which of the implementation rules/regulations are actually present and whether these are functioning. The baseline study provides the state of affairs with regard to the laws and regulations related to various integrity aspects and provides information related to the implementation and enforcement of those laws and regulations, at this point in time. In other words, as of March 2014. Web-based questionnaires were used to gather information for the Baseline Study. Questionnaires were sent to the chairperson of Parliament, the Secretary-General (Clerk) of Parliament, the Prime Minister, the Secretary-General of the Council of Ministers, the Secretary-Generals of the High Councils of State, the Secretaries-General of the Ministries (total 7) and a number of functionaries within 'high risk' functions (inspection and permitting agencies) as well as the Chief of Police. A limited number of government officials were invited for a "in depth" interviews derived, in part, from survey results.

Based on the results of the catalogue (inventory) of regulations, the survey (questionnaires) and the interviews, a number of general conclusions were drawn:

- The basic "infrastructure" of organic legislation related to integrity management is in order.
- Few, if any formal regulations in the area of integrity are being implemented, though for some, limited implementation has recently started.
- Almost none of the ordinances requiring additional rules and regulations containing specific norms have been developed.
- Often, though not always, uniformity of implementation is present at a ministry. Coordination of the interpretation and implementation of the National Ordinance substantive civil servant law is mostly absent within the civil service. There is no guarantee within the organization that there is equality in dealing with cases.
- To insure that there is equality in the actions of all competent authorities at the various ministries, norms and standards need to be further specified by means of "implementation regulations". Said regulations are mostly absent.

- About half of the persons surveyed were not familiar with the code of conduct for civil servants.
- It is unclear “who is responsible for which integrity topics within the civil service”. In other words, there is a lack of clarity in terms of the responsibility and authority for integrity management.

A number of conclusions per institution are also enumerated in this report:

- There are many ambiguities and differences with regard to the procedures related to reporting suspected breaches of integrity;
- There is no consistent rule governing the relationship between civil servants and the press or Members of Parliament;
- The General Audit Chamber was not able to identify a regulation related to the acceptance of (small) gifts within government;
- Additional rules for compensation of travel and accommodation expenses have been instituted as “policy guidelines” rather than the legally required form of a National Decree containing general measures;
- Public tenders are very “integrity sensitive” and additional norms and standards are lacking.

The General Audit Chamber was unable to confirm:

- The exact number of civil servant who have **not** taken the oath of office, since the oath taking was mandated by the Governor. The information provided suggests there are hundreds who haven’t taken the oath of office;
- The exact number of risk analyses conducted related to activities and work processes vulnerable to integrity breaches;
- The degree to which funding of the Corporate Governance Council is properly arranged;
- The number of teachers (in public education) that have taken the oath of office;
- What, if any, measures are taken in the event of excessive use of government issued mobile phones.

The General Audit Chamber recommends that government focus on “hard controls” related to integrity management and specifically, the implementation of important integrity legislation and the development of the (required and numerous) implementation regulations. The General Audit Chamber recommends that the comprehensive execution of all ordinances related to integrity (such as the National Ordinance promotion of integrity of ministers as well as the National Ordinance registration and financing of political parties) is “fast-tracked”. The implementation rules and regulations as required by the various ordinances should be developed with priority, for example, by means of a technical task force assigned the job of drafting legislation.

Furthermore, the General Audit Chamber advises incorporating the norms for which there legislation does not exist (for example “revolving door schemes”, acceptance of gifts, compensation for business travel with spouses (partners), compensation for extended business travel, compensation for professional certification and training, subscriptions to professional organizations/journals) into Codes of Conduct. This recommendation includes Parliament and the Council of Ministers. The Code of Conduct for Civil Servants needs to be reviewed and provided with a “status”, for example, by enacting the Code by means of a Ministerial Decree or a National Decree.

A campaign is needed (in short order) to eliminate the backlog of civil servants who have not yet taken the oath of office. Said campaign should also include teaching staff in public education. Due to the vulnerability related to tenders or granting of contracts, the General Audit Chamber suggests prioritizing the development of the National Decree containing general measures as required by article 47 of the National Accountability Ordinance.

# 1. Introduction

## 1.1 Attention for integrity

The General Audit Chamber considers integrity a prerequisite for the existence of confidence in government. Integrity among public officials and civil servants is one of the most important requirements related to securing the trust of the public (and the media) for public administration. Recent events have demonstrated that an organization's credibility suffers if integrity is in doubt. Moreover, once lost, credibility is not easily regained. A preventative integrity policy along with increased attention for the development of a thorough system of integrity management for both holders of political authority as well as the civil service is essential.

As with effectiveness, efficiency and a customer orientation, integrity is increasingly considered an essential prerequisite for good governance. Together, these factors determine the quality of a government organization, both political-administrative as well as civil service. It is essential that citizens trust the functioning of government. That trust can only be earned, maintained and strengthened if the quality, honesty and prudence of government and thus also government's integrity, are beyond reproach.

The constitution of Sint Maarten, in essence, issues the aforementioned as an assignment to government. Article 101 of the constitution asserts: "*By national ordinance rules shall be laid down in order to secure the lawfulness and integrity of the administration and administrative action and the soundness of the financial management*". Several organic national ordinances containing aspects of integrity have been in effect since October 10, 2010. In a number of cases, these ordinances require that integrity norms are provided and defined, though there are other instances in which the ordinances only require further explanation, for example, a definition of norms by National Decree containing general measures, or by Ministerial Regulation.

The General Audit Chamber wants to contribute the subject of integrity by drawing attention to the need for a preventative integrity policy as well as for the development of a thorough system of integrity management. As such, we included an integrity study, in keeping with article 33 of the National Ordinance General Audit Chamber, in our 2013 audit plan. Early in 2013, we announced that this investigation would take the form of a "baseline study" related to institutional integrity management. The General Audit Chamber intends to develop a baseline -a record of the state of affairs - related to institutional integrity management. In other words, a review of the management of integrity on an institutional level; *a review aimed at entities not individuals*. The investigation seeks to assess whether the integrity of the government administration and the civil service is adequately guaranteed by means of (implementation) regulations and to what degree regulations are executed. In October 2013, the action plan for the baseline study was approved by the Board of the General Audit Chamber. The baseline study institutional integrity management started at the beginning of December 2013.

## 1.2 Context

A number of incidents were reported on the level of government administration (political and civil service) in the course of 2013. These incidents accelerated the attention for integrity in government. During the drafting of the action plan for the baseline study institutional integrity management, the General Audit Chamber was confronted with the issuance of a royal decree dated September 30, 2013, in which the Governor (as representative of the Crown) was instructed to commence an independent investigation into the integrity (proper and reliable) functioning of the public administration as appropriate to a country with democratic "rule of law". Because the government questioned the legal quality of the royal decree, government issued a ministerial decree for the establishment of an "Integrity Committee Public Administration Sint Maarten".



In an earlier phase the Prime Minister announced the intention of government to request Transparency International to carry out a broad review of issues related to corruption, fraud, integrity etc. for Country Sint Maarten. Amidst the growing level of attention for integrity related issues and specifically, breaches of integrity, as well as the various announcements of significant integrity investigations, the General Audit Chamber decided to proceed with the baseline study. This report is evidence of that decision. The General Audit Chamber, in consideration of the article 33 National Ordinance General Audit Chamber, is authorized to carry out this integrity investigation. Moreover, the baseline study is objective and structured, given that it is focused on integrity as stipulated by law and by the manner by which the law is adequately upheld (maintained). Incidents, serious integrity breaches etc. are not the subject of this study.

### 1.3 Baseline Study Institutional Integrity Management

By means of this investigation, the baseline study, the General Audit Chamber seeks to answers to the following questions:

- To what extent has article 101 of the Constitution been further developed in terms of regulations relating to the management of integrity?
- To what extent has government complied with the requirements (as stipulated by law) to further develop certain aspects of integrity, to develop (integrity) norms in national decrees containing general measures, and to issue ministerial regulations etc.?
- To what extent are the regulations containing aspects of integrity and which dictate rules for implementation actually executed and enforced?

To answer these questions, an inventory of all published laws (national ordinances) related to (aspects) of integrity since October 10, 2010, was developed per institution of government (Parliament, Council of Ministers, Ministries, Police, High Councils of State)<sup>1</sup>. In addition, an inventory (catalogue) was made of all articles (of national ordinances) that require further implementation rules and norms. A review was done to determine which of the implementation rules/regulations are actually present and whether these are functioning. The inventory of the relevant ordinances and regulation can be found in annex I.

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<sup>1</sup> Judges and public prosecutors are not included in the baseline study because their legal employment conditions differ from those of the civil service. Moreover, the Law Enforcement Council (*Raad voor de Rechtshandhaving*) is responsible for supervision of the functioning of the law enforcement chain and the integrity of same, including the Public Prosecutor.

In addition, a definition and (exhaustive) catalogue (inventory) was made of the integrity rules that are applicable to the aforementioned institutions, as well as the forms and aspects of integrity that are related to the study:

Aspects of integrity related to the study based on a catalogue of rules & regulations	
- Incompatible functions and jobs	- Secondary / Ancillary jobs
- Untainted decision-making and voting	- Rules related to gifts
- Taking oath/affirmation	- Confidentiality
- Conflict of interest	- Registration business & financial interests
- Compensation representation expense	- Travel & accommodation expenses
- Public Tender	- Use of government property
- Codes of Conduct	- Risk assessment
- “Revolving door” arrangements <sup>2</sup>	- Whistleblower rules
- Integrity Counsellor	- Corporate governance
- Violations of public authority	- Practices related to integrity violations
- Registry, reporting to Public Prosecutor, disciplinary sanctions	

The baseline study provides the state of affairs with regard to the laws and regulations in the field of the aforementioned integrity aspects and provides information related to the implementation and enforcement of those laws and regulations, at this point in time. In other words, as of March 2014.

## 1.4 Approach

After the board of the General Audit Chamber approved the action plan in October 2013, the following approach was used in the conduct of the Baseline Study Institutional Integrity Management.

- **Announcement:** The chairperson of Parliament and the Prime Minister were informed by letter from the board of the General Audit Chamber of the study “*that would lead to a baseline, a record of the state of affairs related to institutional integrity management, as prescribed (or not) by law and regulation*”. The baseline study would also present the degree to which required implementation rules related to integrity regulation are in place and enforced. In the announcement letter, the General Audit Chamber indicated that the study would start shortly and that it would be executed without publicity (2013). The General Audit Chamber also prepared the inventory of integrity regulations by ordinance/regulation and article (December 2013).
- **Presentations:** Presentations were prepared and provided to the Chairperson of Parliament, the Prime Minister, the Council of Ministers and the “management team” of Secretary-Generals, (December 2013, and January 2014).

<sup>2</sup> The revolving door construction is a dubious legal construction that is used by employers to maintain the employee in service, or return (former) employees to service.

- **Web-based Surveys:** "Web-based surveys" were sent to 44 persons. The survey questions were developed on the basis of the integrity aspects stipulated in the relevant regulations and articles "per organizational entity". For the civil service there were 75 questions. The surveys for the other entities included fewer questions (beginning of January 2014). The chairperson of Parliament, the Secretary-General (Clerk) of Parliament, the Prime Minister, the Secretary-General of the Council of Ministers, the Secretary-Generals of the High Councils of State, the Secretary-Generals of the Ministries (total 7) and a number of functionaries within 'high risk' functions (inspection and permitting agencies) as well as the Chief of Police all received personalized emails with the link to their respective survey. Recipients were asked to complete the survey within one week. **The response rate was 93%**, with 41 of 44 persons completing the survey. The answers will be outlined in this report, per organizational entity and ministry.
- **Interviews:** A limited number of government officials were invited for a "in depth" interviews based in part from survey results. Interviews with the Chairperson of Parliament and the Prime Minister were conducted by the Chairman of the General Audit Chamber with support from the Secretary-General of the General Audit Chamber. The remaining interviews were conducted under the direction of the Secretary-General of the General Audit Chamber (beginning of February 2014).
- **Interview reports:** Reports of the interviews were sent for verification to the interviewees with the request to respond within a few days so that the reports could be confirmed (latter half of February).
- **Results memoranda:** Memoranda of the results – a compilation of the data gathered from the survey responses and interviews – were drafted and sent to Parliament, the Council of Ministers and each of the seven ministries. Each recipient was requested to provide input in order to confirm the (findings) results (late February - early March 2014).
- **Consultation:** The draft final report was presented to the Prime Minister on March 25<sup>th</sup> with a request for input. The Council of Ministers requested additional time (until April 10<sup>th</sup>) to respond. Absent the reaction from government with the period requested, i.e. April 10<sup>th</sup> 2014, the report was made definitive on April 11<sup>th</sup>.

## 1.5 Report structure

The findings are reported in Chapter 2 per institution with details per specific integrity topic as listed in the surveys and derived from existing legislation. Findings from the review of Parliament, the Council of Ministers, High Councils of State, the civil service and police corps are presented making use of data from the relevant surveys/interviews. The conclusions based on the findings are presented in Chapter 3, again per institution. The recommendations of the General Audit Chamber are presented in Chapter 4.

The inventory/catalogue of laws and regulation that mandate aspects of integrity management is listed in Annex I. The results (raw data) from the surveys (tables with questions per institute, etc.) can be found in a separate annex that is available in electronic format only, given its large size. The survey was conducted in Dutch and the annex is available in that language.

## 2. Results (findings) per institution

### 2.1 Parliament of Sint Maarten

The following regulations on integrity, as well as the implementation and compliance (enforcement) thereof as applicable to Parliament were examined. In addition, the results from the survey and interviews are included wherever relevant per regulation:

#### 2.1.1. Constitution (articles 50, 51, 53, 55 and 56)

- Article 50 of the Constitution foresees in the suspension by law (in the case of ‘taking into custody’ as a suspect in a criminal act) and dismissal (in the case of an irrevocable conviction due to a criminal act) of a Member of Parliament. The explanatory memorandum related to this article indicates that this stipulation is to be considered as an “*ultimum remedium*” (last remedy). “*Holders of political authority have an exemplary function. They should keep their distance from matters that could sully their office or authority. In such a case, it is initially the person concerned who considers whether lines are being crossed that place good performance of their duties in jeopardy*”. The Chairman of Parliament plays no role in this decision, according to information received. As such the Chairman can and will not prevent a member from serving in the event the situation is not one where article 50 does not apply.
- The respondents report that there is no need for an additional national ordinance to regulate other incompatible functions beyond that which is stipulated in article 51 of the Constitution.
- Furthermore, the study reveals that there is no internal inventory of “secondary” activities, business interests and shareholding of Members of Parliament. Such an inventory could simplify decision making of the Chairperson in terms of the application of Constitutional regulations related to possible conflicts of interest. Decision making could also be more impartial.
- Respondents indicate that there is no need for a national ordinance related to the promotion of a balanced and responsible course of elections.
- The oath/pledge of office prohibits acceptance of gifts by Members of Parliament and the respondents indicate there is no need for further formal regulation (national ordinance). Respondents indicate that the subject can be included in either the rules of order or in a separate code of conduct.

#### 2.1.2. National ordinance registration and finances of political parties

- The Electoral Council was recently appointed. Although this ordinance requires that Parliament provide all necessary facilities for a proper and independent functioning of the Council, the Chairperson of Parliament does not currently consider that there is a role for Parliament in terms of the implementation for the functioning of the Electoral Council. The study reveals that the ordinance is not yet fully implemented. Furthermore, the study indicates that “implementation rules” (mandatory and optional) are not yet developed.

#### 2.1.3. National ordinance regulating the suspension of persons holding political authority (Suspension of persons holding political authority)

- This ordinance was not applicable for the baseline study measurement. No cases were reported.

#### 2.1.4. National ordinance regulating the allowance for travel and accommodation expenses for Members of Parliament (Travel and accommodation expenses allowance for Members of Parliament)

- Members of Parliament receive a fixed monthly fee of ANG 500 to cover transportation expenses. This regulation is also applicable to the Chairperson of Parliament. According to respondents, travel and accommodation expenses are consistently reported in conformity with existing generally applicable regulations (procedures). Accommodation expenses are

paid as per diem. There are no rules covering exceptions and there are no additional regulations.

#### **2.1.5. National ordinance regulating the remuneration of persons holding political authority, allowances for the costs of medical treatment and nursing and the entitlement to holidays and holiday allowances (National ordinance on remuneration of persons holding political authority)**

- Members of Parliament receive an amount equal to 6% of their remuneration to cover representation expenses. There are not additional regulations to cover reimbursement of representation expenditures.
- Members of Parliament receive compensation to cover the cost of the business use of a vehicle and a phone. This compensation is set forth in a separate regulation. The study reveals that the members also are provided with a mobile telephone (subscription and usage fees are covered by Parliament), a laptop and an iPad.
- Based on information received, the Chairperson of Parliament is also entitled to (and provided) a vehicle. The costs associated with this vehicle are covered by Parliament.

#### **2.1.6. National ordinance prosecution of political authorities**

- Prosecution of a Member of Parliament – in accordance with the relevant stipulations of this regulation – has occurred a single time to date according to respondents to the survey.

#### **2.1.7. Regulation on the legal status of the Clerk (Secretary General) to Parliament**

- The Clerk shall not accept secondary functions without the consent of Parliament; the Clerk takes the oath/pledge of office; the Clerk cannot simultaneously serve as a Member of Parliament; the Clerk will receive the equivalent of 6% of his remuneration as a representation allowance. Results from the survey and interviews reveal that a number of the stipulations of the National Ordinance substantive civil servants law (LMA) are applicable to the Clerk. The integrity aspects of the LMA are not applicable to the Clerk. Respondents report that there are no plans to make these integrity aspects applicable. Aspects of integrity related to the Clerk are discussed during conversations between the Chairperson of Parliament and the Clerk.
- The study finds that the "regulation for Parliament" in which the Clerk is provided with an expense allowance for use of a car and telephone, has not (yet) been developed. This type of compensation (allowance) is currently regulated as part of the contract between Parliament and the Clerk.

#### **2.1.8. Regulation on the legal status of staff of the Department of the Clerk to Parliament**

- The rules required by this Ordinance, for approval by Parliament, to award remuneration and allowances for the staff of Parliament, has not been developed. The function (staffing) book approved by Parliament for the staff is used to manage remuneration and allowances. The LMA shall apply mutatis mutandis to the Clerk's staff. As such, the integrity aspects of the LMA apply to the staff.

#### **2.1.9. General**

- Not all integrity aspects, including in their further development and qualification, are included in the above regulations. Other integrity aspects not otherwise regulated in the existing legislation include: 'revolving door' arrangements, whistleblowing regulations, implementation rules related to travel expenditure, implementation rules related to acceptance of gifts (travel with spouses/partners, extension of trips, etc.). The representatives of Parliament who were interviewed expressed differing opinions as how to best regulate these aspects of integrity. Suggestions for the manner of regulation included a code of conduct or expansion of the Rules of Order.

## 2.2 Council of Ministers

The following regulations on integrity, as well as the implementation and compliance (enforcement) thereof as applicable to the Council of Ministers were examined.

### 2.2.1. Constitution (articles 34, 35, and 41)

- Regulation of other public functions that a Minister can fulfill can be delimited – other than already restricted by the Constitution - by means of a separate National Ordinance. Respondents indicate that there is no need to develop such a National Ordinance. The screening of proposed ministers (procedure laid down in National Decree of May 22, 2013, no. LB-13/0442) prevents incompatible associations.
- The Constitution specifies a number of cases of possible conflicts of interest for ministers related to personal and business activities. According to the respondents, the screening of proposed ministers increasingly prevents problems with potential conflict of interest. The Prime Minister oversees the proper application of the rules regarding conflicts of interest in her capacity as chairperson of the Council of Ministers. It was reported that the chairperson of the Council of Ministers has intervened in a single instance in the capacity as chairperson.
- Respondents indicated that, although the oath/affirmation of office prohibits acceptance of gifts, there is a need for additional rules related to this aspect of integrity. Suggestions from respondents suggest that this can be regulated in a Code of Conduct for the members of the Council of Ministers.

### 2.2.2. National ordinance promotion of the integrity of ministers

- The Minister shall provide, within 30 days after the acceptance of his duties, a written declaration truthfully affirming which business interests, assets, he and his spouse or partner possess as well as which secondary functions or ancillary activities they perform and any monetary compensation connected thereto. In addition, the Minister must declare the business interests and other assets of his/her children. According to information received, the Ministers of the current Government have submitted the aforementioned declaration.
- According to the aforementioned National Ordinance, former ministers are also required to submit a declaration within 30 days after leaving office. The study shows that such declarations were not issued after dissolution of the second government (i.e. Wescot-II). The General Audit Chamber was not able to determine if the former ministers are aware that failure to comply with this regulation can be subject to a penalty (prison term of up to 3 years).
- The members of the government (Wescot-III), submitted, upon entering office, the required declaration in the form (model) as stipulated by *National Decree containing general measures*, though the submission was not done within the prescribed time limit.
- The Prime Minister decides which business interests, secondary functions and activities are not desirable for the proper execution of the office of minister, in terms of impartiality, and in terms of independence and confidence therein. Advice can be sought by the Prime Minister from the Council of Advice and the General Audit Chamber. According to the Prime Minister, no situation has presented itself requiring such advice.
- The written statements/declarations are submitted by the Prime Minister and filed with the Clerk of the Common Court of Justice. This entity maintains a record of the declarations. The National Ordinance requires a *National Decree containing general measures* stipulating rules concerning the retention and destruction of documents such as the declarations. In addition, the National Ordinance describes a number of optional rules that can be developed and issued by *National Decree containing general measures*. The General Audit Chamber did not find either the mandatory nor the optional regulations.
- The Prime Minister pledged to, as much as possible within her power, give the necessary attention to the proper implementation of the aforementioned National Ordinance.



### **2.2.3. National ordinance regulating the remuneration of persons holding political authority, allowances for the costs of medical treatment and nursing and the entitlement to holidays and holiday allowances (National ordinance on remuneration of persons holding political authority)**

- According to this National Ordinance, the ministers receive an allowance of 6% of their salary to cover representation expenses. In addition to this arrangement, the Council of Ministers adopted a "ministers debit card policy" (November 1, 2011). According to this policy, ministers can use the debit card to cover a monthly maximum for expenditures related to representation (ANG 3,600), including the 6% as regulated by the National ordinance on remuneration of persons holding political authority. The Accounting Department (*afdeling comptabiliteit*) of the Ministry of Finance manages this "policy".
- The ministers receive compensation for the business use of a car or phone. The relevant detailed rules for this aspect date back to the time of the Island Territory. Ministers are provided an official vehicle and a mobile phone. The costs for the vehicle and phone are borne by the Country (government).

### **2.2.4. National ordinance regulating the compensation for Ministers of travel and accommodation expenses (Regulation on compensation of Council of Ministers travel and accommodation expenses)**

- Based on this ordinance, ministers receive monthly compensation of ANG 500 for the purpose of transportation expenditures. This compensation is available in addition to the official vehicle made available to the ministers. Respondents explain the compensation as being geared towards compensation for the expense related to transportation during official business travel.
- For the compensation of travel expenses during business travel, the rules that were applicable for members of the Executive Council of the Island Territory are maintained for ministers. As such, Ministers are issued a fixed per diem. In exceptional cases, additional expenses can be declared for reimbursement, for example, in the case that the accommodation cost exceeds the per diem.
- Respondents reveal that Ministers usually report on the results of their business travel during meetings of the Council of Ministers.

### **2.2.5. National ordinance prosecution of political authorities**

- Application of this Ordinance for members of the Council of Ministers was not reviewed as part of the baseline study measurement. No cases were reported.

### **2.2.6. National ordinance regulating the suspension of persons holding political authority (Suspension of persons holding political authority)**

- Information from the survey and interviews reveal that it is the intention to take action to place former ministers (who are civil servants), who fall under this Ordinance back into service (as civil servants), of course in consideration of the Social Charter. The study shows that not everyone has been placed back in service.

### **2.2.7. Rules of Order**

The rules of order govern cases in which a Minister must abstain from voting on issues that could lead to conflicts of interest. The Chairperson of the Council of Ministers has not (yet) been confronted with such a situation.

### **2.2.8. National Accountability Ordinance (article 47: public tenders)**

- In principle, all procurement for government must occur by means of public tender, unless the procurement of goods and services does not exceed an amount of ANG 50,000, or in the case of the execution of works the amount does not exceed ANG 150,000. The Minister of Finance can propose the issuance of a National Decree to cover an exception to the public tender. The exceptions (derogation) are applicable in the event of disasters and in the event a

delay in contracting is not in the general interest. Such a decision shall be immediately sent to Parliament. The study reveals that frequent use is made of the exception to public tender through the issuance of a National Decree. According to respondents, the Minister of Finance examines each exception and always reports the results to the Council of Ministers.

- The National Accountability Ordinance requires additional rules (by means of *National Decree containing general measures*) related to the organization of public tender, as well additional rules for way in which exceptions to the public tender, particularly "in the public interest" are regulated. The General Audit Chamber received no information to prove that such National Decree has been developed or issued.

### 2.2.9. Code of Conduct

- Many administrative authorities (within the Kingdom) maintain a statutory code of conduct. Those codes include aspects of integrity that are not otherwise regulated (additional rules related to acceptance of gifts, detailed rules related to administrative expenditure, reimbursement of expenses, business travel including spouses, extension of business travel, revolving door constructions, reporting integrity violations etc.). According to respondents, a code of conduct has not yet been discussed in the Council of Ministers. There are integrity issues that could be regulated in a code of conduct. The Prime Minister is prepared in a subsequent government (cabinet), if elected, to address the development of a code of conduct. In addition, a number of the aforementioned aspects of integrity can be included in the rules of order

### 2.2.10. National Ordinance corporate governance

- A Corporate Governance Code is required to be adopted by *National Decree containing general measures*. The code apparently exists though it was not established as prescribed (i.e. *national decree containing general measures*).
- As an advisory body, the Corporate Governance Council (CGC), must be established by *National Decree containing general measures*. This has occurred. The CGC advises the minister responsible for a particular company or foundation regarding the procedure related to appointment of Executive and Supervisory boards. This also occurs. According to respondents, advice relating to appointments of persons at companies and foundations from the CGC are handled in the Council of Ministers.
- The General Audit Chamber was not able to confirm that the National Decree regulating the method for allotment of the costs related to the CGC, has been established. The financing of the CGC and its secretariat remains unclear.

## 2.3 High Councils of State

### 2.3.1. Council of Advice

The following regulations/rules related to integrity and which are applicable to the Council of Advice were reviewed in terms of development, implementation and enforcement.

#### 2.3.1.1. Constitution and National Ordinance Council of Advice

- Members, deputy members, the Secretary and the remaining staff take the oath office before the Governor. According to those surveyed, this oath renders a separate regulation for the acceptance of gifts unnecessary. The Council of Advice has adopted a code of conduct that is applicable to the vice-chair, the members and deputy members. In addition, the code of conduct also applies to the Secretary and staff.



### **2.3.1.2. National Decree containing general measures employment conditions Secretary and staff of the secretariat Council of Advice**

- The Secretary shall not accept secondary activities that are undesirable in view of a good fulfillment of the office (authority) of Secretary. Prior to accepting a secondary activity approval must be sought from the Council of Advice.
- Integrity aspects of the National Ordinance substantive civil servant law are not formally applicable to the Secretary. According to those surveyed, accommodations have been arranged to make said regulations applicable. Additionally, the code of conduct for civil servants as well as the code of conduct of the Council of Advice is applicable to the Secretary.
- The appointment decree of the Secretary may contain facilities in respect to compensation for expenses for the use of a personal vehicle and telephone. That was not done in the case of the Secretary of the Council of Advice.
- The entirety of the National Ordinance substantive civil servant law – including integrity - is applicable to the staff of the secretariat of the Council of Advice. The survey results indicate that the code of conduct for civil servants is also applicable. The various integrity related items are included during staff evaluations.

### **2.3.1.3. Rules of Order**

- According to the rules of order, members of the Council must provide a written report of their other offices (authorities) and functions. The survey results indicate members comply with this regulation. The Secretary is responsible for safekeeping of the reports.
- The vice-chair and members do not participate in the deliberations or decision-making if such would harm the independence and impartiality of the Council. Possible types of conflict of interest is actively monitored. According to the survey, there has been a single case of possible conflict of interest.

### **2.3.1.4. National Decree containing general measures remuneration vice-chair, members and deputy members**

- There are no general rules for reimbursement of expenses for representation, transportation, telephone and business travel. Compensation for such expenses are dealt with on a case-by-case basis.
- The regulation for official (government) vehicles Sint Maarten applies to the official vehicle funded through USONA. Maintenance costs and fuel consumption are covered via the annual budget.

## **2.3.2. Ombudsman**

### **2.3.2.1. National Ordinance Ombudsman**

- The study reveals that Ombudsman submitted a request to Parliament related to secondary activities though this request was later withdrawn. The “regulation for Parliament” regarding compensation for expenses related to mobile phones and personal vehicles is used.
- The official vehicle used by the Ombudsman was financed through USONA. There is a "resolution" of the Ombudsman that regulates the maintenance and use of a second official vehicle.
- The Ombudsman has no code of conduct and therefore no separate regulation related to acceptance of gifts. The Ombudsman takes the oath of office before the Chairperson of Parliament.
- The entirety of the National Ordinance substantive civil servant law – including integrity - is applicable to the staff of the Ombudsman. The various integrity related items are

included during staff evaluations. The Code of Conduct for civil servants is also applicable to the staff.

### **2.3.3. General Audit Chamber**

#### **2.3.3.1. National Ordinance General Audit Chamber / Code of Conduct**

- The National Ordinance contains rules relating to the oath/affirmation, the incompatibility of functions as well as conflicts of interest. The General Audit Chamber also adopted a code of conduct. This code of conduct describes virtually all integrity aspects including acceptance of gifts. Respondents reveal that the Chairperson ensures that members are not present at deliberation and/or take part in decision-making on matters that may concern them personally.

#### **2.3.3.2. Rules of Order**

- The General Audit Chamber also evaluates its internal functioning and the functioning of the Secretary. Both evaluations have taken place. The survey shows that during evaluation of the Secretary integrity aspects have not explicitly been discussed.

#### **2.3.3.3. National Decree Regulation employment conditions of the Secretary**

- Should the Secretary wish to carry out secondary functions, there must be a notification to the General Audit Chamber.
- The integrity rules as stipulated in the National Ordinance substantive civil servant law have not been declared applicable to the Secretary. The survey indicates that there is a need to make such an arrangement for the Secretary, for example by means of a code of conduct.

#### **2.3.3.4. National Decree Regulation employment conditions of the Staff**

- Integrity aspects and rules contained in the National Ordinance substantive civil servant law are applicable to the staff and are part of staff evaluations.

#### **2.3.3.5. National Decree containing general measures remuneration chair, members and deputy members General Audit Chamber**

- This National Decree does not regulate the compensation of expenses for transportation, telephone and business travel. These expenses are regulated on a case-by-case basis.

## 2.4 Civil Service (7 ministries)<sup>3</sup>

A total of 33 persons received the survey designed for the civil service. Those surveyed included of all seven Secretaries-General, as well as heads of major departments such as Personnel & Organization (P&O), head of Financial Accounting (*Comptabiliteit*), and the Department of Interior Affairs and Kingdom relations (BAK). Included were also a number of heads of department with a “high risk” profile. These included departments responsible for inspections and licensing, for example, the head of the Immigration and Naturalization Service. Of the total of 33 survey, only 3 persons failed to respond.

The web-based survey was comprised of 75 questions. The order for the questions followed the sequence of the articles related to integrity as stipulated in the National Ordinance substantive civil servant law (LMA). The first questions related to the taking of the oath/affirmation (article 43 LMA). Thereafter followed the question related to working hours (article 46 LMA). Questions related to secondary activities (article 51 etc. LMA), conflict of interest (among which article 54 and 55 LMA), use of government property (article 57 LMA), acceptance of gifts (article 58 etc. LMA), confidentiality (article 61 LMA), service dress (article 63 etc. LMA), travel and accommodation expenses (article 72 LMA), integrity counsellors (article 82 etc. LMA), breach of integrity (article 84 and 85 LMA) and disciplinary sanctions (chapter VIII LMA) were included in the survey.

There were also questions related to the Code of Conduct, crimes and misconduct by persons in authority, risk assessments and vulnerable work processes.

Follow up interviews were conducted with all seven Secretaries-General.

### 2.4.1. General Findings

#### 2.4.1.1. Variability of responses

The wide range of variability in the responses to the questions is striking. There was a single questions to which all 30 respondents provided an identical response. Specifically, every respondent was aware of the regulation related to working hours for his/her organization unit. The remaining 74 questions returned a variety of responses. The number of “I don’t know” responses is noteworthy.

#### 2.4.1.2. Implementation regulations/rules

Eight (8) of the 75 questions related to the existence/development of certain “implementation rules/regulations”, for example national decrees containing general measures, ministerial decrees or simply “additional” regulations that are stipulated in National Ordinances. The General Audit Chamber was not able to confirm the existence of such “implementation” rules/regulations during the cataloguing of laws and legislation. On average, just under half of the respondents confirmed that “implementation” rules/regulations **did not** exist. A number of respondents were certain the “implementation” rules/regulations exist, but most respondents (possibly out of an abundance of caution) answered “I don’t know”. The following table provides an overview of the answers to a number of questions ( percent of respondents per response option). The number of “I don’t know” responses are considered notable by the General Audit Chamber.

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<sup>3</sup> General Affairs (AZ), Finance (FIN), Tourism, Economic Affairs, Transportation & Telecommunication (TEZVT), Education, Culture, Youth & Sports Affairs (OCJS), Public Health, Social Development & Labor Affairs (VSA), Justice (JUS), Public Housing, Spatial Planning, Environment and Infrastructure (VROMI)

<b>Survey Question</b>	<b>Yes (in %)</b>	<b>No</b>	<b>I don't know</b>
<i>Have additional rules related to working hours been developed by authority of the Min General Affairs?</i>	18	30	52
<i>Has a national decree been issued listing companies, foundations or associations that the competent authority has determined that civil servants cannot participate as supervisory directors, managers, partners, shareholders or members?</i>	-	33	67
<i>Does your organization deviate (by national decree) from the maximum limit of ANG 100 for acceptance of gifts?</i>	-	64	36
<i>Have additional rules related to acceptance of gifts above the maximum limit been developed by authority of the Min General Affairs?</i>	6	33	61
<i>Have additional rules (by national decree containing general measures) related to service dress (uniforms) been developed by authority of the Min General Affairs?</i>	12	27	36 <sup>4</sup>
<i>Are there policies or rules in your organization related to compensation of expenses not regulated elsewhere?</i>	3	48	48
<i>Does your organization actively maintain a record (register) of notices of breaches of integrity?</i>	9	61	30

### 2.4.1.3. Code of Conduct

There is a "code of conduct for civil servants of Sint Maarten". This code of conduct has been developed as part of the integrity policy for civil servants. The General Audit Chamber was unable to determine the legal status of the code of conduct provided, however, the code was provided to groups of civil servants who attended the integrity workshops organized by government. Furthermore, the code of conduct was widely distributed within the ministry of Public Health, Social Development and Labor (VSA) in 2013 on instruction of the ministries' Secretary-General.

In response to the survey question "*are you aware of the code of conduct for civil servants*", 48% answered "NO", and 52% replied "YES". In other words, about half of the respondents are aware of the code of conduct.

### 2.4.1.4. Responsibility for integrity management

During the follow up interviews, questions such as: "*who is primarily responsible for what*", and "*who is responsible for integrity initiatives such as developing implementation rules/regulations*" were posed. It is notable that also in the case of these questions, the answers varied widely among respondents.

In light of the fact that most of the institutional integrity management regulations related to civil servants and thus the civil service are described in the seventh chapter of the National Ordinance substantive civil service law (LMA), the question "*who is responsible*" for the development of implementation rules/regulations is a logical one. The head of the Personnel Department (P&O) revealed that *P&O intends to develop all implementation rules/regulations required by the National Ordinance substantive civil servant law (LMA). This is the task of P&O, though due to capacity shortages the work is taking longer than expected.*

<sup>4</sup> For this question, the option of "not applicable to my organization" was possible. Twenty-four percent (24%) responded as such.

Most Secretaries-General support P&O's intention, and regard the department as the "guardian" of the National Ordinance substantive civil service law (LMA). As such, respondents view P&O as the entity responsible for the law's maintenance and implementation. Others, specifically the Secretary-General of General Affairs and the head of the Department of Internal Affairs & Kingdom Relations, indicate that the yet-to-be established Integrity Bureau should be viewed as the driving force for integrity policy.

The General Audit Chamber received the text of a *draft National Ordinance to amend a number of national ordinances aimed at strengthening integrity requirements and for the establishment of the Integrity Bureau*. The draft National Ordinance is scheduled to be presented to the Council of Ministers where after it will be submitted for advice to the Council of Advice. This draft National Ordinance proposes amendments to the National Ordinance substantive civil service law (LMA) in terms of integrity aspects. There is also a proposed amendment to the National Ordinance structure and organization of national government in order to establish the Integrity Bureau that will fall directly under the administrative responsibility of the Minister of General Affairs.

If this draft National Ordinance is enacted, the Integrity Bureau will be tasked -among other- with the following functions: advising government, drafting of rules (in respect to integrity management), providing training, executing risk assessments, supporting and coordinating the integrity counsellors of government etc. The work carried out as part of the "research integrity policy project" has been used for the preparation of the establishment of the Integrity Bureau.

A notable fact is that the draft to amend the National Ordinance structure and organization of national government as well as the National Ordinance substantive civil service law (LMA), requires drafting additional implementation rules/regulations. To date, compliance with such requirements for drafting implementation rules (stipulated in among others the National Ordinance substantive civil service law), has been poor, supposedly due to "capacity shortages". As an example:

- The tasks and authorities of the Secretaries-General regarding the implementation of integrity policy within ministries has to be regulated by National Decree containing general measures;
- Additional rules related to the tasks, authorities and appointment of integrity counsellors must be regulated by National Decree containing general measures;
- A code of conduct has to be enacted by ministerial decree from the Minister for General Affairs;
- Further rules/regulations for the procedure of handling and finalizing reports related to suspected breaches of integrity must be enacted by or pursuant to a National Decree containing general measures.

#### **2.4.1.5. Teachers**

During the follow up interviews the General Audit Chamber received information that teachers in public education are also considered government workers (civil servants) and thus subject to the National Ordinance substantive civil servant law. Teachers have not been administered the oath/affirmation of office. Teachers have also not been appointed by National Decree. The reason for this exceptional situation was explained as being due to the absence of an agreement on a remuneration regulation for teachers. The legal status of the teachers is determined at the level of the department (ministry). The respondents indicated that there is no support from the Personnel Department for this situation. Furthermore, teaching staff maintain a separate "working hours regulation"<sup>5</sup>. The Department of Public Education is considered an implementing agency and these type of services are - in principle – not under the direct authority of the Secretary-General. The implementing services fall directly under the responsibility of the Minister.

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<sup>5</sup> This regulation is actually article 23 of the Island Decree containing general measures related to the establishment of a school regulation. According the SG of Ministry Education, a replacement is due in 2014.

## 2.4.2. Findings per integrity aspect

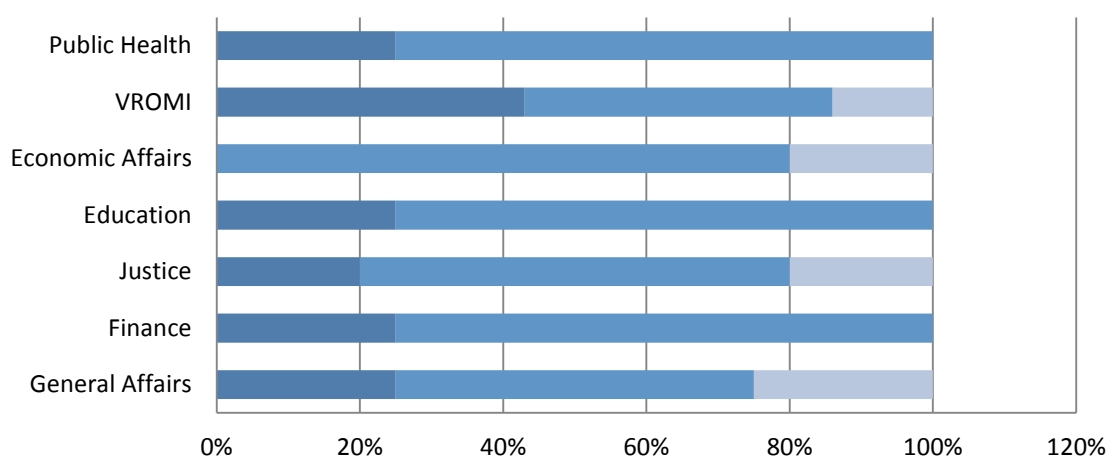
### 2.4.2.1. Oath/affirmation (article 43 National Ordinance substantive civil servant law LMA)

Civil servants must adhere to rules related to their conduct. A civil servant who takes the oath (or affirms), promises or swears to comply with these rules. Every ministry has cases of civil servants who have not yet completed the oath or affirmation.

The number of civil servants reported to have not taken oath varies (widely) by Ministry (see table and graph). Unfortunately, the General Audit Chamber was unable to compare the responses from the survey with actual data from the organization, i.e. P&O.

Based on the (anecdotal) information received, the civil servants who have not taken the oath of office are thought to be “newly hired” persons. Until 2012, it was customary for all civil servants to take the oath before the competent authority, i.e. the Governor. The last time that occurred was in 2012. The competent authority can mandate a head of department to administer the oath of office. Apparently the oath is (since 2012) mandated to individual ministers. The General Audit Chamber was unable to confirm the number of civil servants who have taken the oath since the issuance of the mandate.

### Have all civil servants at your organization taken the oath?



	General Affairs	Finance	Justice	Education	Economic Affairs	VROMI	Public Health
■ yes	25%	25%	20%	25%	0%	43%	25%
■ no	50%	75%	60%	75%	80%	43%	75%
■ I don't know	25%	0%	20%	0%	20%	14%	0%

On average, over half the respondents to the survey (52%) indicate there is a record of the civil servants completing the oath/affirmation. The Personnel Department is said to maintain a record in their Personnel Information System. According to information (Excel spreadsheet) provided by the head of the Personnel Department (P&O), there are about 250 civil servant who have not taken the oath of office. The data provided to the General Audit Chamber does not convince us that the system is complete or accurate. The department is working on updating their systems to complete the registration. The study results suggest that individual ministries exert little or no supervision in terms of which civil servants actually complete the oath of office. Department heads, though not all, reported that they maintain personnel files in which copies of the official statement (*process-verbaal*) are filed.

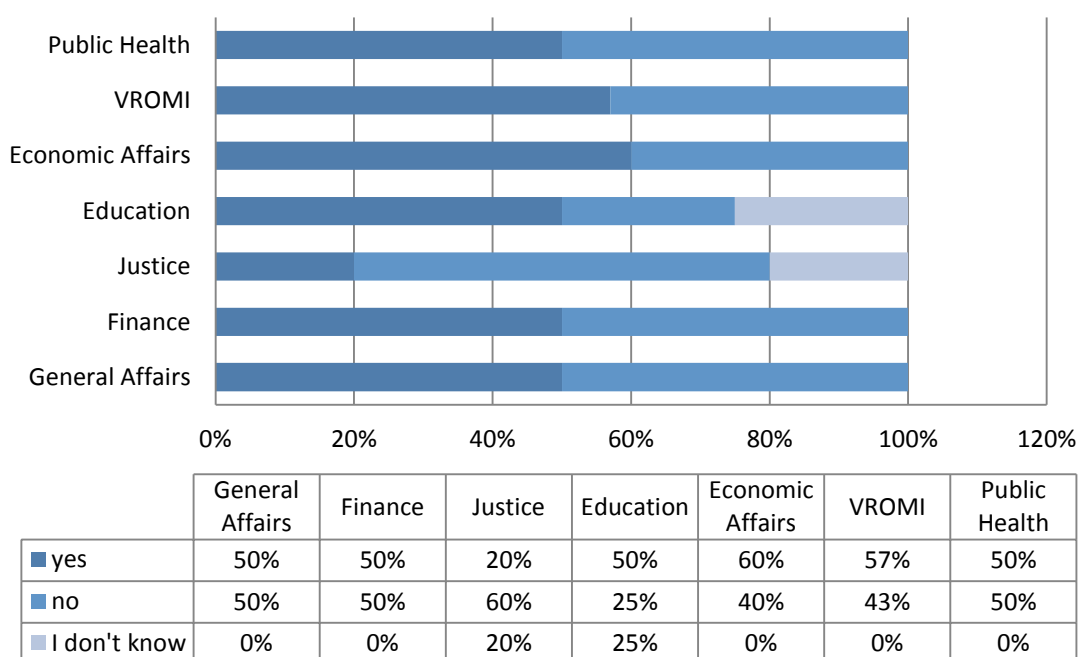
### 2.4.2.2. Working hours (article 46 National Ordinance substantive civil servant law LMA)

All (100%) of the respondents indicate that there is a regulation related to working hours for his/her organization. The manner in which this regulation is enforced varies by Ministry and/or department. Some organizational units use an automated control mechanism, though the majority maintain a manual system based on a registration form to record activity (arrival and departure). On average, 73% of respondents indicate that a registration system is in place. Only a few respondents, 27%, reporting no form of enforcement registry for working hours.

### 2.4.2.3. Secondary Activities (articles 51-56 National Ordinance substantive civil servant law LMA)

Civil servants who wish to carry out secondary activities are required to report such - in advance - to their respective head of department. The head of department cannot grant permission if "good performance of the relevant position or good operations of the relevant service cannot or can no longer reasonably be assured" due to the secondary activity. In addition, the head of department is required to maintain a record (register) of the requests, the considerations and the decisions related to the request. The Minister of General Affairs is required to set rules as to how written applications for secondary activities need to be done, including rules related to the registration and storage of information. The General Audit Chamber did not find aforementioned rules. On average, just over half (52%) of the respondents report having no knowledge to the aforementioned rules. The following graph reveals the response by ministry to the question of compliance to procedure.

**Is the procedure related to requests for secondary activities followed?**





During the follow up interview phase of the baseline study, information was received that that the Ministry Education, Culture, Youth and Sports Affairs, issued a letter to all civil servants of the ministry to make an inventory of secondary activities. The Ministry of Education, Culture, Sports and Youth Affairs, in particular, and other ministries in general, favors the establishment of general rules related to this aspect of integrity. The survey respondents suggest that the Personnel Department is responsible for this aspect. Because there are no valid implementation rules, the Ministry of Public Health has started development of an inventory.

Civil servants are not permitted to undertake work, deliveries or service provision borne directly or indirectly by the government, partially or in full, or to stand surety for or participate in these, directly or indirectly (article 54 LMA). Furthermore, civil servants, or particular groups of civil servants of a particular service may be forbidden by the competent authority to act as supervisory directors, managers, partners, shareholders or member of companies, foundations or associations, to be designated by National Decree, which regularly come into contact with, or could, by virtue of their structure, regularly come into contact with the relevant service (article 55 LMA). The General Audit Chamber did not find the aforementioned National Decree. Survey respondents were equally unaware of the decree (67% answered "I don't know").

A civil servant who holds a management, controlling or supervisory position in a legal entity and receives remuneration for the work performed or to be performed in that position, other than from the national treasury, is required to deposit that remuneration in the national treasury if the appointment to that position (article 56 LMA):

- a) *Was made by or on behalf of the competent authority; or*
- b) *Arose from a statutory provision or pursuant to an agreement contracted with the consent of the competent authority.*

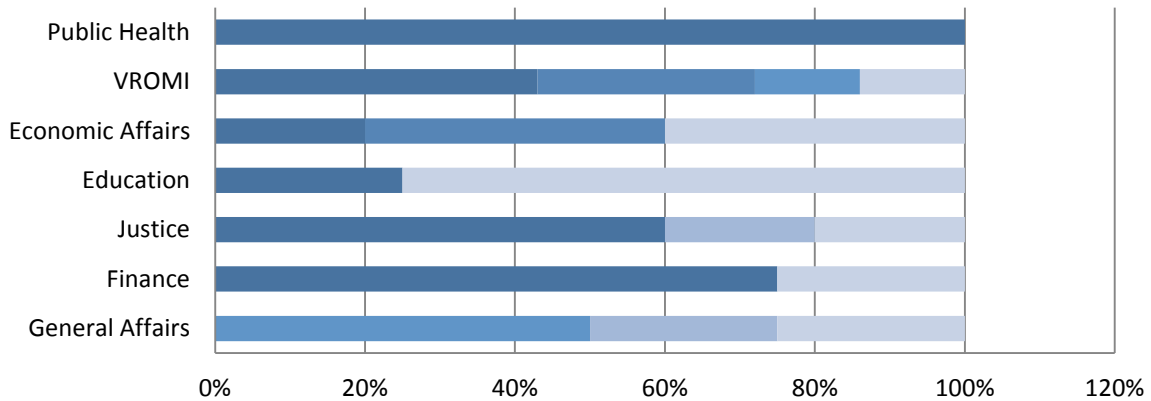
Survey respondents acknowledge that these type of secondary activities exist. Additional arrangements regarding enforcement and compliance, on the other hand, do not exist. There is no check regarding the remuneration and whether this is deposited in the national treasury.

#### **2.4.2.4. Use of government property (article 57 National Ordinance substantive civil servant law LMA)**

Survey results indicate that the arrangement maintained for use of official government vehicles differs by Ministry. Official government vehicles may only be used for the benefit of the service (business), and not for commuting. Dispensation may be granted in special cases. There is a "Regulation official government vehicles Sint Maarten". Under this regulation, Secretaries-General have been issued official vehicles for both business and private use. The regulation also allows the SG's to identify other persons who can use the vehicle.



## How many workers use the official vehicle in accordance with policy?



	General Affairs	Finance	Justice	Education	Economic Affairs	VROMI	Public Health
■ "0-5"	0%	75%	60%	25%	20%	43%	100%
■ "6-10"	0%	0%	0%	0%	40%	29%	0%
■ "11-20"	50%	0%	0%	0%	0%	14%	0%
■ >20	25%	0%	20%	0%	0%	0%	0%
■ none	25%	25%	20%	75%	40%	14%	0%

Survey results indicate large variations to the question related to “how many employees use an official government vehicle”. On average, fifty-seven percent (57%) of respondents indicate that between 0 and 10 employees use the official vehicle. On average, 27% respondents answer that no official government vehicles are in use at their ministry. As evidence of the variety of responses per ministry, refer to the graph and table above.

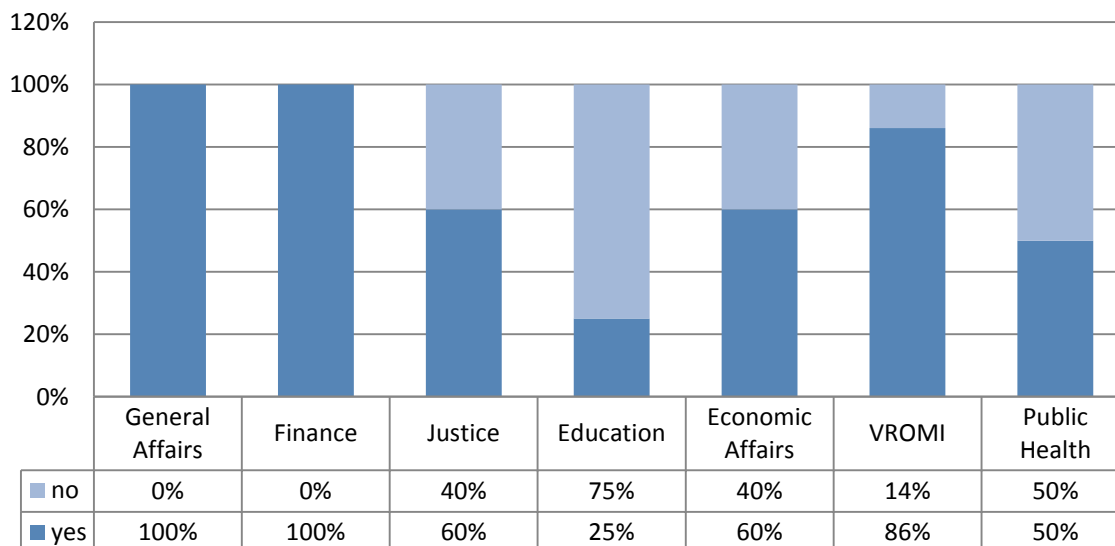
A few specific findings deserve mention:

The Ministry of Education, Culture, Sports and Youth Affairs reported during the follow up interview that their ministry uses a “compensation scheme” based on gasoline coupons. The General Audit Chamber was not able to verify this “scheme”. Three quarters (75%) of the respondents at the Ministry of General Affairs indicate that more than 11 persons use the official government vehicle<sup>6</sup>. During the follow up interview, the Ministry of General Affairs reported that a review is ongoing to determine whether persons who have a government vehicle were issued the vehicle in compliance with the “Regulation official government vehicles Sint Maarten”. Furthermore, the respondents informed the General Audit Chamber that the management of the vehicle fleet is being reorganized.

<sup>6</sup> 50% reported that between 11-20 persons use the vehicle and 25% reported that more than 20 persons use the vehicle.

On average, the majority of the survey respondents (70%) are aware of a regulation/rule related to the issuance of mobile telephones. The results of the awareness per ministry are listed in the following graph.

### Are there policy rules or arrangements related to use of mobile phones?



A similar regulation is said to be utilized for the issuance of laptops and computers. These arrangements are reported to have been used in government prior to October 10, 2010 (Island Territory). The regulations/rules are managed and implemented by the Department of Facilities Management of the Ministry of General Affairs. The regulation for mobile phones includes monthly maximum limits for usage. Excess usage must be reimbursed by the user.

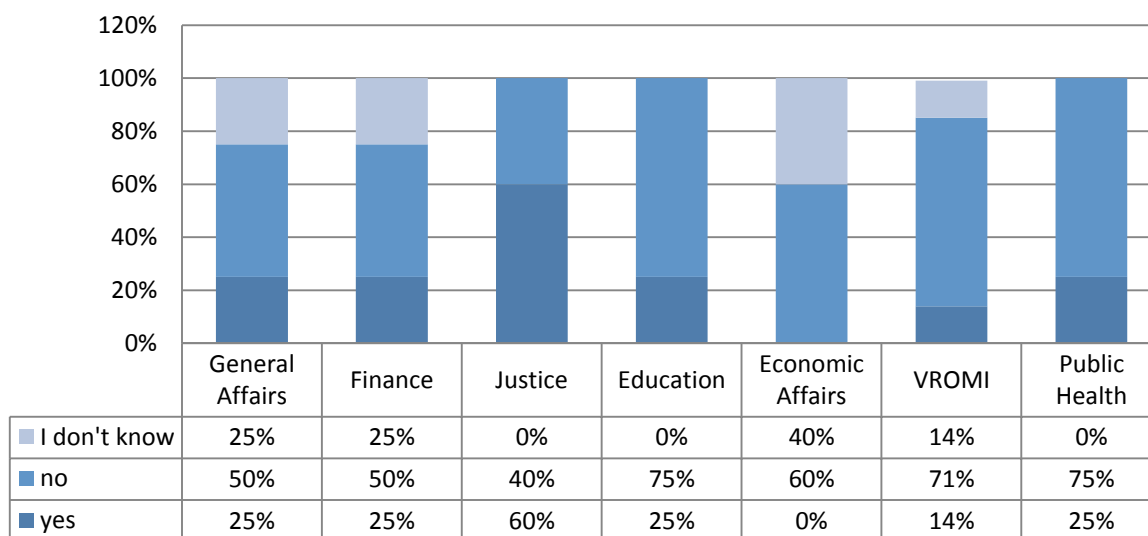
A low level of supervision related to the usage of the mobile phones was mentioned in many of the follow up interviews. According to respondents, misuse or violations of the rules should be dealt with by the Department of Facilities Management. There is very little analysis of usage nor is there much coordination between the Department of Facilities Management and the Accounting Department at the Ministry of Finance. The Ministry of Public Health, Social Development and Labor reports that there is virtually no monitoring of usage nor is there any control. That ministry also states that a laptops are treated similarly; the units are issued by the Department of Facilities Management; there is never proof of issuance.

#### 2.4.2.5. Acceptance of gifts (article 58, 59 National Ordinance substantive civil servant law LMA)

The acceptance of a fee, reward or gift cannot occur without prior consent of the head of department (service). The civil servant has a duty to the head in this regard. Moreover, the civil servant cannot accept a gift from a client that is offered at a stage related to service provision to that client. Any gift valued at or in excess of ANG 100 will not be allowed by the head of department. Similarly, the head will not give consent for the acceptance of a gift if there is a reasonable suspicion that the fee, remuneration, gift or promise is made in order to motivate the civil servant to take or refrain from certain action in his service provision. The amount previously referred to may be amended by National Decree.

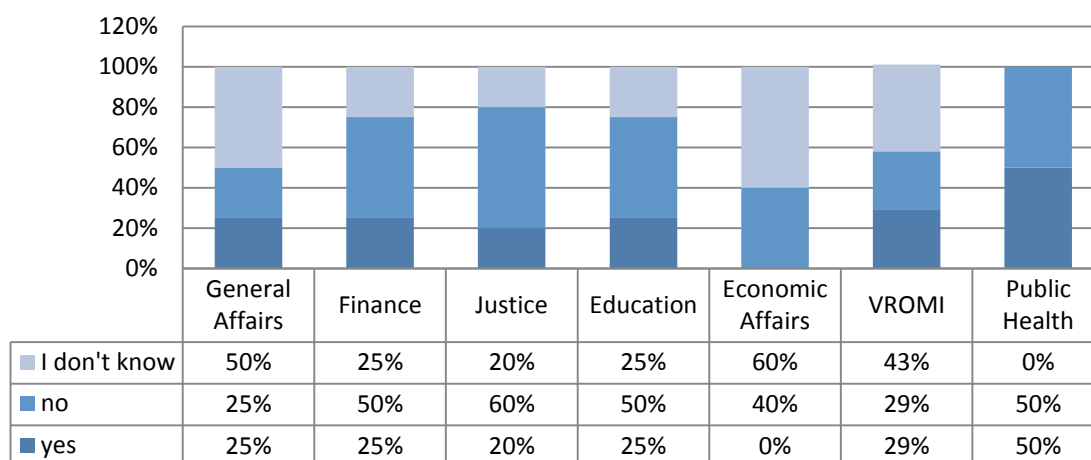
In terms of this aspect of integrity, the survey outcome reveals that an average of 61% of respondents assert that there is no mandatory reporting for the acceptance of gifts. The following graph shows the results per ministry.

### Is there mandatory notification for acceptance of gifts?



In the event respondents acknowledged the existence of a procedure for acceptance of gifts, respondents were questioned related to compliance. On average twenty-four percent (24%) of respondents report that the procedure (notification, evaluation, approval/rejection and registration of gifts) is observed (compliance). The following graph provides the results per ministry.

### Is the procedure related to acceptance of gift observed?



According to the National Ordinance substantive civil servant law (LMA), The minister responsible for personnel affairs shall impose additional rules concerning the way in which the notification of gifts must be done. There must also be rules created for the use of the information and the storage thereof. A third of survey respondents, (33%) were certain the aforementioned rules do not exist and 61% indicated that they were not sure of the existence of the rules. The General Audit Chamber did not find evidence of the existence of the aforementioned rules.

Information received from interviews suggest that the ANG 100 value limit is not subject to change/review. The General Audit Chamber could not confirm the existence of any form of structured control and enforcement of the rules regarding the acceptance of gifts at the ministries.

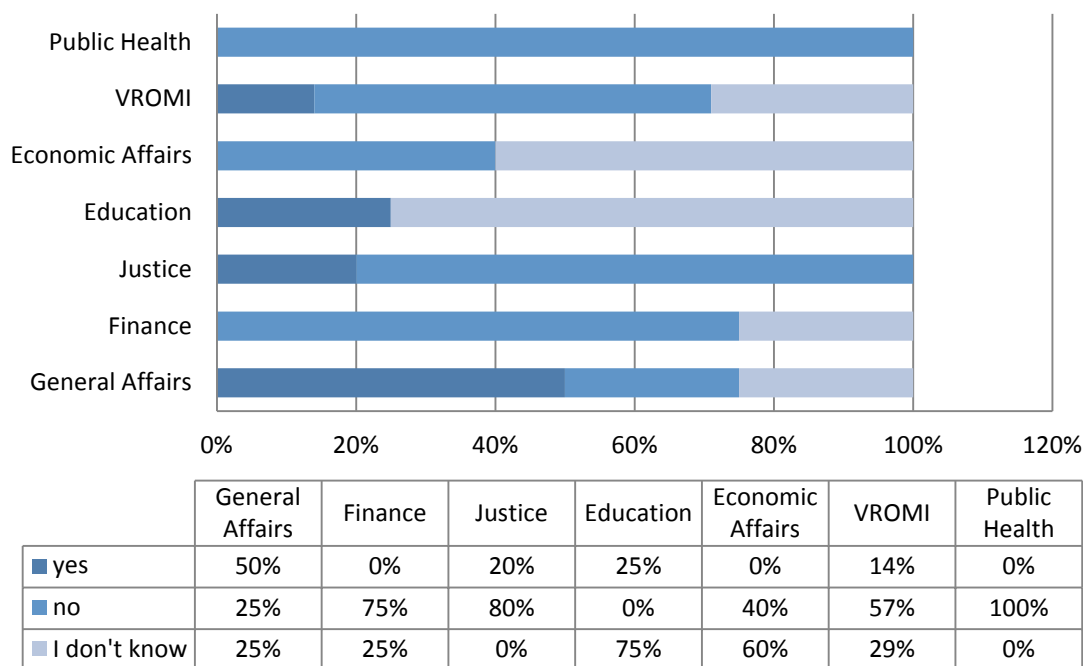
#### 2.4.2.6. Confidentiality (article 61 National Ordinance substantive civil servant law LMA)

Civil servants are required to protect the confidentiality of all information of which they become aware in the course of their official duties, to the extent that this obligation follows from the nature of the matter or is explicitly imposed on them.

More than 45% (on average) of the respondents maintain that there is no detailed implementing rule regarding confidentiality. Confidentiality is an integral part of the oath/affirmation of office, and those workers under contract are required to sign a confidentiality agreement. There are no generally applicable rules for dealing with members of Parliament or the press, although, on average, 15% of those surveyed seem to believe that such rules exist.

The Ministry of General Affairs claims to maintain an *instruction* for dealing with the press. At another Ministry (Public Health), there is the policy that "information to third parties" must always be channeled through the Minister. The following graph provides results per ministry related to rules or instructions for dealing with Members of Parliament.

#### Are there rules for dealing with members of Parliament?



When asked about "leaking of secrets", more than a quarter (27%) of respondents (on average) indicate the existence of such cases, a third (33%) indicate that there have been no cases of "leaking of information". The remainder of the respondents answered "I don't know" (39%).

#### 2.4.2.7. Service dress (article 63 National Ordinance substantive civil servant law LMA)

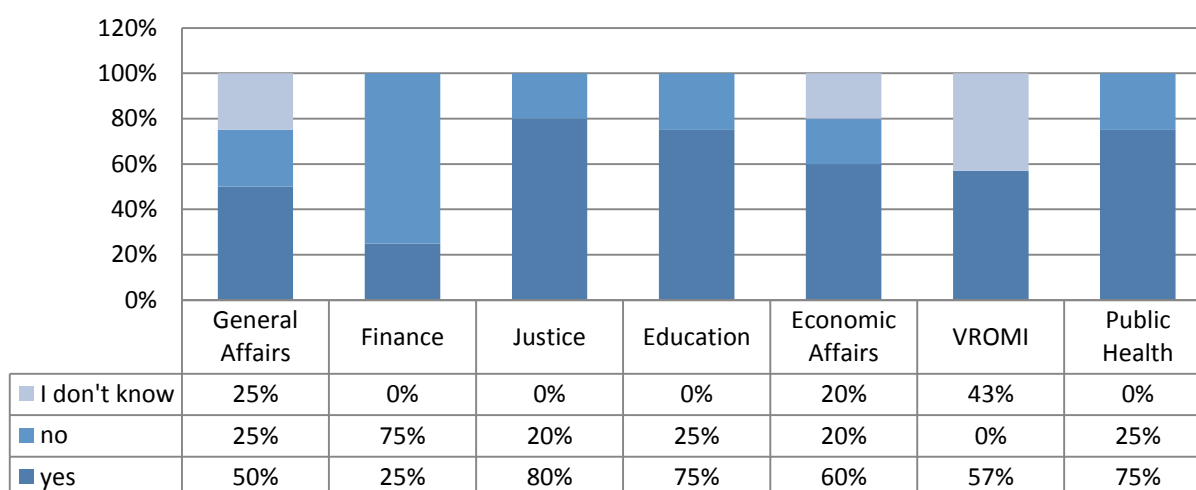
Civil servants are required to wear the service attire and distinguishing marks, if and to the extent that this is prescribed for them by the competent authority. The provision of service attire or an allowance for this shall take place in accordance with rules laid down by National Decree, containing general measures. Although an average of 12% of respondents claim that there is a detailed arrangement, i.e. a National Decree, containing general measures for regulating service dress, the General Audit Chamber was not able to locate such a regulation. According to the majority of respondents, there are no rules to minimize the abuse and improper use of service dress. The following ministries Education, Culture, Sports and Youth Affairs, Public Health, Social Development and Labor, and Finance,

indicate that service dress is commonly used. Other ministries indicate that “uniforms” are used at some departments. The ministries maintain individual policy and rules regarding issuance of service dress.

#### 2.4.2.8. Business Travel (article 72 National Ordinance substantive civil servant law LMA)

Civil servants are entitled to compensation for travel and accommodation expenses and to insurance against the risks of flying when travelling on official business. Rules concerning the award of the allowance for accommodation expenses referred to above, and concerning the aforementioned insurance, shall be laid down by National Decree, containing general measures.

#### Is the procedure for compensation of business travel followed?



On average 70% of respondents specify that there are detailed rules relating to the reimbursement of expenses. The General Audit Chamber did not find the National Decree, containing general measures as required by article 72 of the National Ordinance substantive civil servant law LMA regulating this matter. The respondents refer to a “policy” dating back to the time of the Island Territory. The latter is based on a “per diem” allowance.

During the follow up interviews, respondents referred to a more recent policy, specifically “travel and accommodation costs 2013”. The new policy or rule was initiated by the Personnel Department, among others. The General Audit Chamber received a copy of the correspondence addressed to the Secretaries-General that includes “*policies in respect of business travel and compensation for travel and accommodation expenses for civil servants*”.

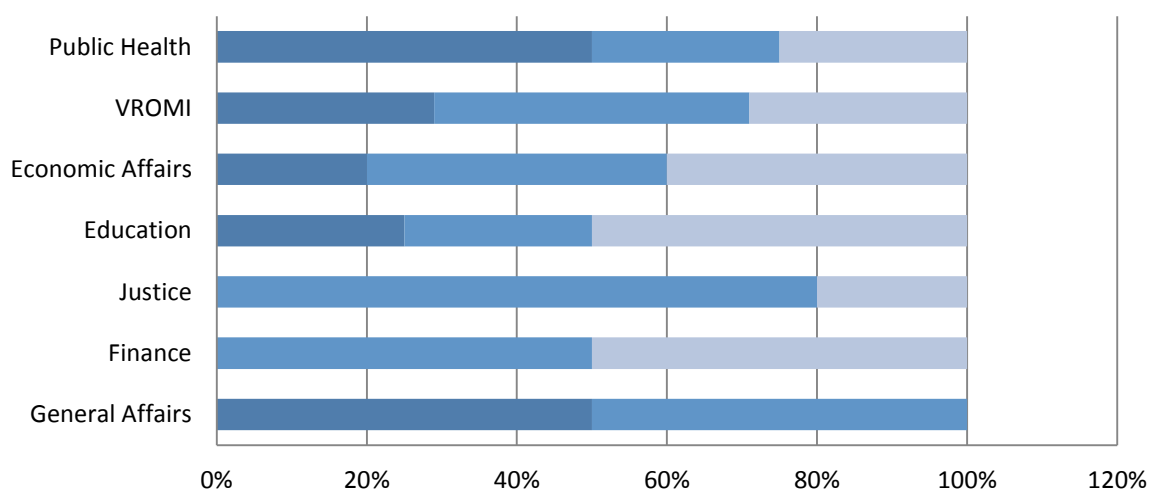
Point of departure for the new policy is not a “per diem” arrangement for accommodation expenses. The compensation is limited and additional expenditures must be reported for reimbursement. A number of the respondents refer to the new policy as having the form of a Ministerial Decree, though the documentation obtained appears to be no more than a policy (containing procedures). The National Ordinance substantive civil servant law (LMA), article 72 paragraph 2 requires that rules concerning accommodation expenses be laid down by National Decree containing general measures.

According to 24% of those surveyed (on average), the procedure related to travel and accommodation expenses (providing invoices/documents, evaluation by head of department, and payment by the Financial Accounting Department) is not adhered to. Both the previous policy as well as the new policy require civil servants to provide a report of the business travel. According to respondents, reporting is often not done.

### 2.4.2.9. Integrity Counsellor (articles 82 and 83 National Ordinance substantive civil servant law LMA)

The Minister of General Affairs is required to appoint a civil servant as an **integrity counsellor** for each ministry. An integrity counsellor handles integrity issues of civil servants and shall treat the information received in that capacity in confidence and shall protect the identity of persons from whom the information is obtained from disclosure to third parties. The integrity counsellor shall issue a confidential, anonymized report to the Minister of General Affairs twice a year, regarding the number of times that his advice was requested in the preceding period and the topics of the advice, stating the form of breach of integrity of which he may have become aware. Further rules concerning the recording and use of the information included in the report as referred to above shall be laid down by the Minister of General Affairs. The graph provides an overview per ministry of the level of awareness regarding the appointment of the integrity counsellors.

#### Have integrity counsellors been appointed for your ministry?



	General Affairs	Finance	Justice	Education	Economic Affairs	VROMI	Public Health
■ yes	50%	0%	0%	25%	20%	29%	50%
■ no	50%	50%	80%	25%	40%	42%	25%
■ I don't know	0%	50%	20%	50%	40%	29%	25%

Although, on average, 30% of all respondents to the survey are not aware of the integrity counsellor, the follow up interviews revealed that each Ministry has recently been designated two integrity counsellors. According to those interviewed, there is still much uncertainty about the scope or content of the job of the integrity counsellor. The detailed rules related to the reporting (article 83 paragraph 5, National Ordinance substantive civil servant law LMA) do not exist. The counsellors have only just been appointed and require training.

The General Audit Chamber is in possession of a draft *National Ordinance to amend a number of national ordinances aimed at strengthening integrity requirements and for the establishment of the Integrity Bureau*. This draft stipulates that by or pursuant to National Decree containing general measures, additional rules will be enacted regarding the tasks, authorities and appointment of integrity counsellors at the ministries etc.

### 2.4.2.10. Suspicion of a breach of integrity (article 84 National Ordinance substantive civil servant law LMA)

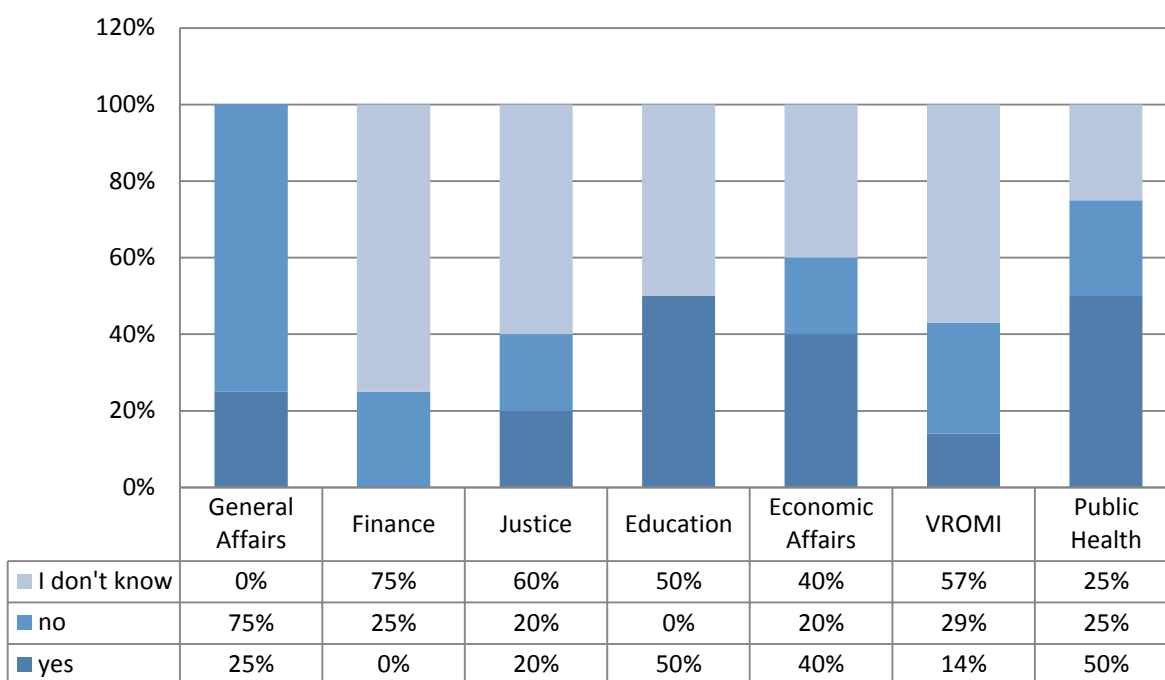
Civil servants shall notify, in writing or verbally, the head of the service (department) of suspicions of a breach of integrity based on reasonable grounds. The head of the service to whom the notice is

issued must confirm (in writing) receipt of the notice, must draft a report, and send said report to the minister concerned. Said minister must form, within 8 weeks after receipt of the report, a substantive position on the suspected breach. Furthermore, there must be confirmation of receipt provided to the civil servant concerned immediately after the notification in which suspicion of a breach of integrity and the date of the notification are listed. In the event that the suspected breach of integrity is based on fact, the “necessary measures” must be taken. The civil servant making the notification must not in any way suffer disadvantage in his position. The Minister of General Affairs must establish further rules concerning the recording and use of the data included in the aforementioned substantive position of the minister.

On average, approximately a quarter of all civil servants (24%) surveyed are aware that there is a procedure set forth by law regarding the reporting of suspicion of breach of integrity. The follow up interviews confirm that few of the persons surveyed are aware of the procedure, let alone if said procedure it is followed. Most ministries reviewed indicate that they know of violations of integrity rules

The following graph provides the responses per ministry to the question “Is the procedure regarding suspicion of integrity breaches followed (compliance)?”

**Is the procedure regarding suspicion of integrity breaches followed?**



When there are breaches, the study reveals that these breaches of integrity are treated in different ways. The General Audit Chamber notes that in the draft National Ordinance to amend a number of national ordinances aimed at strengthening integrity requirements and for the establishment of the Integrity Bureau, article 84 LMA is redrafted. Integrity breaches are more clearly defined in this draft.

**2.4.2.11. Disciplinary sanctions (articles 86-102 National Ordinance substantive civil servant law LMA)**

These articles from the National Ordinance substantive civil servant law regulate how and in which cases disciplinary penalties may be imposed and in which cases the competent authority may suspend or dismiss a civil servant, whether or not by law, especially in case of violation of integrity rules.

Only about a quarter (24%) of the respondents indicate that there are additional rules related to disciplinary sanctions for violating integrity rules. The remaining 75% indicate that these policies do not exist. The General Audit Chamber did not find any additional rules. Information from the follow up interviews reveal that there has been a single case of the imposition of disciplinary sanctions as a result of a breach of integrity rules. In that case the Personnel Department provided support in terms of the procedure. Most of the respondents report not having been confronted with such an imposition of disciplinary sanctions.

#### 2.4.2.12. Code of Conduct

The purpose of the code of conduct on integrity for civil servants is "to provide a guide to civil servants in terms of decision-making and in terms of determining the standards and conditions for operating within Government". The status of the code of conduct is unclear. The code has no formal legal status. The document is an internal arrangement that the civil service should observe. The code concerns "rules for conduct that form the basis for working among civil servants". Most relevant is the fact that the code provides an interpretation and often an elaboration of the integrity aspects stipulated in the National Ordinance substantive civil servant law (LMA), though a few of the rules contained within the code supplement the rules of the aforementioned ordinance.

Information derived from both the survey as well as follow up interviews reveals that about half (52%) of those surveyed are aware of the code of conduct. Furthermore, the data from interviews indicates the code is not used very much. Some ministries (which) report using elements of the code during staff evaluations.

The General Audit Chamber was informed that during "Awareness workshops" organized under the auspices the Department for Internal Affairs and Kingdom Relations, the code was distributed to civil servants.

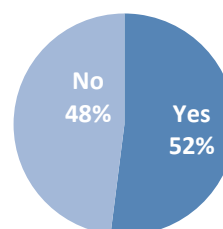
More than half of all respondents indicate that so-called "revolving door" schemes (55% on average) and "whistleblower rules" (52% on average) are not regulated in the National Ordinance substantive civil servant law LMA nor are these aspects regulated in the code of conduct. The General Audit Chamber did not find consensus among respondents regarding the need for such arrangements.

Once the draft National Ordinance *to amend a number of national ordinances aimed at strengthening integrity requirements and for the establishment of the Integrity Bureau* is enacted into law, the code of conduct will be authorized by Ministerial Decree.

#### 2.4.2.13. Criminal activity (Penal Code Second book, title XXVIII, articles 2.344 ! 2.364), misconduct (Penal Code Third book, title VII, articles 3.60 ! 3.68), breach of confidentiality (Penal Code Second book, title XIV)

Certain forms of forgery, corruption, fraud, accepting gifts, conflicts of interest and abuse of authority are identified as punishable crimes by the Penal Code. Misconduct is failure by a civil servant to comply with certain formalities, to safeguard relevant documents, copying of documents for other than official use etc. Misconduct is usually punished through the imposition of fines.

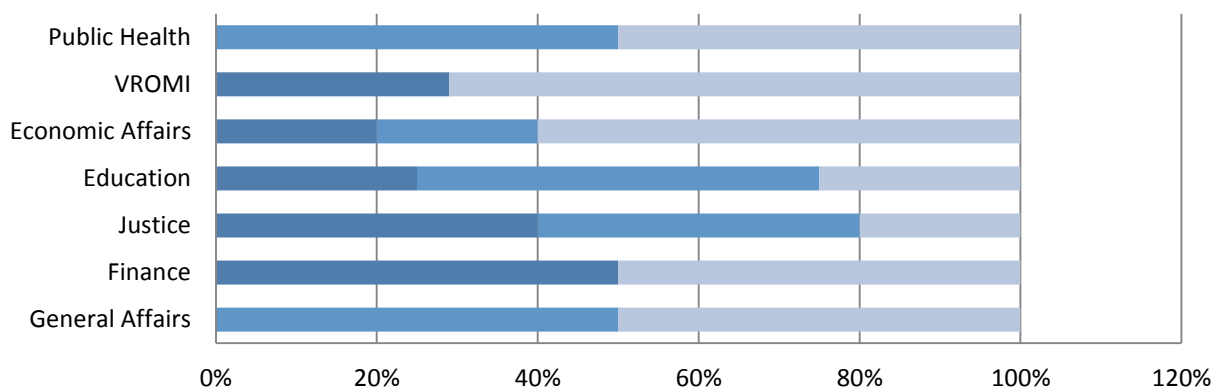
**Are you aware of the Code of Conduct?**





In this regard, the elucidation of article 84 paragraph 7 of the National Ordinance substantive civil servant law (LMA) is relevant: if it appears that a breach of integrity has occurred, the necessary measures must be taken. Depending on the specific case, those measures include disciplinary penalties or filing a report at the Office of the Prosecutor pursuant to article 200 of the Code of Criminal Procedure. According to the Code of Conduct for civil servants, a report should be filed with the Prosecutor if there is strong evidence that an offence was committed. The following graph reveals the responses to the question per ministry.

### Are reports always filed upon suspicion of official misconduct or crimes?

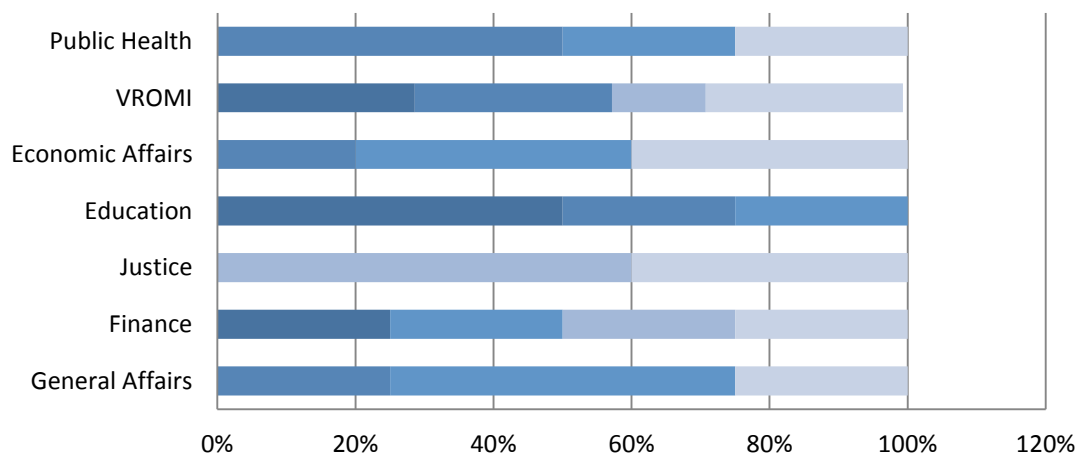


	General Affairs	Finance	Justice	Education	Economic Affairs	VROMI	Public Health
■ yes	0%	50%	40%	25%	20%	29%	0%
■ no	50%	0%	40%	50%	20%	0%	50%
■ I don't know	50%	50%	20%	25%	60%	71%	50%

On average, almost a quarter of all the respondents (24%) believe that reports are **always** filed, 27% believe that reports are not always filed, and about half state that they do not know.

Information derived from the follow up interviews indicates that it is not clear to the respondents who is responsible for determining the seriousness of the violation, nor who is responsible for filing the report. The graph reveals the results per ministry related to the questions “who evaluates the seriousness of the violation?”

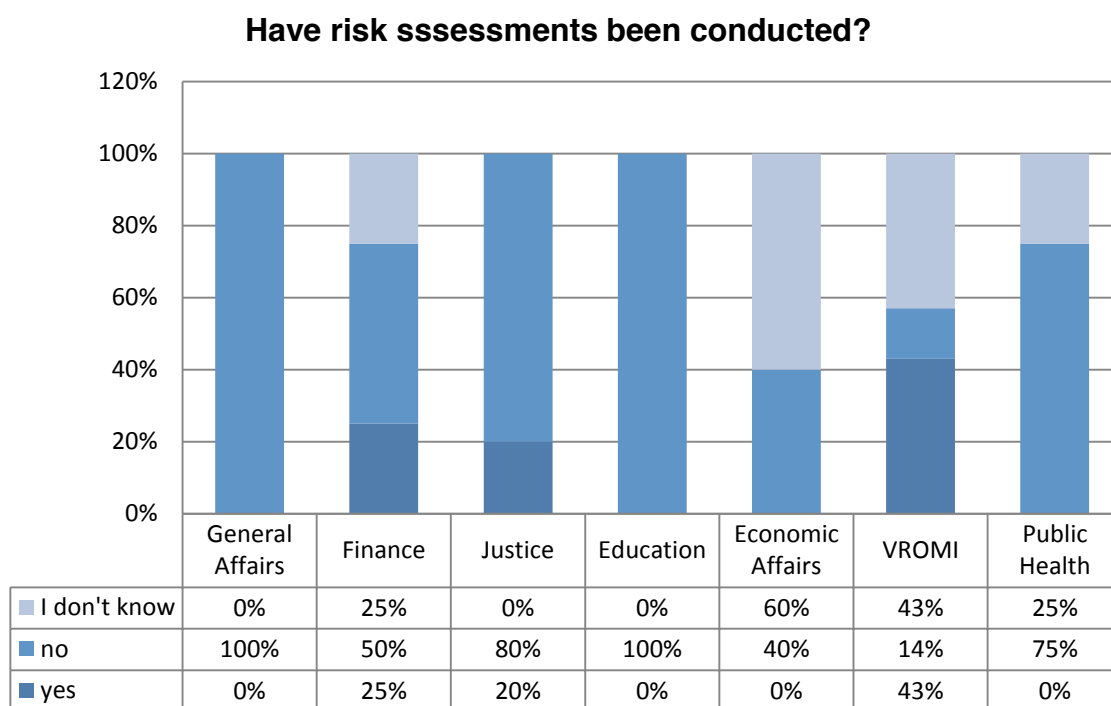
### Who evaluates the seriousness of a violation?



	General Affairs	Finance	Justice	Education	Economic Affairs	VROMI	Public Health
■ Competent authority	0%	25%	0%	50%	0%	29%	0%
■ Secretary General	25%	0%	0%	25%	20%	29%	50%
■ Responsible minister	50%	25%	0%	25%	40%	0%	25%
■ Head of Dept	0%	25%	60%	0%	0%	14%	0%
■ Don't know	25%	25%	40%	0%	40%	29%	25%

#### 2.4.2.14. Risk assessment

Risk assessments allow work processes and functions within processes to be evaluated in terms of the level of vulnerability; what is the level of risk within the processes in terms of allowing breaches of integrity within the organization or of a civil servant. It makes sense to execute risk assessments for work processes to identify which are most vulnerable. It should be noted that there is no legal requirement for executing risk assessments.



Of all civil servants surveyed, an average of 15% reported knowledge of risk assessments. The interviews provided additional information. For example, the Ministry of Finance claims that work was done to review the vulnerability of work processes. At that ministry, control mechanisms have been developed to mitigate misconduct. Respondents report that there have been no risk assessments conducted at the ministries of General Affairs and Education. The respondents of the other ministries provided differing answers making it difficult to draw a conclusion. During follow up interviews, the Ministry of General Affairs reported “taking notice” of risk assessment. The Census Office for example is said to have executed a risk assessment of their work processes. The General Audit Chamber could not confirm that statement.

## 2.5 Police Sint Maarten

To execute the study related to the further development, implementation and enforcement of integrity management with the Police Corps, the General Audit Chamber studied the regulations related to integrity of the National Decree containing general measures related to regulations for employment conditions for the Police Corps Sint Maarten. During the follow up interview with representatives of the Police Corps the General Audit Chamber was informed that the National Decree containing general measures is “materially” used, but the Decree has never been legally published. There are ongoing discussions with unions regarding the development of a new regulation related to employment conditions for the police.

### 2.5.1. Oath/Affirmation (article 26)

Every police officer, including administrative staff, must take the oath of office before the Minister of Justice. The oath is an important part of the police profession.

The Personnel Department of the Corps keeps track of who takes the oath. Furthermore, integrity is a fixed part of personnel evaluations and in addition, managers include integrity in the daily briefings.

### 2.5.2. Requirements of office (article 96) / Code of Conduct, Code of Ethics

A police officer is required to carefully and diligently carry out his/her function and is required to behave as befits a fine police officer, etc., etc. The Police Corps has a code of conduct, adopted from the Netherlands Antilles (normally referred to as the Code of professional standards for the Police Officer). The code is part of the training for officers. Furthermore, the code of ethics represents “*all established rules of conduct and directives, formulated with the goal to provide all officers with a guide to respond appropriately in different situations during the conduct of their work, both inside and outside the organization*”.

The Code of Conduct/Code of Ethics does not address so called “revolving door schemes” nor “whistleblower regulations”. There are cases at the police where specialists are retained in service after pensionable age. There are agreements with the unions governing these cases. The function becomes vacant as the (former employee) specialist is hired on the basis of a contract.

### 2.5.3. Confidentiality (article 97)

Confidentiality is regulated by means of taking the oath of office and this aspect of integrity is also regulated in the Code of Ethics and finally is also a condition of employment. Contacts with Parliament or with the press are handled via the Public Relations department of the Corps. Informal contact cannot be avoided, but do not often lead to “leaks”. One of the respondents reported that in the two years of service at the Corps, there has not been a case of “leaks” related to active criminal investigations.

### 2.5.4. Service Dress (uniforms) (article 98)

There is a ministerial decree with general operation related to service dress (uniforms). Police officers must wear the uniform with insignia as was provided by the Corps. The respondents reported no abuse of service dress. The single case of misuse of identification (ID) card, was immediately dealt with.

### 2.5.4. Secondary activities/conflict of interest (article 105)

A police officer is prohibited to exercise secondary functions/activities, if the proper fulfillment of his duties as an officer of police is put at risk or harm can be done to the reputation of his function.

There are no further rules related to secondary activities. The respondents from the Police Corps report that the organization has come a long way though there is still room for improvement. In terms of conflict of interest and secondary activities, the police are working along with the integrity project of government.

#### **2.5.5. Acceptance of gifts (article 106)**

The Code of Ethics regulates how a police officer is required to deal with the acceptance of gifts, making promises etc. The follow up interview reveals that the Corps strives for a “zero-gift policy”. That rule is most clear.

#### **2.5.6. Use of government property (article 108)**

There are rules related to the use of official vehicles. A number of managers and specialists have use of an official vehicle in their official capacity, including for standby duty (on call). The existing regulation regarding use of telephones is not optimal. The interviewed representatives are in favor of additional implementation rules that provide clarity regarding the role of the supplier (Department Facilities Management) and the users (police) of certain services and products (telephones, computers). According to those interviewed, there is a lack of adequate financial management related to the use of government property, complicating the ability to deal with extreme use or misuse of property.

#### **2.5.7. Disciplinary sanctions (Chapter X)**

Policy arrangements exist in regard to applying disciplinary sanctions. Breaches of integrity are always dealt with and when necessary using disciplinary sanctions. The Minister of Justice imposes the disciplinary sanctions. The Police Corps maintains a policy whereby criminal investigation is first completed (the accused has the right to remain silent during the investigation) and thereafter to start with the disciplinary process (the accused is required to cooperate).

#### **2.5.8. National Ordinance substantive civil servant law (articles 72, 73 and 80)**

According to article 95 of the Decree employment conditions Police Corps Sint Maarten, chapter VII of the National Ordinance substantive civil servant law (integrity rules) is not applicable with the exception of articles 72, 73, 80.

The compensation of travel and accommodation expenses was previously based on the old arrangements used by the Executive Council of the Island Territory; recently the “*policy rules travel and accommodation 2013*” was adopted. There are no regulations for travel using personal transportation.

There are no regulations that allow reimbursement of costs that can be declared in any other way.

#### **2.5.9. Crimes / misconduct by persons in authority (Penal Code)**

Within the Police Corps there are a variety of procedures for reporting suspicion of a criminal act or misconduct. The Internal Affairs Department is usually the preferred entity that conducts the investigation of the suspicious situation. This department can also initiate an investigation absent a suspected violation. The Public Prosecutor determines if the National Investigation Service (*landsrecherche*) will carry out the investigation, particularly if it is criminal in nature. A report can be filed to the Prosecutor but also directly to the National Investigation Service. The minister has no role in this procedure.

#### **2.5.10. Risk assessment**

Within the Police Corps a couple of risk assessments were executed, specifically regarding procedures related to meal coupons and telephone expenses.

## 3. Conclusions

### 3.1 General Conclusions

#### 3.1.1. Integrity infrastructure

The basic “infrastructure” of organic legislation related to integrity management is in order. Formally, the requirement of article 101 of the Constitution to develop rules by means of national ordinance in order to secure the lawfulness and integrity of the administration and administrative action and the soundness of the financial management has been met. The explanatory notes related to the article refer primarily to the National Ordinance promotion of the integrity of ministers and the National Ordinance registration and finances of political parties. The aforementioned ordinances have been in force since October 10, 2010, the date on which the Country status was achieved. As of that time, modern legislation for civil service related to integrity went into effect, i.e. the National Ordinance substantive civil servant law (LMA). The well-known integrity issues such as taking the oath, secondary activities, use of government property, confidentiality, integrity counsellors, are regulated in the aforementioned ordinance (LMA). The General Audit Chamber does not find that essential formal ordinances related to integrity are absent.

#### 3.1.2. Implementation of regulation

Three and a half years after the establishment of Country Sint Maarten and thus three and a half years after ordinances took effect, there are few if any formal regulations in the area of integrity being implemented. For a small number, implementation started very recently. After three changes of government (Cabinets), there is a start to the implementation of the National Ordinance promotion of the integrity of ministers. The ministers of the third Cabinet, (Wescot III) submitted the required declaration regarding business interests and additional activities, although this was not done within the period required by the ordinance. The outgoing ministers of previous cabinets have failed to submit the required declarations. The National Ordinance stipulates that failure to submit the required declarations are punishable under the regulation. With elections approaching, the first activities related to the National ordinance registration and finances of political parties are being taken. The Electoral Council was recently appointed.

The National Ordinance regulating the suspension of persons holding political authority has not yet been implemented.

#### 3.1.3. Missing regulations

The General Audit Chamber notes that ordinances formally require government to develop additional rules and regulations containing specific norms. Almost none of these implementation regulations have been developed.

- National Ordinance promotion of integrity of ministers: article 8 second paragraph. The rules for the register in which the written declarations are included, is missing.
- National Ordinance promotion of integrity of ministers: article 9 paragraph 3. The national Decree containing general measures Rules concerning the custody and destruction of the documents, is absent.
- National Ordinance registration and finances of political parties: article 12. The National Decree containing general measures regulating remuneration of the members and deputy members of the Electoral Council is missing.
- Regulation on the legal status of the Clerk to Parliament: the “regulation of Parliament” that grants the Clerk compensation for use of a personal vehicle and telephone is absent.
- Regulation on the legal status of staff of the Department of the Clerk to Parliament: The remuneration and supplements of civil servants shall be awarded pursuant to a

regulation approved by Parliament on the proposal of the Presidium. This regulation is missing.

- National Accountability Ordinance article 47: The National Decree containing general measures wherein further rules shall be laid down concerning the design and implementation of the public tendering (contracting) is absent.
- National Ordinance substantive civil servant law (LMA): Additional rules related to the procedure required for approval of secondary activities is missing.
- National Ordinance substantive civil servant law (LMA): Additional rules regarding acceptance of gifts is missing. National Ordinance substantive civil servant law (LMA):. Additional rules via a National Decree containing general measures related to service dress are absent.
- National Ordinance substantive civil servant law (LMA): Additional rules via National Decree containing general measures related to compensation of accommodation expenses for business travel are missing. There are instead policy rules available.
- National Ordinance substantive civil servant law (LMA): Additional rules related to the registration and use of information maintained by integrity counsellors are absent.
- National Ordinance substantive civil servant law (LMA): Additional rules related to the registration and use of information for reporting suspicion of integrity breaches are missing.

#### **3.1.4. Lack of standardization**

Based on survey results (from the 30 civil servants), it is clear most every question produced divergent responses. A majority of the 30 respondents are in fact “competent authorities” by virtue of their function, i.e. Secretary-General, Head of Department. Some of the respondents indicated that certain implementation rules were present or that there are specific policy arrangements. Yet others were unsure. Procedures are explained in a differing ways. The questions whether rules are enforced or complied with produced a variety of answers. Some of the respondents assume that reports are recorded, others are unsure. There is no consensus in terms of who is responsible for enforcement.

In short, most respondents explain and execute the regulations of the National Ordinance substantive civil servant law differently. Often, though not always, uniformity of implementation is present at a ministry. Coordination of the interpretation and implementation of the National Ordinance substantive civil servant law is mostly absent within the civil service. There is no guarantee within the organization that there is equality in dealing with cases.

#### **3.1.5. Need for norms**

The National Ordinance substantive civil servant law contains norms and standards that are relatively abstract. To insure that there is equality in the actions of all competent authorities at the various ministries, these norms and standards need to be further specified in implementation regulations. These rules are – at present - mostly absent.

#### **3.1.6. Code of Conduct**

The General Audit Chamber notes that only the Council of Advice and the General Audit Chamber adopted codes of conduct for the functioning of their (board) members. A code of conduct for civil servants exists, though it is not known to about half of civil servants surveyed. The General Audit Chamber cannot determine whether the remainder of civil servants surveyed actively use the code of conduct.

#### **3.1.7. Responsibility for integrity management**

The survey and interview results reveal that it is unclear “who is responsible for which integrity topics” within the civil service. Where should initiatives related to the development of integrity management stem from? Many respondents point to the Personnel Department. Others choose the yet-to-be established Integrity Bureau. The General Audit Chamber concludes that there is a lack of clarity in terms of the responsibility and authority for integrity management. We have taken note of

government's plan to designate the Integrity Bureau in this role (draft *National Ordinance to amend a number of national ordinances aimed at strengthening integrity requirements and for the establishment of the Integrity Bureau*).

## 3.2 Specific conclusions

### 3.2.1. Parliament

Members of Parliament are elected and on issues of integrity are subject to the Constitution (specifically, articles 50, 51, 52 and 56). Article 50 stipulates that members who are irrevocably penalized to custodial sentences for committing certain serious offences, lose by operation of law their Parliamentary membership. The second paragraph of this article includes a provision in the event a member is prosecuted but refuses to relinquish his/her office. In the event a member is taken into custody but the sentence for committing certain serious criminal offences has not yet become irrevocable, the member is suspended from Parliament by operation of law.

The prosecution of members of Parliament takes place according to the rules of the National Ordinance prosecution political authorities. Members of Parliament have an “*exemplary function*”. They should keep their distance from situations that could tarnish their office. Such a situation arises, particularly, when members of Parliament commit crimes. In such cases, it is the member, in first instance, who should consider whether lines that place good performance of duty in jeopardy, have been crossed. The standards demanded by article 50 of the Constitution for legally removing or suspending a member from office (Parliament) are **substantial and qualified**.

### 3.2.2. Representation expenses

On the basis of the National ordinance on remuneration of persons holding political authority, ministers receive a monthly supplement for representation of 6% of their remuneration. The General Audit Chamber obtained the “minister’s debit card policy”. This “regulation” provides for additional compensation for representation by means of the use of a debit card.

### 3.2.3. Vehicle and telephone

The National Ordinance on remuneration of persons holding political authority foresees in compensation for official vehicles and telephones. On the basis of the National Ordinance regulating the compensation for Ministers of travel and accommodation expense, ministers enjoy a monthly allowance for travel expenses (*vervoerskosten*<sup>7</sup>) amounting to ANG 500. The General Audit Chamber verified that ministers also have use of official vehicles provided by government for the account of government.

### 3.2.4. Public Tender

The survey and interview results reveal that exceptions to the National Accountability ordinance related to public tender occur regularly. The exceptions (derogations) to the ‘public tendering’ norm occurs most frequently on grounds that a delay in contracting is against the general interest. The Minister of Finance issues such in a Decree. Rules further outlining the design and implementation of contracting (public tender) are required by virtue of the National Accountability Ordinance. The form for these rules is by National Decree, containing general measures. The General Audit Chamber is of the opinion that public tenders are very “integrity sensitive” and that in this area further norms and standards are lacking.

### 3.2.5. Corporate Governance Council

The General Audit Chamber was unable to determine whether the National Decree for establishment of the division of expenses related to the operation of the Corporate Governance Council is available. The General Audit Chamber was therefore unable to determine how well the funding of the CGC is regulated. This could affect the functioning of the CGC.

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<sup>7</sup> In the Dutch version of the National Ordinance, the word used is “vervoerskosten” which is transportation expense.



### **3.2.6. Secretaries High Councils of State**

The General Audit Chamber notes that the usual integrity rules stipulated in the National Ordinance substantive civil servant law (LMA) are not applicable to the secretaries of the Council of Advice and the General Audit Chamber.

### **3.2.7. Ombudsman**

The General Audit Chamber confirms that the Ombudsman maintains a separate “resolution” related to the use and maintenance of official vehicles.

### **3.2.8. Teachers**

Integrity management for teachers of public education (they fall under the National Ordinance substantive civil servant law LMA) is not fully regulated. The responsible ministry receives little or no assistance from the “professionals” at the Personnel Department. Seemingly no teachers have been administered the oath of office.

### **3.2.9. Oath/affirmation of office**

A large number, possibly in excess of 250 civil servants based on work documents received from the Personnel Department (P&O), have not taken the oath/affirmation of office, since the authority was mandated by the Governor. The General Audit Chamber was unable to confirm the exact number of civil servants who have not taken the oath of office.

### **3.2.10. Mobile telephones**

The General Audit Chamber concludes that the provision of mobile telephones (via Department of Facility Affairs) is poorly regulated and there are few checks regarding use of mobile phones as well as computers. Reports of excessive use are often not acted upon.

### **3.2.11. Acceptance of gifts**

The General Audit Chamber was not able to identify a regulation related to the acceptance of (small) gifts within government. Some ministries allow acceptance of for example ‘gift baskets’, others prohibit the practice. The police maintain a “zero gift” policy.

### **3.2.12. Relationship between civil servants and Parliamentarians & press instruction**

There is no consistent rule governing the relationship between civil servants and the press or Members of Parliament. A single ministry maintains an “instruction” regarding the press. The General Audit Chamber did not receive a copy of the instruction for evaluation.

### **3.2.13. Travel and accommodation expenses**

The General Audit Chamber has taken note of the recently instituted “policy guidelines for business travel and compensation for travel and accommodation expenses for civil servants”. Article 72 of the National Ordinance substantive civil servants law, requires additional rules in the form of a National Decree containing general measures for compensation of travel and accommodation expenses. The current rules are “policy guidelines” and the law requires a specific form. Regulations related to compensation and reimbursement are “integrity sensitive” thus justifying a particular form of enactment.

### **3.2.14. Suspicion of breaches of integrity**

With regard to the procedures with regard to reporting suspected breaches of integrity, the General Audit Chamber observes many ambiguities and differences. Once in function, integrity counsellors may offer more possibilities - in future - to those who report suspected violations. Procedures for reporting suspected breaches are ‘redrafted’ in the draft National Ordinance to *amend a number of national ordinances aimed at strengthening integrity requirements and for the establishment of the Integrity Bureau*.

### **3.2.15. Risk assessment**

The General Audit Chamber could not confirm the number of risk analyses related to activities and vulnerable work processes. Risk analysis were reported at the Police Corps, sections of the Ministry of Finance and at Census Office.

### **3.2.16. Police**

The police organization gives the impression of being ahead of the civil service in terms of arranging integrity management.

## 4. Recommendations

### 4.1 The two elements of the system of integrity

- Organizational measures, regulations, risk assessment, audits and reporting and investigation procedures. These are referred to as *hard controls*.
- Promoting a sound organizational culture, e.g. by awareness training, workshops, dilemma training and management role model behavior. These are referred to as *soft controls*.

This baseline study concentrates primarily on the following questions

- what are the types of integrity regulation
- are the regulations adequately developed
- are the regulations implemented

In other words, it is a study of the hard controls.

The General Audit Chamber recommends that government focus on these “hard controls” and specifically, the implementation of important integrity legislation and the development of the (required and various) implementation regulations.

The General Audit Chamber is of the opinion that the attention for the *soft controls* will only be of value once the foundation is prepared within the organization by means of:

- proper legislation and regulation in the realm of integrity management;
- completed risk assessment to determine which work processes and activities are vulnerable to integrity violations; and
- with solid procedures for reporting and investigating suspicion of integrity breaches.

### 4.2 Execution of ordinances

Government is responsible for attending to the implementation of important official ordinances related to integrity. The National Ordinance promotion of integrity of ministers is of imminent importance to insure reliable administration and to mitigate conflict of interest and mixing of personal business with acts of administrative authority. This ordinance requires that ministers leaving office provide a declaration of their business interests, shareholding etc. Only in so doing can there be clarity regarding what has transpired during their term of office. Failure to provide the required declaration is therefore subject to penalty.

The execution of the National Ordinance registration and financing of political parties, is equally important. The requirement of this ordinance for political parties to maintain a legal form and to register such with the Electoral Council supports the transparency of the operations of political parties. Stipulations of this ordinance related to the financing of political parties are designed to limit gifts to parties. The objective is the mitigation of conflicts of interest. The General Audit Chamber understands that the implementation of this ordinance has started and we recommend that the comprehensive execution of all ordinances related to integrity is “fast-tracked”.

### 4.3 Rules and regulations for implementation

All implementation regulations and rules that are required, though not yet drafted or developed, are listed in the conclusions (Chapter 3) of this report. The General Audit Chamber concludes that *because of* the absence of “specific norms and standards” (as required in the implementing rules and regulations) there is no coordinated implementation of even the most abstract standards found in the formal ordinances. Unequal treatment of cases are therefore possible. The General Audit Chamber recommends that implementing rules and regulations as required by the various ordinances are developed with **priority**. For example, by means of the formation of a technical task force tasked with drafting legislation.

#### 4.4 Integrity Bureau

The lack of capacity may very well be a cause for slow development of the implementation rules and regulations. The General Audit Chamber is not convinced that lack of capacity is the sole cause. Based on the results of the study, the General Audit Chamber discerns a lack of clarity regarding “who” is responsible for “what” in terms of the various aspects of integrity management. Many of the civil servants surveyed believe that the Personnel Department is the “manager” of the National Ordinance substantive civil servant law (LMA), and that the department should remain in this role. Others, specifically representatives within the Ministry of General Affairs, prefer placing the responsibility with the yet-to-be-established Integrity Bureau. These respondents feel that the Bureau should take the lead for integrity management as a whole.

The explanatory notes of the draft National Ordinance *to amend a number of national ordinances aimed at strengthening integrity requirements and for the establishment of the Integrity Bureau*, also ascribes an important role for the Bureau that will fall directly under the responsibility of the Minister for General Affairs. For example, the Integrity Bureau will be tasked with drafting legislation. The draft ordinance for the establishment of this Bureau describes the task as a combination of the previously mentioned *hard controls* as well as *soft controls*. The General Audit Chamber is of the opinion that such a broad task description requires a qualified, well-staffed institution to drive and energize the civil service particularly in terms of the *hard controls*.

Whether the Integrity Bureau will, in the near term, be able to achieve that drive and will be able to prioritize the development of the required implementation regulations for integrity management is unclear. Before this Bureau is operational, a number of activities have to take place, among which the amendment and enactment of several National Ordinances. Thereafter the Bureau has to be staffed and funded. The General Audit Chamber reiterates that the development of the implementation regulations must be prioritized. As such, the Task Force as recommended in 4.3 could be used to start the process of drafting legislation, preferably under temporary authority of the departments of Personnel Affairs and Legal Affairs.

#### 4.5 Codes of Conduct

Once the required implementation regulations/rules are drafted, it will become clear which norms and standards related to integrity management are regulated by law and which require further detailing. The General Audit Chamber recommends incorporating the norms for which there are (presently) no legislation (for example “revolving door schemes”, acceptance of gifts, compensation for business travel with spouses (partners), compensation for extended business travel, compensation for professional certification and training, subscriptions to professional organizations/journals) into Codes of Conduct.

This recommendation includes Parliament and the Council of Ministers. The General Audit Chamber is a proponent of developing Codes of Conduct rather than incorporation of such norms and standards related to integrity management in documents such as Rules of Order. The option of using the Rules of Order was suggested during interviews. The General Audit Chamber is of the opinion that Rules of Order provide procedures and rules governing the conduct of meetings of for example Parliament and the Council of Ministers, rather than managing the conduct of Members of Parliament or Ministers related to integrity. The Code of Conduct for civil servants needs to be revised and given a status, for example by adopting the code via National Decree or Ministerial Decree.

#### 4.6 Oath of Office

The General Audit Chamber recommends developing a campaign aimed at the accelerated completion of administering the oath (or affirmation) to all civil servants who have not yet taken the oath of office. This campaign should also apply to the teachers in public education.

#### **4.7 Public Tender**

Due to the vulnerability related to tenders or granting of contracts, the General Audit Chamber suggests prioritizing the development of the National Decree containing general measures as required by article 47 of the National Accountability Ordinance.

## ANNEX I

### Inventory/Catalogue of laws and regulation related to integrity management

The General Audit Chamber has catalogued the following regulations and implementation rules that regulate aspects of integrity per institute.

#### Parliament:

##### Constitution:

Art. 50: loss of membership Parliament and suspension of membership;

Art. 51: second paragraph: incompatibilities;

Art. 53: conflict of interest/untainted decision-making;

Art. 55: balanced and responsible course of elections;

Art. 56: oath, declaration en affirmation.

##### National Ordinance registration and finances of political parties (articles 14, 27, 28, 29, 31, 33, 37, 38)

- Functioning Electoral Council;
- Register legally formed political parties ;
- Registers of donations received by political parties;
- Financial statements en annual report of political parties.

##### National Ordinance regulating the suspension of persons holding political authority

##### National Ordinance regulating the allowance for travel and accommodation expenses for Members of Parliament (articles 3, 4)

- Accommodation expenses;
- Other general expenditure rules.

##### National Ordinance regulating the remuneration of persons holding political authority, allowances for the costs of medical treatment and nursing and the entitlement to holidays and holiday allowances (articles 3.1, 3.3)

- Additional rules related to allowances for representation;
- Rules for allowances for business use of car and telephone.

##### National Ordinance prosecution of political authorities

##### Regulation of the legal status of the Clerk to Parliament (articles 2.2, 2.3, 8, 9)

- Secondary positions;
- Parliamentary Regulation for expense allowances;
- Integrity rules.

##### Regulation on the legal status of the Department of the Clerk to Parliament (art. 3)

- Regulation approved by Parliament for remuneration and supplements of civil servants;
- Code of Conduct civil servants.

##### Code of Conduct

## **Council of Ministers:**

### Constitution

Art. 34: third paragraph: incompatibilities;

Art. 35: conflict of interest, untainted decision-making;

Art. 41: oath, declaration en affirmation.

### National Ordinance promotion of the integrity of ministers (articles 2, 3, 6, 8 through,12)

- National Decree containing general measures, model written declaration;
- Mandatory implementation rules/regulations (national decrees) and “optional”- measures;

### National Ordinance regulating the remuneration of persons holding political authority, allowances for the costs of medical treatment and nursing and the entitlement to holidays and holiday allowances (articles 3.1, 3.3)

- Additional rules related to representation expenditures etc.

### National Ordinance regulating the compensation for Ministers of travel and accommodation expenses (articles 3.1, 4.1, 4.2)

- Additional rules related to compensation for (personal) transportation;
- A regulation regarding the amount fixed by the Council of Ministers for each individual case, or a general amount to be fixed per day for travel outside the Country.

### National Ordinance prosecution of political authorities

### National Ordinance regulating the suspension of persons holding political authority

### Rules of Order Council of Ministers (art. 22)

- Untainted decision-making, conflict of interest.

### National Accountability Ordinance (art. 47)

- Derogation (exception) option by national decree;
- National Decree containing general measures according to art. 47, paragraph 6.

### Code of Conduct

- Code of conduct for Council of Ministers.

### National Ordinance Corporate Governance (articles 3, 4, 8, 9, 10, 12 )

- Functioning of the corporate governance council (CGC);
- Procedures for appointment and dismissal of board members on initiative of the minister.

## Civil Service:

### National Ordinance substantive civil servant law

Art. 43: oath/ affirmation;

Art. 46: working hours;

Art. 51-56: secondary activities;

Art. 52: paragraph 6: record notices of secondary functions, decisions and reasons for decision;

Art. 52: paragraph 7: rules from the Minister responsible for personnel affairs with regard to the civil servants in the service of the Country;

Art. 57: use of government property (regulation for use of official/government vehicles Sint Maarten and use of government issued mobile phones);

Art. 58-60: acceptance of gifts;

Art. 59: paragraph 7: further rules as imposed by the Minister responsible for personnel matters;

Art. 59: paragraph 4: National Decree;

Art. 61: confidentiality (procedures related to communication between civil servants and members of Parliament);

Art. 63-64: service attire;

Art. 63: paragraph 4: the provision of service attire or an allowance for this shall take place in accordance with rules laid down by national decree, containing general measures;

Art. 72: compensation for travel and accommodation expenses;

Art. 72: paragraph 2: National Decree containing general measures concerning the rules for awarding of the allowance for accommodation expenses;

Art. 73: indemnification and compensation is granted for costs for which no other provision is made;

Art. 82-83: integrity counsellor;

Art. 83: paragraph 5: further rules shall be laid down by the Minister of General Affairs;

Art. 84: paragraph 8: further rules shall be laid down by the Minister of General Affairs;

Art. 84: paragraph 7: necessary measures in the event of a suspected breach of integrity;

Articles 86-102: (Chapter VIII and IX) disciplinary sanctions.

### Code of Conduct Civil Servants Sint Maarten

- Awareness;
- Enforcement;
- Check during performance appraisals.

### Rules/regulations related to “revolving door” arrangements

### Rules/regulations protecting whistleblowers

### Penal Code

Second book, title XXVIII, articles 2.344 – 2.364: crimes committed by persons in authority;

Third book, title VII, articles 3.60 – 3.68: misconduct by persons in authority;

Second book, title XIV: breach of confidentiality;

Art. 200 Code of criminal procedure: reporting to Public Prosecutor in case of suspected serious infringement of integrity.

### Risk analysis/vulnerable work processes/functions



## **Police Sint Maarten**

### Decree legal status Police Corps of Sint Maarten

Art. 26: oath/affirmation;  
Art. 96: official obligations;  
Art. 97: confidentiality requirement;  
Art. 98: service attire;  
Art. 98: paragraph 6: additional rules by ministerial decree with general purpose;  
Art. 105: secondary activities and conflict of interest;  
Art. 106: acceptance of gifts;  
Art. 107: refund duty for remuneration as director or supervisor of public company or public foundation;  
Art. 108: use of government property;  
Chapter X: disciplinary sanctions.

National Ordinance substantive civil servant law (based on article 95 of the decree legal status Police Corps of Sint Maarten, articles 72,73 and 80 of the National Ordinance substantive civil servant law are applicable)

Art. 72: compensation for travel and accommodation expenses;  
Art. 72, paragraph 2: National decree containing general measures regulating travel and accommodation expenses;  
Art. 73: indemnification and compensation for costs for which no other provision is made.

### Code of Conduct

#### Rules/regulations related to “revolving door” arrangements

#### Rules/regulations protecting whistleblowers

#### Penal Code

Second book, title XXVIII, articles 2.344 – 2.364: crimes committed by persons in authority;  
Third book, title VII, articles 3.60 – 3.68: misconduct by persons in authority;  
Second book, title XIV: breach of confidentiality;  
Art. 200 Code of criminal procedure: reporting to Public Prosecutor in case of suspected serious infringement of integrity.

#### Risk analysis/vulnerable work processes/functions

## **Council of Advice**

### Constitution

Art. 72: oath/affirmation.

### National Ordinance Council of Advice

Art. 12: oath/affirmation secretary and staff.

### National Decree containing general measures regarding employment conditions of the secretary of the Council and the staff of the secretariat

- Secondary activities secretary;
- Employment conditions of the National Ordinance substantive civil servant law applicable to secretary. This does not include National Ordinance substantive civil servant law integrity rules;
- Appointment decree for secretary: additional rules included regarding compensation of expenses for personal vehicle and telephone;
- National Ordinance substantive civil servant law applicable to staff of secretariat.

### Rules of Order Council of Advice

Art. 13: secondary activities vice chair and members;

Art. 14: untainted decision-making;

Art. 15: conflict of interest;

Art. 16: conflict of interest;

Art. 17: untainted decision-making.

### National Decree containing general measures remuneration vice chair, members and deputy members

- Regulation for compensation of representation expenses, transportation, telephone and business travel;
- Use of official vehicles.

### Code of Conduct

## **Ombudsman**

### **National Ordinance Ombudsman**

Art. 4: paragraph 3: secondary activities Ombudsman;

Art. 4: paragraph 4: oath/affirmation (before chairperson Parliament);

Art. 9: Employment conditions for civil servants is applicable to the Ombudsman with the exception of the integrity rules;

Art. 10: Parliamentary Regulation for expense allowances for use of personal telephone and vehicle developed;

Art. 12 paragraph 5: Employment conditions of the Country are applicable on the staff of the Bureau of the Ombudsman.

## **General Audit Chamber**

### **National Ordinance General Audit Chamber**

Art. 7: oath/affirmation;

Art. 6: incompatibility of activities/functions for members, deputy members and the secretary;

Art. 18: untainted decision-making/conflict of interest.

### **Rules of Order**

Art. 8: The General Audit Chamber evaluates its functioning and that of the secretary on an annual basis.

### **National Decree Regulation Employment conditions Secretary**

Art. 2: secondary activities;

Art. 7: a number of employment conditions from the National Ordinance substantive civil servant law are applicable to the secretary with the exception of the integrity rules.

### **National Decree Regulation Employment conditions staff of secretariat**

Art. 2: National Ordinance substantive civil servant law and other employment conditions are completely applicable to the staff of the secretariat of the General Audit Chamber.

### **National Decree containing general measures remuneration chairperson, members and deputy members**

- Regulation for compensation of transportation, telephone and business travel expenses.

### **Code of Conduct**

The General Audit Chamber has a code of conduct for the chairperson and (deputy) members.



**General Audit Chamber**

**Algemene Rekenkamer**