



From the Desk of

*Franklin A. Meyers*

Member of Parliament

Faction Leader – United People's Party

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Sint Maarten, June 23, 2015

The President of Parliament  
Dr. Lloyd J. Richardson  
Present

Refnr: UP 15-003  
Subject: Proposed Changes – Ordinance Integrity Chamber

Honorable President;

Pleasant greetings to you.

Based on the plenary session held in Parliament on Monday, June 22, 2015 I hereby submit a letter to you with request of forwarding to the Prime Minister/Minister of General Affairs.

The attached letter highlights the proposed changes to the draft National Ordinance for the Integrity Chamber.

I trust that my letter will be delivered and I look forward to the response of the Prime Minister.

Respectfully,

Mr. Franklin A. Meyers  
Member of Parliament

FAM/ks

Parliament of Sint Maarten





From the Desk of

*Franklin A. Meyers*

Member of Parliament

Faction Leader – United People's Party

Sint Maarten, June 23, 2015

The Honorable Prime Minister/Minister General Affairs  
Mr. Marcel Gumbs  
Government Administration Building  
Clem Labega Square  
Philipsburg, St. Maarten

Refnr: UP 15-003A  
Subject: Proposed Changes – Ordinance Integrity Chamber

Honorable Prime Minister;

Pleasant greetings to you.

Based on the plenary session held in Parliament on Monday, June 22, 2015 I hereby submit the proposed changes to the draft ordinance for the Integrity Chamber on behalf of the faction of the United People's Party.

The proposed changes are as follows:

1. The first change should be to change the wording of "binding advice" in "advice" and the wording of "advice" in proposal.
  - i. **Motivation:** Parliament wants to leave no doubt that the local government governs Sint Maarten. Therefore only the local government can bind government/Sint Maarten and not the Integrity Chamber. The sanction however of not responding to the "advice" of the Integrity Chamber will be the same; meaning that not responding will result in the situation that the advice becomes a decision by government by operation of law. This change is solely to avoid confusion within the constellation of powers in Sint Maarten and therefore has no effect to the manner the integrity chamber operates.
2. The change of the wording "Council" into "Council of ministers".
  - i. **Motivation:** To make the law more clear. Several councils are mentioned in the law.
3. The change of Article 4 by adding the applicability of Article 32 paragraph 2.
  - i. **Motivation:** This change is to clear up any ambiguities when one needs to cooperate and when one can distance himself thereof. Parliament finds it important that persons have the right to "plead the fifth". One of the basic rights in a society is that one cannot not be forced to incriminate oneself. Furthermore, in a small society such as Sint Maarten many persons are somewhat related to each other and Parliament wants to avoid persons being forced to incriminate themselves by not willing to cooperate in the investigation of relatives.





4. The change of article 3; a new paragraph should be added; paragraph 5.
  - i. “5. The term as mentioned in article 275 paragraph 1 of the formal criminal code (wetboek van strafvordering), is maximum one year after the date the Integrity Chamber has filed criminal charges as mentioned in paragraph 4”
  - ii. **Motivation:** Parliament finds it extremely important that integrity issues are apprehended within short (if there are integrity issues). This means that the prosecutor should act fast when charges are filed in that regard. At the same time, Parliament finds it important that persons burdened with public duties; Ministers, Members of Parliament, high ranking civil servants, etc. do not experience any defamation of their character for long periods of time. Therefore when criminal charges are filed by the integrity chamber the prosecutor has one year from that date to determine whether it will prosecute or not. This is in line with the principles of fair trial. Sint Maarten has various examples where high ranking public figures were investigated for years and in several cases these persons were acquitted or not prosecuted, but their lives are destroyed as for years these persons could not work (in the field) they were used to. A balance is needed in the timeframe; the prosecutor has ample time to research, and to commence prosecution in case it deems it necessary while on the other hand the rights of the individual(s) need to be protected at the same time. Parliament deems the timeframe of one year reasonable and fair. Furthermore the small size of the Sint Maarten society justifies that clarity is given within a short period. Persons need to be able to move on after charges are filed; either they are cleared or prosecuted.
5. The change of the Article 5 paragraph 2.
  - i. a. will become Sint Maarten and chairman.
  - ii. b. will become the Netherlands
  - iii. c. (removal of chairman)
  - iv. **Motivation:** Parliament finds it important that the leading role of Sint Maarten is underlined in this article, as the Integrity Chambers concerns Sint Maarten solely (only integrity issues in Sint Maarten are being researched) and primarily therefore a country affair (landsaangelegenheid). As such Sint Maarten has the leading role in countering integrity issues and as such also in establishing and chairing the integrity chamber. The fact that other Kingdom partners want to be involved does not affect those principles and that role.
6. The removal of article 17.
  - i. **Motivation:** Sint Maarten already has a law that deals with the admittance and expulsion of foreigners (landsverordening toelating en uitzetting; LTU) and persons working in Sint Maarten (regardless of their nationality) are admitted by law. Parliament sees no need to arrange something that is already arranged. Furthermore it will make administrative procedures in that regard unnecessary complicated and the





- laws impure; as such the article is to be removed from the draft ordinance. The law admittance and expulsion deals with the admittance and expulsion of foreigners and the law Integrity Chamber deals with the establishing and work method of the Integrity Chamber.
7. The change of the wording “protocol” into “investigation protocol” (onderzoeksprotocol).
    - i. **Motivation:** Parliament wants to avoid confusion between the protocol that the Integrity Chamber has to make and the protocol that has been signed between Sint Maarten and the Netherlands. Therefore, when it concerns the protocol of the Integrity Chamber, it has to be referred to as the “investigation protocol”.
  8. The change of article 4 of “every place” into every place where government has a direct or indirect right of use established for government use.
    - i. **Motivation:** Parliament doubts whether persons that work in the Secretariat of the Integrity Chamber can be considered as investigating officers and therefore doubt whether they should be able to enter every place excluding a home. Every place currently also entails the private business(es) of an individual and Parliament prefers that those infringing measures are done by the Police and the prosecutor. Parliament wants to avoid the situation in case evidence is gathered in an investigation that such evidence cannot be used as it was gathered by the wrong persons. As such the desire of parliament is to limit the places the Integrity Chamber can enter; it should only be government places. In the event the chamber becomes aware of severe breaches of integrity that might warrant the raid of a private business or home, the Integrity Chamber should file criminal charges and the justice chain should take over the investigation.
  9. The change of Articles 21 and 22; adding a time limit.
    - i. **Motivation:** Parliament finds it important that integrity issues are dealt with swiftly. As such the time frame for a pre-investigation is to be limited to 3 months and the total timeframe of pre-investigation up to the date the report is submitted may not be longer than one year. In case the time frame is exceeded this will lead to the Integrity Chamber not being admissible and the case has become time barred. This change also promotes fast results from the chamber while on the other hand the interest of persons and departments subject of investigation are protected; they will not be subject of investigation for years.
  10. The change of Article 23; adding a paragraph that states that information gathered by the Integrity Chamber will only be used for the purposes of the Integrity Chamber.
    - i. **Motivation:** The information gathered should only be used by the Integrity Chamber. Parliament wants to avoid the situation that said information ends up in other reports where ultimately the character and reputation of persons can be destroyed if a “potential breach” of integrity





is reported and/or an investigation is initiated without any results or the chamber does not even want to start an investigation. The information could for instance end up in reports of the VDSM, mentioning in vague terms that there “might” be a “potential risk” concerning the integrity of a person when applying for a job where such a report can be relevant, resulting in a negative advice concerning said person (although Parliament is of opinion that those VDSM reports should be dealt with as an advice only). Parliament wants to make clear the importance of the protection of the individual in that regard.

11. The change of the wording “Council of Ministers” in “Council of Ministers of Sint Maarten”.
  - i. **Motivation:** Parliament want to have it clear to whom the (binding) advices are sent to.
12. The change of term in Article 24 paragraph 1 from four (4) weeks to twelve (12) weeks.
  - i. **Motivation:** Parliament finds it important that government can get a reasonable short period to react to the report of the chamber and if government deems it necessary that it has enough time to do a small investigation on their own before they respond to the integrity chamber. The four (4) weeks proposed in the draft are considered too short by Parliament and Parliament wants to avoid the situation that due to time restraint information to the chamber is sent, while government did not have enough time to formulate a diligent and serious response. Parliament also want to avoid the situation that no response is sent on time.
13. The change of Article 29; an extra paragraph is added regulating the registration in the register of the Integrity Chamber.
  - i. **Motivation:** Parliament wants to have the law Integrity Chamber in line with the law on the Protection of Personal Data (landsverordening bescherming persoonsgegevens). As such solely personal information can be gathered for the time of the (pre)investigation and afterwards it should be deleted from the register. By doing so the register will be cleaned up automatically.
14. The change of Article 32 paragraph 1; an extra sub paragraph is added stating that persons whom intentionally report erroneously to the Integrity Chamber is punishable by law.
  - i. **Motivation:** Parliament wants to avoid that persons out of spite and/or based on hearsay will report someone or some things to the Integrity Chamber without any consequences for those persons. It should be clear that one should only report facts that one obtained or witnessed themselves. False reports will limit the workflow of the Integrity Chamber and will harm persons. Considering the term intentional (what is considered intentional?) Parliament wants to follow the term “conditional intent” (voorwaardelijke opzet) as outlined by the Supreme Court.





15. The change of Article 34; adding an extra paragraph creating a time frame of 3 months in which the “mutual arrangement” (onderlinge regeling) is established.
  - i. **Motivation:** Parliament finds it important that the Integrity Chamber is operational within short. As such the manner the remuneration of the members of the chamber and the manner in which portion Sint Maarten and the Netherlands shall contribute to the budget of the Integrity Chamber. If parties cannot come to an arrangement within three (3) months the consequence will be that Article 34 will come into effect which will give Sint Maarten the possibility to have the chamber operational within very short by itself.
16. An extra item should be added by article 5; stating that the Integrity Chamber can only operate when all 3 members have been appointed.
  - i. **Motivation:** Parliament finds it important that the chamber can solely operate when all members are appointed.

The proposed changes are what the faction of the United People’s Party and by extension the coalition would like to see made to the draft ordinance and once made will secure the approval of Parliament on the ordinance of the Integrity Chamber.

Thank you in advance for your assistance and cooperation and I look forward to a timely response, I remain,

Respectfully,

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Mr. Franklin A. Meyers  
Member of Parliament

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