

# Review (semi) public entities Sint Maarten

## *Summary*

2022-0151u/SM/lc/dvdk

August 2022



**Subject: Summary of review of (semi) public entities Sint Maarten**  
**Date: August 2022**

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We hereby present the report “Summary of review of (semi) public entities Sint Maarten”, prepared in accordance with our agreements set out in 23 February 2022 contract confirmation and part of the “Review (semi) public entities Sint Maarten”.

This report has been completed based on publicly available data and information, information provided by the entities, desk research and expert interviews. The preface introduces the background and objective of the review. Section 1 introduces the five entities. Section 2 summarizes the effectiveness of the entities, section 3 the efficiency. Section 4 gives recommendations for the Sint Maarten Government.

PricewaterhouseCoopers Advisory N.V.

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August 2022

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# Preface

## Section

<b>P</b>	<b>Preface</b>	<i>Background of this review, scope of the work and approach of this review by PwC</i>
1	<b>Introduction</b>	<i>A profile of the five entities including their relation to government (governance)</i>
2	<b>Effectiveness of public services</b>	<i>Are services provided by the public entities important to the public interest and are they delivered to satisfaction?</i>
3	<b>Efficiency of business operations</b>	<i>How does the production (output) relate to the resources used (input)?</i>
4	<b>Recommendations</b>	<i>What are recommendations for the Government of Sint Maarten?</i>



# The country package aims to strengthen the resilience and robustness of the economy and society of Sint Maarten

## Background and central goal of 'doorlichting'

- On December 22, 2020, Sint Maarten and the Netherlands signed the mutual arrangement for the implementation of the Sint Maarten Country Package. This package focuses on a broad palette of reforms and investments, which contribute to the resilience and robustness of the economy and society of Sint Maarten.
- Theme B of this package focuses on cost and effectiveness of the public sector. Part of this theme is the review ('doorlichting') of (semi) public companies (B2).
- Central goal of the 'doorlichting' is to gain insight in (1) the legitimacy of public ownership, (2) governance, (3) effectiveness and (4) efficiency of the (semi public companies). This summary is structured along these 4 research questions.
- Based on these insights we drafted recommendations for the Sint Maarten Government. Also, this review puts forward - where relevant - practical suggestions for improvements aimed at strengthening the governance, operational management and operational processes of the (semi) public entities.

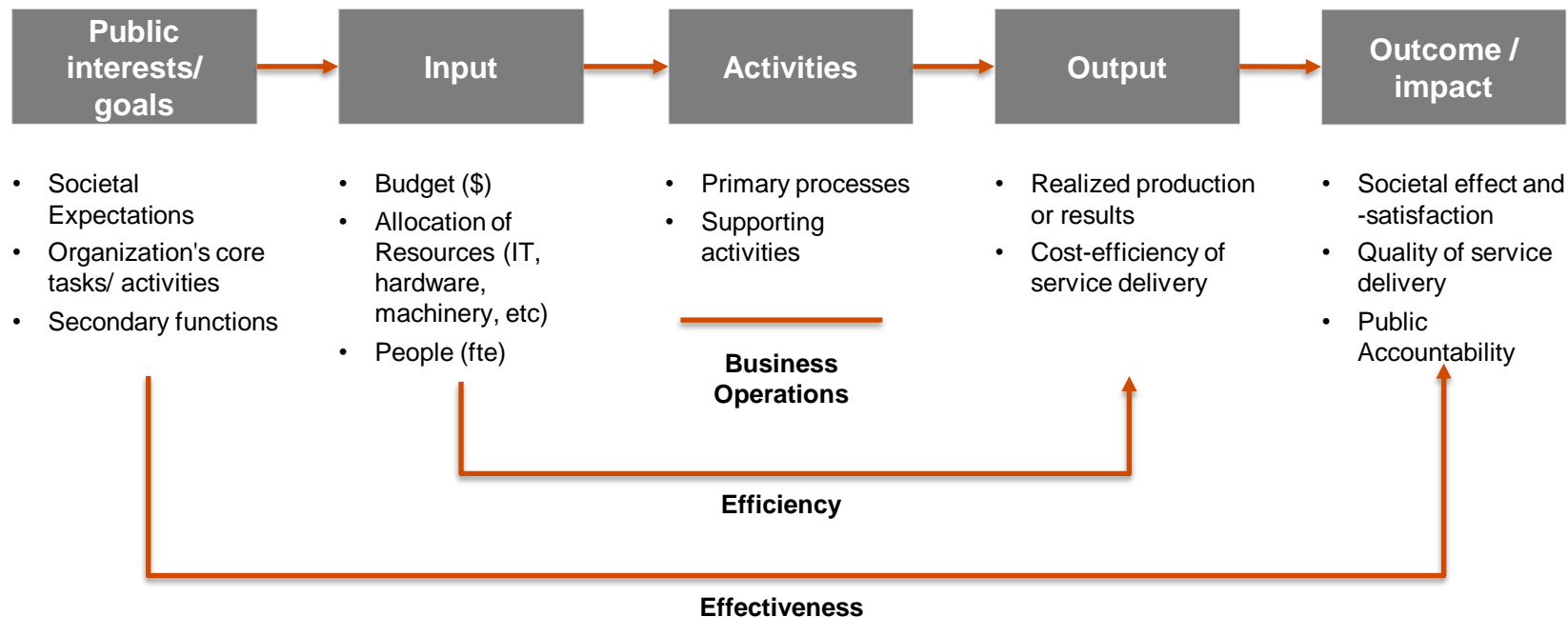
## Scope of role PwC

- PwC has been selected to conduct this review. Five government organizations have been placed in scope by the Government of Sint Maarten, each of which has i) major social impact and/or ii) potentially major impact on the public finances of St. Maarten:
  - Bureau Telecommunications & Post (BTP)
  - Sint Maarten Housing Development Foundation (SMHDF)
  - NV Gemeenschappelijk Electriciteitsbedrijf Bovenwindse Eilanden (GEBE)
  - Sint Maarten Laboratory Services (SLS)
  - Postal Services Sint Maarten (PSS)
- PwC conducted this review ('doorlichting') as part of its advisory services and does not provide an auditor's report, certification or other form of assurance with regard to the services we provide or the information on the basis of which our services are provided. PwC has not audited or otherwise verified the information provided to us by any source as part of the engagement.

# Our theoretical framework is based on the system theory of public organization evaluations

## System theory of public organization evaluation: efficiency and effectiveness

- **Efficiency** can be defined as the achievement of constant production at lower costs (*cost efficiency*), or realization of more production at a constant cost level (*production efficiency*). Hence, to provide insight in efficiency, the relation between input and output needs to be demonstrated.
- **Effectiveness** can be defined as the extent to which the efforts of an organization contribute to the achievement of the intended objectives. Hence, to provide insight in effectiveness, the relation between the public interests/ goals and impact on society needs to be demonstrated.



# Story of the engagement: our way of working was focused on close collaboration with all stakeholders involved

## Timeline and project milestones

- **Feb 4** Kick-off meeting with BZK/SXM core team
- **Feb 18** BZK/SXM core team agrees with theoretical framework and research approach PwC
- **Feb 24** Briefing of responsible Ministers of SXM Government: Prime Minister, Finance, TEATT, VROMI and VSA
- **Mar 3** Briefing of SB-members and CEO's/directors of five entities, chaired by SXM Prime Minister and MinFin
- **Mar 7 – 11** Individual preparation meetings with five entities
- **Mar 14 – Apr 1** Visit of PwC-team to Sint Maarten, multiple in-person meetings with the entities
- **Apr 22**
  - Discussion with Steering Committee on draft report PwC
  - Entities review draft report PwC (*'hoor en wederhoor'*)
- **May 15** Final reports phase 1 ('doorlichting') except GEBE delivered by PwC. GEBE was delivered on August 24

## Key stakeholders and their role

- The **BZK/SXM core team** consisted of a projectmanager of the Dutch Ministry of Interior and Kingdom Relations, and representatives of the cabinets of the Prime Minister and Minister of Finance of the Sint Maarten Government and the Secretariat of the Council of Ministers.
- The five entities had the following **(policy) responsible Ministers** within the SXM Government:
  - GEBE: Minister of VROMI
  - PSS: Prime Minister
  - SLS: Minister of VSA
  - SMHDF: Minister of VROMI
  - BTP: Minister of TEATT
  - The Minister of Finance carries a general responsibility regarding issues with links to the SXM budget. The Council of Ministers is the shareholder.
- The **Steering Committee** consisted of representatives of BZK, the cabinets of the Ministries involved (see above), the CoM secretariat and the chairman of the CGC.
- The **meetings with the five entities** took place at director-level, and were followed-up by meetings with managers and supporting staff. The period of the on-site visit was concluded with meetings on director-level in which the main findings and analysis of PwC were shared with the entity.
- Both the Steering Committee and the concerned entities reacted to draft reports by giving their feedback on factual errors and questions for clarification. **PwC kept track of all comments and the way of following-up.** On May 15, the final reports were delivered.
- **GEBE** suffered from a cyber attack during the period of the field visit and the weeks after. Consequently, the preparation of the GEBE report did not follow the displayed timeline. Nevertheless, the steps of hoor- en wederhoor were taken and final report on GEBE was delivered on August 24, 2022.



# This public summary is structured along the 4 research questions

Section	Topics covered and key points addressed				
<p><b>1</b></p> <p><b>Introduction</b></p> <p><i>A profile of the five entities including their relation to government (governance)</i></p>	<p><b>Entity profile</b></p> <p><b>Structure of the governance</b> (Boardstructure, Supervisory Board, Formal government relations)  <b>Entity information</b> (Statutory objective(s), core tasks / activities, products or services, net results)</p>				
<p><b>2</b></p> <p><b>Effectiveness of public services</b></p> <p><i>Are services provided by the public entities important to the public interest and are they delivered to satisfaction?</i></p>	<table border="1"> <thead> <tr> <th data-bbox="1248 671 1847 728">Evaluation criteria per entity</th> <th data-bbox="1847 671 2446 728">Conclusions per entity</th> </tr> </thead> <tbody> <tr> <td data-bbox="1248 728 1847 878"> <p>For example:</p> <ul style="list-style-type: none"> <li>- <b>Accessibility</b> (coverage, downtime/ reliability)</li> <li>- <b>Affordability</b> (tariffs, pricing)</li> <li>- <b>Sustainability</b> (emissions, quality, ...)</li> </ul> </td> <td data-bbox="1847 728 2446 878"> <p><b>Trends only, no exact numbers</b></p> </td> </tr> </tbody> </table>	Evaluation criteria per entity	Conclusions per entity	<p>For example:</p> <ul style="list-style-type: none"> <li>- <b>Accessibility</b> (coverage, downtime/ reliability)</li> <li>- <b>Affordability</b> (tariffs, pricing)</li> <li>- <b>Sustainability</b> (emissions, quality, ...)</li> </ul>	<p><b>Trends only, no exact numbers</b></p>
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<p><b>4</b></p> <p><b>Recommendations</b></p> <p><i>What are recommendations for the Government of Sint Maarten?</i></p>	<p><b>Recommendations for SXM Government</b></p> <p><b>Key priorities</b>  <b>Resulting initiatives</b>  <b>Implementation roadmap</b></p>				



# Section 1: Introduction

## Section

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# PSS NV is Sint Maarten’s main postal company, serving 40K inhabitants and ~25 businesses/governmental clients



## Governance structure PSS N.V.



## Core tasks, current activities and net results

PSS formal objectives are “**the establishment and maintenance of a postal service** for receiving, transferring/transmitting and delivery of notices, information, money and goods:

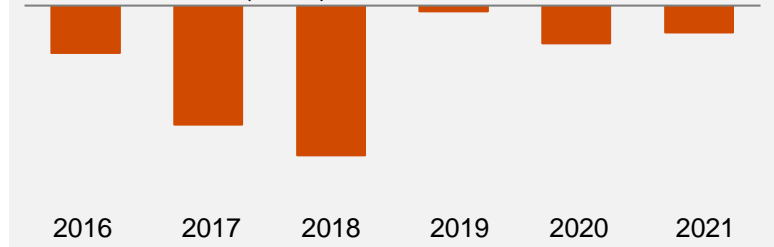
- 1. Receiving, transferring/transmitting and delivery** of postal items;
- 2. The transfer and payment of money** by means of postal order, giro and related activities;
- 3. Providing of savings- and investment services** via the post-office savings bank.”<sup>1</sup>

At this moment, PSS offers the **following services**:

- Sales of stamps, sending and receiving parcels and letters (regular, registered, express and elite) and e-commerce (US mailing address)
- P.O. box rentals
- Ancillary services: PSS Travel; printing, copying and scanning services; payment of bills, including top UP (Telem/UTS); delivering of DHL packages

PSS’s clients are both **private customers (~25%) and businesses (~75%)** of which 50% is government

PSS net results (trend):

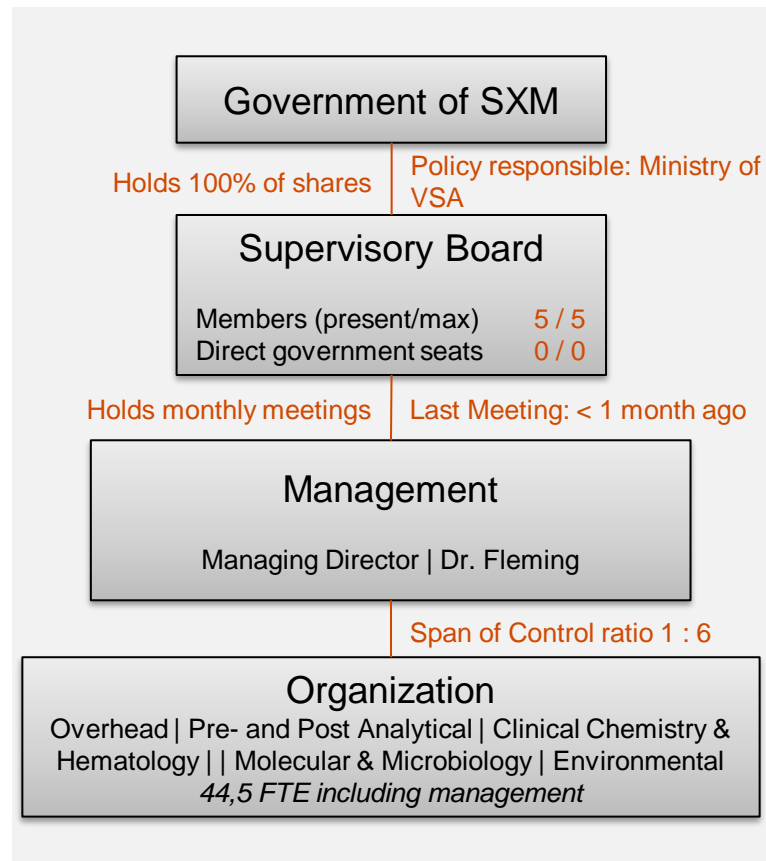


1) PSS Articles of Association, 2010

# SLS NV is SXM's national clinical and environmental lab, providing services to Sint Maarten and surrounding islands



## Governance structure SLS N.V.



## Core tasks, current activities and net results

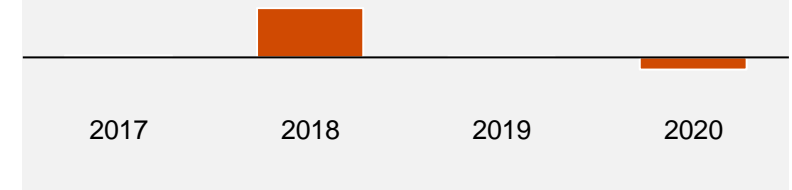
SLS formal objectives are:

1. To operate laboratory for inpatient, outpatient and general practice patient care delivered to individuals and in the context of public health and of justice, all of this, where necessary, by entering into agreements with other laboratories;
2. The import, export of and the wholesale and commission based trade in instruments and laboratory supplies;
3. The entity is authorized to do everything that may be useful or necessary to achieve its objective or that is related thereto in the broadest sense of the word, including participating in enterprises and companies

At this moment, SLS offers the following services:

- Pre- and post-analytics
- Clinical Chemistry and Hematology
- Molecular and Microbiology
- Environmental testing

SLS net results (trend):

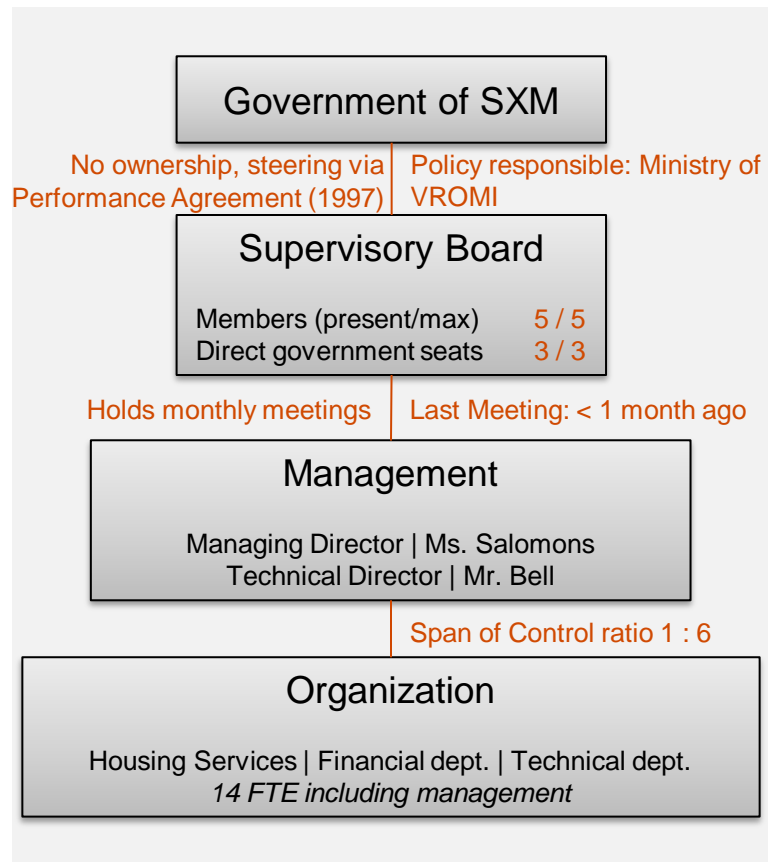




# SMHDF is Sint Maarten's only social housing organization

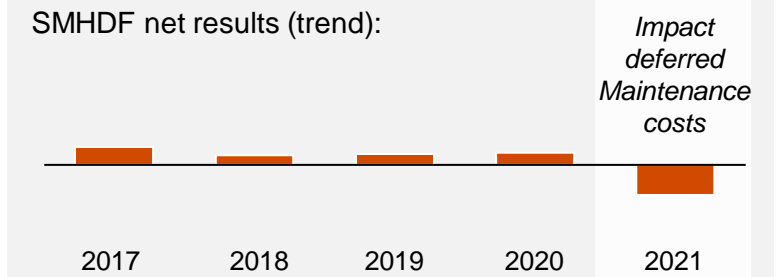


## Governance structure SMHDF



## Core tasks, current activities and net results

- SMHDF is an independent non-profit organization in which the Sint Maarten Government has a decisive voice in its governance with three of five seats in the Supervisory Board. SMHDF is currently the only **social housing provider** operating in Sint Maarten.
- Core activities include:
  - Constructing and acquiring** houses and buildings
  - Acquiring land** in property or lease
  - Managing, maintaining and reconstructing** houses and buildings
  - Issuing **mortgage loans** for the construction of houses (via SMHFF<sup>1</sup>)
- SMHDF has a portfolio of 769 units, providing three different types of offerings to its tenants:
  - Social rental homes** which are eligible for government subsidy schemes, depending on income
  - Senior homes** tailored to needs of the elderly
  - Emergency homes** for disaster affected people

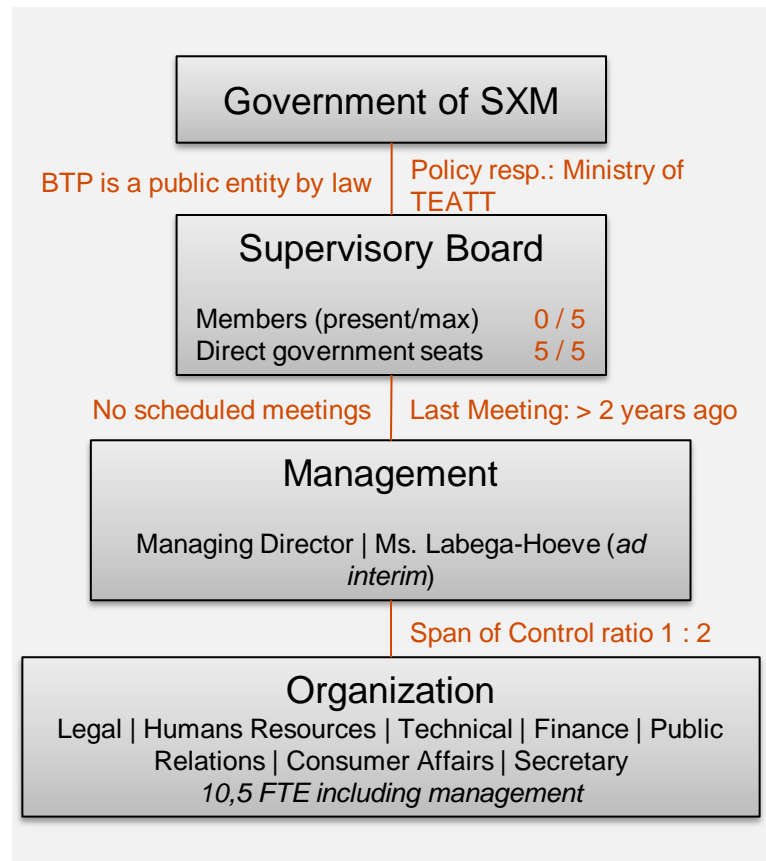


1) Sint Maarten Housing Financing Fund

# BTP presents itself as Sint Maarten's independent regulator, overseeing activities of the telco, post and utility monopolists



## Governance structure BTP



## Core tasks, current activities and net results

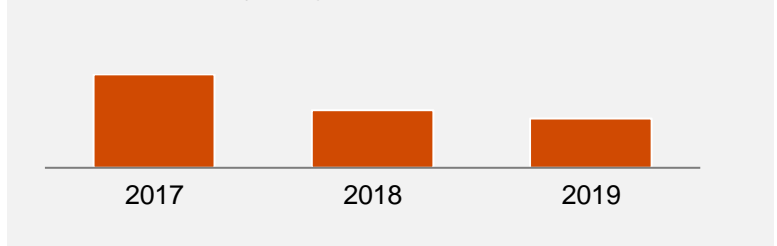
Responsibilities and tasks of BTP:

1. Development of policies for telco and post sector;
2. Preparation of the rules and regulation and laws for telco and post;
3. Providing general advice to minister of TEATT and Council of Ministers;
4. Implementing and executing policy frameworks on telco and post established by the minister of TEATT (e.g.: moratorium Telecom, 2013-2019);
5. Where necessary on instruction of the Council of Ministers, represent and defend the interest of the country Sint Maarten related to telco and post; national, regionally and internationally;
6. Executing other activities in accordance with the National Ordinance, (e.g. National Numbering Plan).

BTP focuses on the following activities:

- Legislative and policy advisory
- Industry regulation
- Invoicing and collection

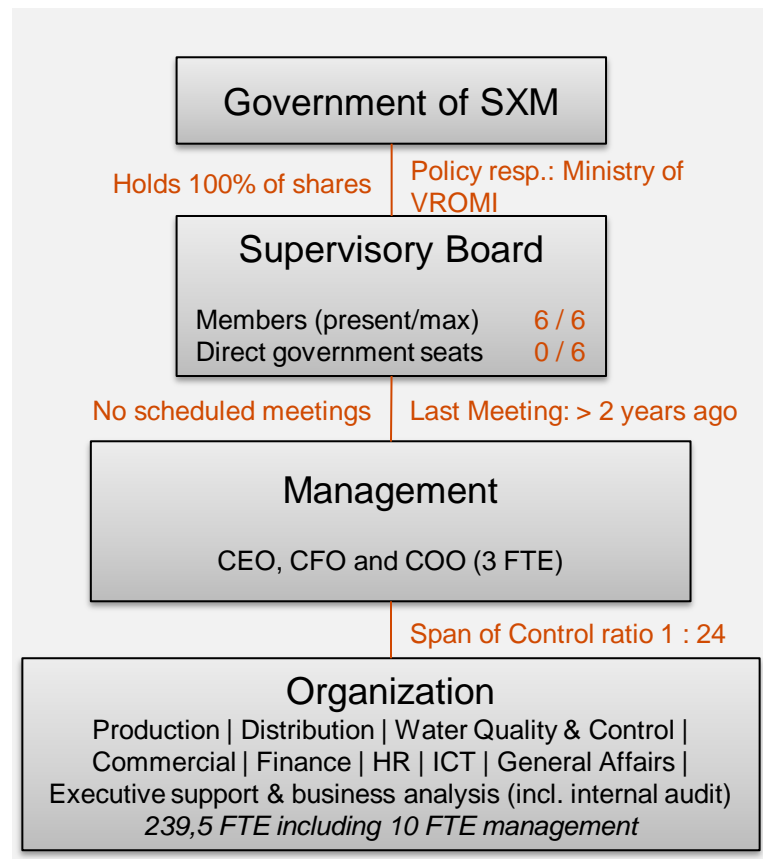
BTP net results (trend):



# GEBE mission is to supply electricity and distribute electricity and water, serving the public interest of St. Maarten



## Governance structure GEBE

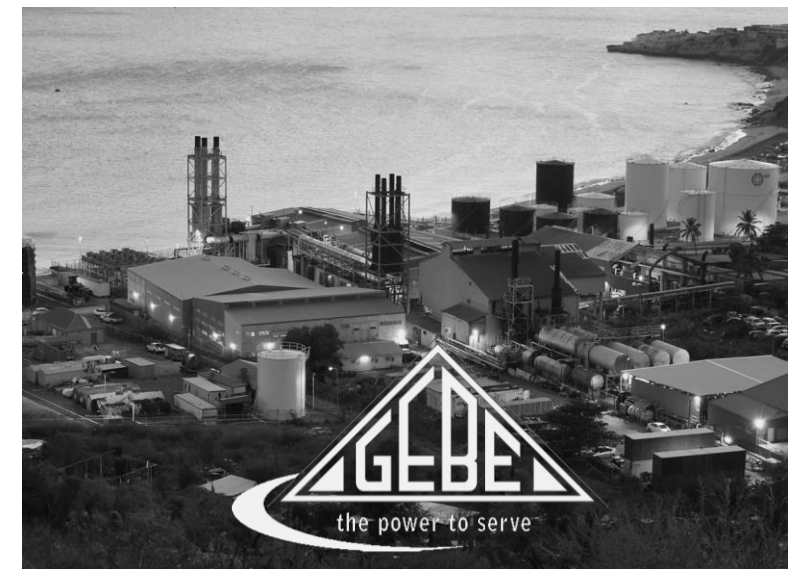
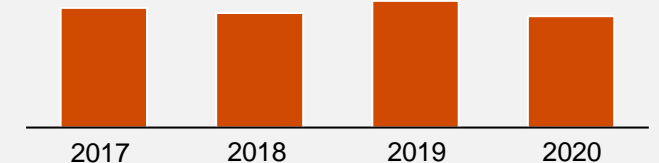


## Core tasks, current activities and net results

GEBE's formal objectives based on Aol<sup>1</sup>:

- **To establish and operate an electricity company** as well as to lay electric wiring and install electric equipment for end users
- **To operate and manage water plants**, including the distribution of water and trade in machinery and equipment necessary for that purpose
- **To operate and manage waste water treatment plants and sewerage infrastructure** and equipment necessary for that purpose
- **To operate and manage solid waste plants**, solid waste to energy facilities, collection and handling of solid waste and trade in machinery necessary for that purpose

GEBE net results (trend):



1) Articles of Incorporation, Article 2 (2012) – note: GEBE is only active in 1 & 2: operating an electricity company, and operating water distribution company; no activities in waste water treatment/ sewage/ solid waste plants



# Section 2: Effectiveness

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# PSS provides services effectively, taking into consideration that external factors significantly impact PSS' operations



## Effectiveness evaluation


### Drivers of public value

### Absolute and relative assessment




**Accessibility**

**Accessibility of postal services has declined but still sufficient.** PSS responded to the declining postal volumes on Sint Maarten over the period 2017 – 2021 by adapting its operations. Examples include the reduction of numbers of street collection boxes, closure of the Simpson Bay postal office and reduction of the number of rounds from 3 to 3-2 per week. Nevertheless, collection of post is still sufficiently warranted via the post office and street collection boxes. The opening hours are in line with common business hours of Sint Maarten and the frequency of collection is comparable to the frequencies in similar regions (Barbados, St. Lucia, Trinidad and Tobago).



**Accuracy**

**Accuracy is low.** PSS realizes strong local delivery times which are above the benchmark of comparable regions. However, a major part of the local post is not delivered, due to contextual factors outside PSS' sphere of influence. The international delivery times are significantly longer in relation to lead time performed by commercial competitors. PSS international accuracy is also significantly lower than the commercial on-island alternatives. Finally, compared to national postal services in comparable regions (Barbados, St. Lucia, Trinidad and Tobago) PSS lead times are also significantly longer.



**Affordability**

**Affordability is comparable to the benchmark.** PSS' rates for local and international letters and parcels and PO boxes are in line with comparable regions. PSS is distinct from commercial on-island alternatives in offering significantly lower rates. In 2022, PSS adjusted the rates which were last adjusted in 2017. Local rates were adjusted for inflation only preserving the on-island affordability. International rates were increased to further off-set growing cost base on shipping.


# SLS services are effective with some areas for improvement



## Effectiveness evaluation


### Drivers of public value

### Absolute and relative assessment




**Accessibility**

**Accessibility of laboratory services is good.** With its extensive portfolio of six testing locations (compared to 2 locations for its main competitor HCLS), and its offering of home-visits, SLS ensures physical accessibility to the public. While most of its clinical testing portfolio overlaps with the available offer from HCLS and existing alternatives on Saint Martin, SLS services are differentiated by (1) offering environmental (water) testing to B2B clients, (2) acting as only lab services provider to the department of justice, and (3) being the only ISO-accredited laboratory on St. Maarten offering these services. An imbalance is visible between uninsured inhabitants on Sint Maarten and SLS' income from uninsured patients, potential indicating accessibility challenges for parts of the population.



**Accuracy**

**Accuracy of SLS' services is good** with note that protecting patient data privacy could be improved. The Sint Maarten Government outlined clear quality requirements to SLS in its Ministerial Decree of 2016, which were met in 2019 when SLS became St. Maarten's first and only ISO 15189 and ISO/IEC 17025 certified clinical and chemical laboratory. Certification serves as proof point to SLS' adherence to international standards on its quality management systems, their competence, and their functioning in line with industry and legal standards. While SLS is currently the only accredited laboratory, its main competitor HCLS is subject to similar quality requirements in its Ministerial Decree, which indicates SLS' differentiating quality position might change in the future.



**Affordability**

**Affordability of SLS' services is difficult to assess, as prices are based on outdated tariffs.** The majority of SLS income consists of reimbursements from health insurers, of which approximately 80% comes from St. Maarten's public health insurer SZV. Tariffs that SLS receives are established by the insurers and approved by the Ministry of VSA. Tariffs from SZV have been established in 2001, and reportedly have remained largely the same over time. As a result, tariffs are expected to have deviated significantly from the real cost of tests, as both upward (inflation, new testing methods) and downward (technological advancement, automation, efficiency) drivers would have changed costs.


# The effectiveness of SMHDF in making more social housing available for the society of Sint Maarten is limited



## Effectiveness evaluation

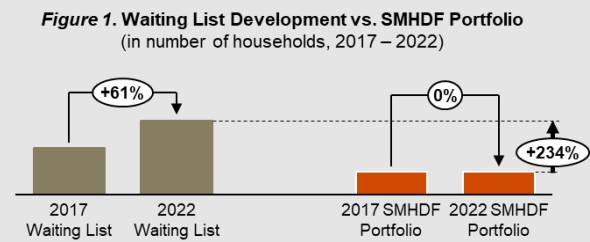

### Drivers of public value

### Absolute and relative assessment




**Accessibility**

The *availability* of houses shows a net drop in the period 2017 – 2022. As Figure 1 shows, the constant level of units within the housing portfolio translates into an overall decrease of availability as the demand for social housing increased by 61% (in terms of waiting list), mainly due to hurricane Irma.

**Affordability**

When it comes to *affordability*, SMHDF rental rates show a significantly below-market level compared to both formal and informal housing segments on Sint Maarten. Many rental rates remained stable for over 25 years, hence very affordable for the tenants. At the same time this affects the long-term sustainability of SMHDF’s business model and the ability to run a viable business.



**Soundness**

From a *soundness* perspective, serious challenges affecting SMHDF’s portfolio unfold. Amongst an aging property base, hurricane Irma accelerated required activities in repair and maintenance. Almost half a decade later, SMHDF still handles outstanding repairs and deferred maintenance activities. As a result, the number of tenant complaints is significant as well as lost court cases on tenants refusing to pay rent seriously impacts rental revenues.



**Livability and sustainability<sup>1</sup>**

Due to the operational focus on repair and maintenance, remaining objectives which are commonly observed at social housing foundations have been deprioritized. SMHDF strives to foster *livability* in their neighborhoods. Similarly, their focus on *sustainability* has been minimal within the current portfolio. Once development activities resume, this could become a more critical business priority.

1) At present, these public interests are no formal objectives of SMHDF

# BTP effectiveness seems limited

## Effectiveness evaluation

### Drivers of public value

### Absolute and relative assessment



#### Landsverordening

BTP realized two legislative and policy advises over the last 5 years. Also, 80% of the KPI's on 2019 were not met. Performance over the other years in the review period (2017-2021) could not be assessed due of the lack of performance evaluation. Additionally, 20% of BTP's invoices were paid in 2019.



#### Principles of good public service

To determine the effectiveness of BTP, additionally four case studies in which BTP played a central role were analyzed on four principles of good public service: decisiveness, collaborativeness, transparency and professionalism.

BTP's effectiveness seems limited. First, BTP is by law ('Landsverordening BTP') positioned as an internal service-organization under the Ministry of TEATT. The tasks of BTP oversee policy preparation on telco and post, implementing laws (on behalf of the minister of TEATT) and advising the government and representing Sint Maarten abroad. At the same time, BTP presents itself as an independent regulator on its website. This upfront creates divergence between expectations of external stakeholders and the formal task of the organization.

Also, the energy utility sector has been added to BTP's scope of tasks by Ministerial Decree since 2017. As to this moment, BTP has not developed activities on this sector. There is a pending discussion with TEATT whether BTP is assigned with any task on the utility sector.

Finally, BTP's adherence to principles of good public service is limited. Improvement is mostly needed on using the appropriate instruments, collaborating with other public authorities, and disclosing justification of actions to the public.

# GEBE services are effective with some areas for improvement<sup>1</sup>



## Effectiveness evaluation

### Drivers of public value

### Absolute and relative assessment

**Accessibility**

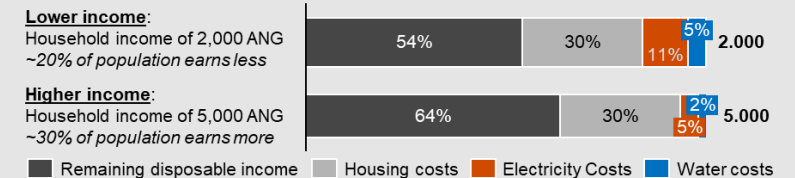
With regard to **accessibility**, GEBE has secured access to electricity for nearly 100% of the Sint Maarten households, in line with other countries in the region. Piped water coverage is estimated at 98-99% of Sint Maarten households, putting GEBE among leading countries in the Caribbean.

**Reliability**

Concerning GEBE's **reliability**, several attention points were identified. It is noticeable that no data could be obtained on GEBE's performance against norms and standards outlined in its electricity concession regarding e.g. quality of supply. Furthermore, while number of outages were (relatively) stable over time, GEBE's operational production capacity is close to peak demand, and reserve margins are limited. With two additional production units approaching end of their technical life (in 2023 and 2024), continuity of service may be put at risk. While reportedly various plans and ambitions to expand and diversify production capacity were developed in recent years, limited investments have materialized. High turnover in GEBE management and resulting lack of (strategic) stability may have prevented progress towards existing plans. On water supply, no view could be developed on supply reliability and quality adherence due to lack of data.

**Affordability**

When it comes to **affordability**, flexible fuel charges drive fluctuations in electricity tariffs at GEBE, as electricity base rates have not been increased for 8 years and remained at ANG 25 ct. per kWh. Compared to other Caribbean countries, GEBE B2B electricity rates are below benchmark, especially for industrial clients (>40% below average). Residential consumers pay slightly less per kWh compared to neighboring countries. However, electricity still accounts for a large share (~11%) of lower income household expenditures, as average electricity consumption per household on Sint Maarten is relatively high at >6,000 kWh per year. Water tariffs remained relatively stable, based on tariffs agreed with the Sint Maarten government. Compared to the broader Caribbean region, GEBE's water tariffs are relatively high, as GEBE's residential tariff (ANG ~6.25 per m3) is close to 40% above the average benchmark tariff. As a result, water consumption puts further pressure on disposable incomes of households.



**Sustainability**

With regard to **sustainability**, Sint Maarten and GEBE show limited progress towards their sustainability targets. Despite various plans and analyses (e.g. on waste-to-energy, solar projects) and strategic priorities to focus more on renewable energy, investments have not materialized. Sint Maarten has a relatively ambitious target compared to other Caribbean countries, which is amplified by the lack of progress in recent years. Revision of Sint Maarten's renewable energy policy is advised to (re-) define a realistic pathway.

<sup>1</sup> This conclusion does not necessarily apply to the current (Sept. 2022) situation, in which GEBE suffers from the consequences of the April 2022 cyber attack.



# Section 3: Efficiency

## Section

P	Preface	<i>Background of this review, scope of the work and approach of this review by PwC</i>
1	Introduction	<i>A profile of the five entities including their relation to government (governance)</i>
2	Effectiveness of public services	<i>Are services provided by the public entities important to the public interest and are they delivered to satisfaction?</i>
<b>3</b>	<b>Efficiency of business operations</b>	<i>How does the production (output) relate to the resources used (input)?</i>
4	Recommendations	<i>What are recommendations for the Government of Sint Maarten?</i>

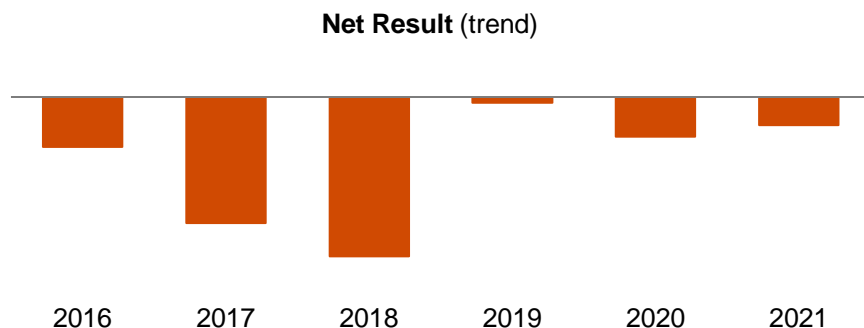


# Despite all efforts by management, PSS is not sufficiently cost-efficient



## Efficiency evaluation

In assessing the efficiency, primary staff and support staff is distinguished. On the primary staff (e.g. postal delivery), productivity decreased due to declining postal volumes on a constant FTE-level. When the support staff is included, productivity increased due to the overhead reduction. Despite these efforts to cut costs, costs are still higher than the revenues as figure 1 below shows:



Consequently, the future viability of PSS is uncertain as PSS' financial position is extremely weak underlined by the following factors:

- PSS has a negative equity position;
- PSS' liquidity position is extremely fragile;
- Given its poor financial position, PSS is not likely to attract commercial capital (loans). This limits the finance of potential business investments.

PSS' employment conditions (primary and secondary benefits) are in line with the CLA, which have not been changed since the founding of PSS in 2010. PSS requested exclusion for 12,5%-rule because the workload increased after the reorganization and the terms have not been updated since foundation.

The conclusion on efficiency is that despite all efforts by management, PSS is not cost-efficient (enough). A clear mismatch is visible between service level requirements, pricing and scale of the business. For long term financial viability, it is unavoidable to either lower the services levels (i.e. 1-day service a week) or increase the price / governance investments to make this viable at the Sint Maarten scale. The financial indicators point out that the continuity of the company and its services are at serious risk.



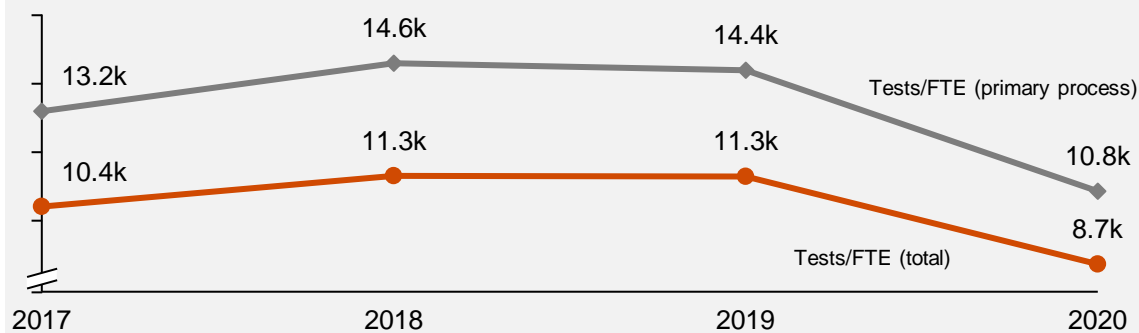
# SLS Efficiency performance has been marked by Irma and COVID-19; nonetheless, SLS has shown active control on costs



## Efficiency evaluation

In assessing the **productivity**, focus on selected metrics of (financial) laboratory efficiency. One of the key metrics is the test volume per FTE. SLS productivity increased until 2020. Due to Covid-19, productivity stagnated in 2020 on 8.7k tests per FTE as *figure 1* shows. Compared to peer-groups this is an acceptable level of productivity.

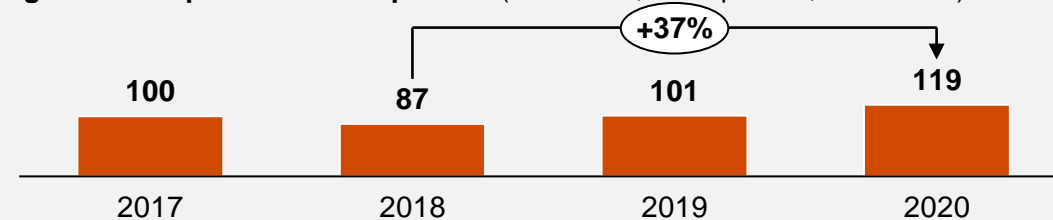
**Figure 1: Test volume per FTE (2017-2020, '000 tests per FTE and per primary process FTE<sup>1)</sup>)**



Attention points exist on productivity of overhead/ support staff, as primary process to support staff ratio has decreased consistently over time, driven by an expanding Finance function.

When it comes to **cost efficiency**, the most apparent attention point is the significant growth in non-personnel costs per tests (mainly test supplies), growing with >35% per test between 2018 and 2020 (*see figure 2*). Reportedly driven by (1) repurchasing of lost inventories after Irma, (2) expansion of testing offering (incl. PCR-testing), and (3) an ineffective manual inventory management system, SLS has started to address this by shifting to a digital inventory system.

**Figure 2: non-personnel cost per test (2017-2020, index per test, 2017 = 100)**



Observations on SLS employment conditions show that the primary benefits are defined by SLS's 2017 salary scale; the secondary benefits are defined by the CLA. SLS has outlined an action plan for the 12,5% ruling based on an internal vote on the preferred package.

# Both operational and financial analysis gives reason for concerns on SMHDF' efficiency



## Efficiency evaluation

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In assessing the productivity of SMHDF, focus lays on key activities along the housing value chain (e.g. construction, maintenance and exploitation) and selected overall metrics. Most apparent is a structural lack of development activity, whilst the available land and permits have been secured to realize a significant number of houses. The lack of development has primarily been caused by organizational focus on outstanding repairs and limited access to low-cost capital.

Although exploitation and maintenance have been a structural management priority, concerns regarding *productivity* uphold. In particular, the absence of a multi-year maintenance planning in combination with highly fluctuating costs and deferred maintenance activities can be seen as a warning signal. To some extent, these issues give rise to broader challenges in the exploitation process. SMHDF experiences a high level of arrears, partially due to outstanding maintenance efforts. Moreover, repairs to units increase the period of time in which a unit cannot be exploited, and as a result, revenues are missed.

The concerns regarding productivity, are further confirmed in the analysis of *cost efficiency* of SMHDF, where primarily income statements and capital positions are considered. Since 2017, SMHDF has not been able to either increase income streams, nor lower direct and / or overhead costs. In addition, budget accuracy seems limited (meaning that the differences between the forecasts as outlined in the budget and the realizations as outlined in the financial statements are at some parts substantial) and steering on cost control is a challenge. Consequently, net results have been under pressure which impacts SMHDF's ability to attract sufficient capital at low-cost to finance development activities and repairs. Acknowledging these threats, SMHDF has secured a new commercial loan dependent on future valuations of SMHDF property. Going forward, attracting capital to ensure business continuity and resume development activity will remain a challenge for SMHDF.

The 12,5%-income rule is not implemented since SMHDF is an independent foundation.

# BTP efficiency is limited

## Efficiency evaluation

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In assessing BTP's **productivity**, focus lays on BTP's production in regard of the tasks formulated in the Landsverordening BTP. In this perspective, the added value of BTP is limited since its policymaking tasks resulted in two policies over the last five years. Furthermore, KPI's on BTP's primary process (i.e. # performance of inspections, market studies, organizing seminars) remain constant over time while expenses have increased. It should be noted that the performance evaluation of 2019 shows that approx. 80% of the KPI's were not met. For the years 2017, 2018 and 2020 onwards, no evaluations are available. According to BTP the many recent governmental changes should be seen as the main reason for the absence of performance evaluation.

When it comes to cost **efficiency**, personnel costs are the most significant cost driver for BTP. Approx. 60% of the total personnel of BTP works as support staff. Costs relating to supportive processes consist of 74% (2019) of the total costs of the organization. Furthermore, key positions for BTP's primary process are currently being outsourced: the CTO and Radio Controller. The total personnel cost of BTP consists of 70% internal personnel and 30% external personnel. BTP's organization structure is not in healthy shape in terms of core vs. support and in terms of C-level management versus the rest of the organization.

BTP is allowed to subtract its own expenses from its earnings (license and concession fees) before paying to the government. The calculation of these payments to the government is limited transparent. Also, the payment frequency is not in line with clauses in the National Ordinance. Furthermore, the expenses are not subjected to a cap.

# GEBE appears to perform well on efficiency, with attention points on (1) increasing water loss ratio, (2) share of overhead staff and (3) high levels of doubtful receivables



## Efficiency evaluation

Overall, a moderate to good level of **efficiency** can be observed across GEBE's activities. On electricity distribution, GEBE performs strong on electricity net losses compared to other Caribbean countries (performing in the top quartile) and showing improvement of 9,6 to 6,6% net losses between 2017 and 2020. Water loss however increased strongly over time (25% to 36% between 2017 and 2020), reportedly due to excessive water leaks following Hurricane Irma, insufficient pressure regulation, inaccurate meters, and potential theft through fire hydrants.

GEBE still performs well compared to benchmarks (remaining below average of 45% net loss), but the large spread in performance across countries and strong bottom-line impact highlights the importance for GEBE to reverse the trend of recent years. Some action has been taken (e.g. with rebuilding and expanding of water storage capacity), but the continuous increase in water loss levels shows this is a priority for GEBE going forward.

Personnel **productivity** in the primary process for both electricity and water staff has increased between 2017 and 2021, with e.g. increasing numbers of customers being served with a smaller staff base. Overhead productivity however might require attention as it has remained stable, but GEBE's overall share of support staff (~27% of FTE) appears relatively high, and indicate improvement potential.

When it comes to **financials**, GEBE shows high levels of doubtful receivables, peaking in 2019 after a government utility bill settlement. Profitability was heavily impacted in 2018 by a decline in sales following Irma and a rise in pension costs. Revenues fluctuate over time, mainly driven by shifting electricity sales due to Hurricane Irma and Covid-19. Decreased revenues in 2020 appear to have been effectively absorbed with lower costs as fewer overhauls took place. GEBE appears to perform well on financial indicators, indicating healthy cash reserves, current assets, an upward trend in liquidity ratios and an equity to asset ratio that is above industry standards.

Observations on GEBE **employment conditions** show that the Supervisory Board approved the proposal for a 12.5% cut in personnel expenses. Based on PwC interpretation of the information received, GEBE's implementation of the 12.5% reduction of personnel costs does not cover e.g. gross salaries and wages (2022 number not known, but for 2019: 20.7 mln. ANG) – therefore, with the lower baseline in practice only ~2-3% of total personnel expenses appears to be deducted.

# Section 4: Recommendations

## Section

P	Preface	<i>Background of this review, scope of the work and approach of this review by PwC</i>
1	Introduction	<i>A profile of the five entities including their relation to government (governance)</i>
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4	<b>Recommendations</b>	<i>What are recommendations for the Government of Sint Maarten?</i>





# Recommendations SXM Government

## Recommendations

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1. The five reviewed entities operate different in sectors, play different roles and have different added values to society. This review delivered recommendations specific for the management of the entities involved. We provided suggestions to further stimulate performance of the entities under review. The suggestions aim to increase value added of the entities to Sint Maarten society. We recommend active follow up of the recommendations because some issues are a result of long standing debate.
2. The five reviewed entities have in common that they play a vital role for the economic structure of Sint Maarten. All entities serve public interests, which, as society evolves, shift over time. Overseeing the reviews of all entities, we recommend the government of Sint Maarten to be more aware of the public objectives of the entities. We saw insufficient evidence in the actions of the government over the past years in which they explicitly act based on public objectives. Track two (advice on policy framework for SXM SoE's) of this assignment can be of large value added in that perspective.
3. Two entities, SMHDF and PSS, are notably impacted by the lack of sufficient scale and are currently in a financial distressed situation.
  - a. Since SMHDF is foundation where the government has no ownership over, there is no direct financial risk for the government. However, the availability of social housing has a great impact on the society of Sint Maarten and therefore, government intervention is expected. We see three major lines of recommendations in this respect. First, update the performance agreement (PA) with the SMHDF in line with the actual public interests on social housing (the current PA dates from 1997). Secondly, make sure that there are KPI's in place on which the government actively and timely can steer on SMHDF's performance (the current PA has no KPI's). Finally, the governance (i.e. the relation between government and SMHDF) should be adjusted accordingly. In the current situation, the government holds a majority vote in SMHDF's Supervisory Board, which basically forms the only option for intervention.
  - b. Regarding PSS, the situation is different. Since PSS is a NV where the government holds 100% of the shares, the government is exposed to financial risks caused by the current situation. The situation observed raises the question whether there is a lack of sufficient instruments to intervene or that the exiting powers are not sufficiently used. As a 100% shareholder, the government has – amongst others – the following key powers: 1) the right to appoint, suspend and dismiss SB members, 2) to approve the annual accounts, 3) to approve major investments or strategy plans of the company and 4) to amend articles of association. We observed that only the first power is actively executed. We recommend the government of Sint Maarten to deploy the existing set of instruments more widely than we observed in this research. Part of the discussion will and should involve the consequence of the limited scale of PSS and the service level that can be offered sustainably offered against current income. Right now the mix between income and services provided is off balance.

# Recommendations SXM Government

## Recommendations

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4. Overseeing all five entities, it strikes that operational KPI's often are lacking. Operational KPI's are indicators that reflect the (quality of) service as this is close to the experience of the average Sint Maarten citizen. We recommend the government of Sint Maarten to develop operational KPI's in which the entities are being steered on their direct impact on the every day life of the Sint Maartener. opportunity of filling in budgetary gaps.
5. Overseeing all five entities, another striking point is that issues from the past (sometimes 10 or 20 years ago) still affect today's business. As an example we mention the housing situation of BTP for over 10 years and the consequences of the transfer of housing portfolio to SMHDF in the late 90s. The solutions should not be sought in yet another audit, but in an administrative conversation in which a clean sheet is created. We noticed that detailed audits and discussions distract key stakeholders from dealing with the real challenges these organizations face.

Part of the here mentioned recommendations will be further deepened in part 2 of this research, the development of a policy framework for government-owned companies. Such a framework protects both government and public company: the government should be protected against the budgetary risk caused by loss-making companies, a (successful) public company should be protected against political



# Appendix

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## 1. List of abbreviations

# List of abbreviations

**BZK:** *Ministerie van Binnenlandse Zaken en Koninkrijksrelaties*

**CGC:** *Corporate Governance Council*

**CoM:** *Council of Ministers*

**SXM:** *Sint Maarten*

**TEATT:** *Ministerie van Toerisme, economie, transport en telecommunicatie*

**VROMI:** *Ministerie van Volkshuisvesting, ruimtelijke ordening, milieu en infrastructuur*

**VSA:** *Ministerie van Volksgezondheid, sociale zaken en arbeid*

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# Analysis Policy frameworks Sint Maarten ('B2 track')

2022-0249/SM/lc/ng

September 2022

September 2022

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# List of Abbreviations

- Aol: Articles of Incorporation
- ARS: Algemene Rekenkamer Sint Maarten (*General Audit Chamber*)
- AvA: Algemene Vergadering van Aandeelhouders (*General Meeting of Shareholders*)
- AZ: Ministry of General Affairs
- BW: Burgerlijk Wetboek (*Civil Code*)
- BW2: Book 2 of Burgerlijk Wetboek Sint Maarten (*Civil Code*)
- CoA: Council of Advice
- Cft: College financieel toezicht (*Board of Financial Supervision*)
- CGC: Corporate Governance Council Sint Maarten
- CoM: Council of Ministers Sint Maarten
- FIN: Ministry of Finance
- LNT: Landsverordening Normering Topinkomens (*Standards for Remuneration Policy*)
- KPI: Key Performance Indicator
- MvT: Memorie van Toelichting (*Explanatory Memorandum*)
- N.V.: Naamloze Vennootschap
- Overheid-nv: State-owned enterprise (Government owned Companies)
- Senior management: Management Board plus Supervisory Board
- Staten: The Parliament of Sint Maarten
- SOAB: Stichting Overheidsaccountants Bureau
- SXM: Sint Maarten
- TEATT: Ministry of Tourism, Economic Affairs, Transport and Telecom
- VROMI: Ministry of Public Housing, Spatial Planning, Environment and Infrastructure
- VSA: Ministry of Public Health, Social development, and Labor



# Executive Summary

Commissioned by the Dutch Ministry of Kingdom Affairs and the Sint Maarten government, PwC has analyzed the Sint Maarten policy on its participations ('overheid-nv's'). More specific, PwC was asked to analyze (1) Sint Maarten's participation policy, (2) the country's Corporate Governance Code, (3) the *Landsverordening Normering Topinkomens* (Top Income regulation) and (4) the provision of information on overheid-nv's towards Sint Maarten's Parliament. This summary is structured along these four themes and presents the conclusions per theme.

## **(1) Sint Maarten's participation policy**

The analysis shows Sint Maarten's current participation policy is partly complete in its design and does not yet meet the standards required in the 'Rijkswet financieel toezicht'. A clear shareholder strategy is recommended and the understanding of their role by key stakeholders such as the Ministry of Finance could be improved. Overall, every-day working with the participation policy appears to be a challenge. Below we describe the main points for further (policy and organizational) development.

The *Rijkswet financieel toezicht* ('Kingdom act on Financial Supervision') outlines that Sint Maarten is required to have a participation policy in line with internationally accepted standards, covering three main areas: (1) procedures for obtaining and disposing of shares of overheid-nv's, (2) guidelines for a dividend policy, and (3) requirements and procedures regarding the appointment and dismissal of board members.

In its design, the participation policy of Sint Maarten does not cover all necessary building blocks of a participation policy. Main shortcomings lie in (i) the compliance with procedures, (ii) State's rationale of participation policy and periodic review of the participation's portfolio (iii) the role of the government as a shareholder, and (iv) the absence of provisions on transparency and disclosure to the public of Sint Maarten. Repairing these shortcomings is important since government participations in overheid-nv's involve public funds as well as possible risks to the budget of Sint Maarten in cases of liquidity deficits or financial distress.

### *(i) The compliance with procedures*

The formal procedures of the participation policy (in Dutch 'deelnemingenbeleid') are in place and ready for execution. The *Landsverordening Corporate Governance* obliges the government of Sint Maarten to seek advice from the Corporate Governance Council (CGC) when acting on the three main areas<sup>1</sup> of a participation policy (following the *Rijkswet financieel toezicht*). Also, the *Landsverordening* outlines the procedure when the government deviates from the CGC's advice. Lack of clarity exists however on its practical adherence: it is unclear whether the government in all cases follows the procedures of the *Landsverordening*, including informing the CGC when deviating from its advice.

### *(ii) State's rationale of participation policy and periodic review of the participation's portfolio*

Sint Maarten does not evaluate whether changing market circumstances influence the rationale and justification of public shareholdership, or whether the use of other legal instrument(s) may be more suitable. Sint Maarten has a dividend policy, which was written in 2013, and recently (May 2022) adopted. The adopted policy outlines the right considerations. The entity-specific ratios appended to the policy are however outdated and should be revised based on the entities' current capitalization structure and latest financial statements. Based on the information provided for this study, a total of NAf. 23 million of dividend from Sint Maarten's overheid-nv's is received since

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<sup>1</sup> The three main areas are: (1) procedures for obtaining and disposing of shares of overheid-nv's, (2) guidelines for a dividend policy, and (3) requirements and procedures regarding the appointment and dismissal of board members.

2010: NAf. 4 million from TelEm N.V. and NAf. 19 million from GEBE N.V. No dividend has been paid out by the other overheid-nv's.

*(iii) The role of the ministry of Finance and policy departments in the participations policy*

Regarding the organization of the participation policy, discrepancies can be observed on the allocated roles and responsibilities within the government. The 'National Ordinance on the rules for the involvement of the government in overheid-nv's and foundations' assigns the government (i.e. Council of Minister, CoM) and the CGC with a direct role, while other legislative documents like 'Organisatiebesluit Ministerie van Financien' outline that direct roles should also be assigned to the Ministry of Finance and policy departments (such as TEATT). In practice, the involvement of both departments is limited. This raises the question which considerations are used to support decision-making of the shareholder at the general meeting of shareholders ('AvA'), especially on decisions which may have financial implications on Sint Maarten's budget or consequences for the public interest.

*(iv) The absence of provisions on disclosure to the public and on performance monitoring*

By law (Civil Code Book 2), it is mandatory to have at least one AvA per entity a year. In practice, at some overheid-nv's, multiple AvA's were held per year (see figure A below), while at others no AvA's were organized. Furthermore, the participation policy lacks concrete norms or Key Performance Indicators (KPI's) which are defined by the shareholder for overheid-nv's. This means that no performance monitoring has taken place on the extent to which Sint Maarten's overheid-nv's guarantee the respective public interests.

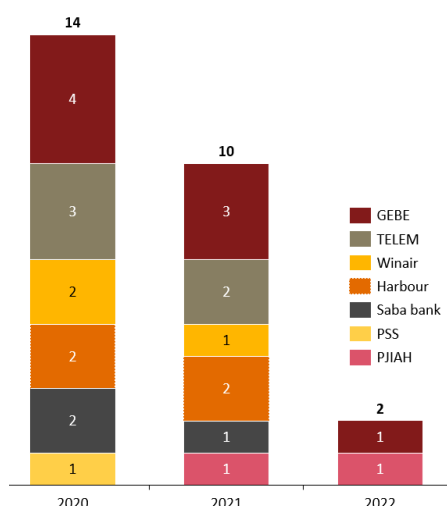


Figure A: Overview of all general meeting of shareholders 2020-2022 (till March)

For our recommendations on the participations policy, see chapter 2.

**(2) Effectiveness of the current Corporate Governance policy**

Effectiveness of Sint Maarten's cooperate Governance policy can be improved. A new Code is under development and expected to strengthen the position of the CGC and thereby improving the effectiveness of the practice of corporate Governance in Sint Maarten.

Sint Maarten's current Corporate Governance Code dates from 2009. It contains several aspects of good Governance. For example, it created institutions that were designed to establish good practices, clarifying roles and responsibilities, and strengthening the senior management of overheid-nv's by appointing qualified members. Sint Maarten's current Corporate Governance Code is however considered to be outdated on the field of regularize the government's oversight over overheid-nv's. Hence, a new Code is under development. The new Code is not yet public, but its content has been made available for the purpose of this evaluation. The new Code will

improve aspects of good Governance— assuming the new Code is adopted in the way that is presented to us in this research.

The development of the new Code is part of the ‘Improvement Plan’ which implementation is currently work in progress. The ‘Improvement Plan’ aims to improve the corporate Governance practice in Sint Maarten by amending the relevant regulations and the Corporate Governance Code.<sup>2</sup> The amendments intend to strengthen the position of the CGC and its structural support to the shareholder. The ‘Improvement Plan’ has identified several ways to streamline the role of the CGC (by among others establishing a Corporate Governance Authority) and improve the clarity of its tasks.<sup>3</sup> If implemented, these amendments would be a good step forward as well.

Attention is required on three concrete clauses which are not yet envisaged in the new corporate Governance regulation and -Code: (1) information disclosure to the society, (2) remuneration guidelines and (3) enforcement clauses. It is advisable to explicitly integrate clauses on these three areas in order to lift Sint Maarten’s Corporate Governance policy. The ‘Improvement Plan’ has already recommended these clauses to Princess Juliana International Airport N.V. We would recommend broadening the scope of this recommendation to all overheid-nv’s.

The enforcement of the current Code is not seen as fully effective. The foreseen improvements, especially on the future role of the Corporate Governance Authority, will provide useful ways of strengthening the enforcement of corporate Governance. To assess whether the changes effectively work, it is recommended to evaluate the new corporate Governance policies after three years from the moment they come into force.

For our recommendations on the Corporate Governance policy, see chapter 3.

### **(3) The Landsverordening Normering Topinkomens (LNT)**

Sint Maarten has a law on the regulation of “top inkomens” at among others overheid-nv’s. Enforcement did however not take place in the past years, as enforcement clauses are absent in the current LNT-law. The proposed new LNT-law offers meaningful enforcement instruments, as long as statutes (‘Articles of Incorporation’) of overheid-nv’s do not contain conflicting or limiting clauses.

Sint Maarten has different options to enforce the LNT regarding overheid-nv’s as a shareholder and as a legislator. The Corporate Governance Code (soft law) and the civil Code BW2 (hard law) do however not provide the AvA with the same mandate. As a shareholder, the government has the possibility to approve (or reject) the remuneration policy of an overheid-nv. The statutes of overheid-nv’s may however contain conflicting or limiting clauses with respect to BW2 and they may restrict the shareholder’s authority to approve or reject the remuneration. The individual statutes of overheid-nv’s were not assessed in this research to evaluate whether this is the case. This ambiguity may change after the adoption of the new LNT-law. If implemented in its current draft, the new LNT seems to have thorough administrative clauses and offers the shareholder clear guidelines for its approval decisions at the AvA. The effectiveness of the new LNT-law depends however on two key conditions. First, the financial statements need to be timely audited and approved by the shareholder. Second, the Minister of Finance needs to take decisive measures when being informed on breaches of the LNT-law. In this light we see two areas of attention:

1. In the current draft of the LNT, no clause is formulated on the case where an overheid-nv does not have audited financial statements or when it lags in its financial reporting.
2. It can be argued that the draft-LNT will not automatically overrule the statutes of overheid-nv’s in case they contain limiting clauses on the remuneration and/or on the approving authority of the shareholder. Legal discussion is imaginable when it comes to the

<sup>2</sup> The Corporate Governance Improvement Plan was drafted on the request of the CoM based on the World Bank review in 2018. The Corporate Governance Improvement Plan serves as a pilot to establish Corporate Governance best practices at the Airport companies and strengthen the Corporate Governance Council and its functioning.

<sup>3</sup> See for example actions 5a and 5c in the ‘Improvement Plan’.

question of whether the LNT goes against the core system of BW2. Especially in a situation where an existing top income earner does not voluntarily agree to the new legal regime and publication obligation. For an effective enforcement of the LNT-guidelines, the government as a shareholder is advised to make sure that the LNT-guidelines are integrated in the statutes of the respective overheid-nv's and that they are fully corresponding.

Given the fact that the new LNT law is not yet effective, no enforcement thereof has taken place in the last few years. The new LNT law contains an evaluation clause after three years from the moment the law comes into force. The evaluation will be shared with the Parliament of Sint Maarten.

For our recommendations on the LNT policy, see chapter 4.

#### ***(4) Provision of information on overheid-nv's towards Sint Maarten's Parliament***

The depth of information on overheid-nv's shared with the Parliament is currently limited. There is a visible demand for more information in the last couple of years as the table below points out.

Although Sint Maarten's Constitution determines that the country has no active information sharing obligation towards Parliament, the government does inform the Parliament on an active basis. Information towards Parliament occurs through the draft budget (annually), the country's financial statements (annually) and the 'Uitvoeringsrapportages' (quarterly). The depth of the information is, however, limited as key financial ratios are not (consistently) reported. The same applies to forward guidance or concrete details on potential future risks and the impact on the country's budget. Therefore, the signaling value of information is restricted. This may be solved after implementing many of the recommendations of the 'Improvement Plan' and broadening the focus of the ones that are directed at Princess Juliana International Airport N.V to all overheid-nv's.

In the last couple of years, the Parliament seems to have more interest for overheid-nv's. This may signal an increasing need for factual and technical information which is at present not being fulfilled sufficiently through the current flow of information. The importance of meaningful information flow to Parliament lies in its budget authority of the way public funds are spent and in its controlling mandate of the government as a shareholder. Information provision to Parliament on overheid-nv's should enable it to be well-informed in taking financial decisions like for instance liquidity support, credits, deductions, or dividend amounts. Ministers, and not the overheid-nv's, are accountable to Parliament and have the obligation to provide it with information as requested.

For our recommendations on the information provision to the Parliament of Sint Maarten, see chapter 5.

# 1. Introduction

In the context of the 'Country Packages' (2020) between the Netherlands and Sint Maarten, both countries have agreed to several theme specific projects. These projects are meant to contribute to the welfare and wellbeing of the society of Sint Maarten. The focus of the B theme is the costs and effectiveness of the public sector on the public finances. This track consists of 15 activities. The B2 activity, which this report is part of, concerns public entities owned by the government (hereafter 'overheid-nv's'). The main objective of B2 is to "strengthen and improve the Governance and management of public entities which are owned by the government in order to limit (future) losses and risks for the public budget of Sint Maarten"<sup>4</sup>. B2 exists of two parts. Part 1 contains the assessment of five (semi-) public entities. In part 2 an analysis of the policy frameworks of Sint Maarten is outlined about the participation policy of the country, the compliance of the corporate Governance policy, the enforcement of the Standards for Remuneration Act (in Dutch 'Wet Normering Topinkomens', 'LNT') and finally the way the Parliament of Sint Maarten is informed about overheid-nv's.

Four of the five final assessments of part 1 have been delivered in May 2022. The fifth one was delivered in July 2022. In this document we present the (draft) findings, conclusions, and recommendations of part 2, based on our document study and insights collected through several in-depth interviews. This draft report was finalized after the incorporation of input and comments from the Steering Committee. This input was received in August 2022. The final report is delivered in September 2022.

## 1.1. Research themes

This report delivers analysis, and where necessary recommendations, on the four following themes:

1. The participation policy of Sint Maarten regarding the establishment, management, and termination of state-owned enterprises ('overheid-nv's')
2. The Corporate Governance Policy of Sint Maarten and the way in which the country as a shareholder and as a policymaker ensures the compliance of it
3. The extent to which the country in her capacity as a shareholder and a policymaker has or shall have formal instruments to enforce the Standards for Remuneration Act
4. The information flow to the Parliament regarding overheid-nv's

## 1.2. Research approach and scope

These analyses are established through a qualitative approach and a process consisted of document research, review of key laws and regulations, responses and data provided by key stakeholders and face-to-face interviews with advisory bodies, supervisory authorities, government officials, members of Supervisory boards of overheid-nv's, local corporate Governance experts, and other stakeholders. Appendices A1 and A2 provide an overview of the documents used and interviews (15 in total) conducted. The majority of the 15 interviews took place during a field visit in the week of 5 to 10<sup>th</sup> of June 2022.

On two areas, namely the new/under revision Corporate Governance Code and the Remuneration Act, no documents were received because both subjects are still in the drafting legislative process. Therefore, we conducted several interviews with key stakeholders to collect insights and facts on the clauses and provisions that are foreseen in the legislative documents on both subjects. In this context it should be underlined that we thus could not assess the functioning of both policy subjects since their legislation at moment of writing is still work in progress. Therefore, our assessment in chapters 3 and 4 is limited to the functioning of the current

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<sup>4</sup> Uitvoeringsagenda landspakket 1 oktober - 31 december 2021, p. 6

corporate Governance policy and the current LNT-law. We however do give our vision on the new CGC and LNT in the respective chapters. Furthermore, we advise the government of Sint Maarten and/or the Dutch Ministry of Internal and Kingdom Affairs to evaluate both laws after three years.<sup>5</sup>

During the field visit, our preliminary findings and recommendations were discussed with stakeholders. The final report is delivered in September 2022.

The scope of our research is limited to relevant policy frameworks on overheid-nv's. These are private entities in which the country of Sint Maarten directly or indirectly holds full or partial interest in its share capital in accordance with art. 1, sub m, of National Ordinance on Corporate Governance. The period in which this research has taken place is between May 1<sup>st</sup>, 2022 and June 25<sup>th</sup>, 2022. We did not conduct an auditor review of the data we received, and we assume that all relevant documents (except on few specific topics, see previous paragraph) related to the scope of our research were shared with us if they were available within the government.

The latter is an important note in the overall context of the limited documentation we received on the practice and functioning of policies. To be able to understand and analyze this, in-depth interviews were used to collect insights and perceptions. Therefore, a clear picture was developed about the practice of policies. This overall picture that we have drawn up from our research is in fact a 'photo' of the situation on Sint Maarten regarding overheid-nv's. Because not all procedures and working methods are equally well documented, the in-depth interviews were an important tool for collecting insights into the practice of the participation policy. In this, we focused on identifying trends so as not to build the analysis on individual experiences

### **1.3. Reading guide**

This report reads as follow. Chapter 2 analyzes the design, organization, existence and functioning of the participation policy of Sint Maarten. Chapter 3 provides an overview of the corporate Governance policy of the country and assesses whether that policy is at present enforced by the government as a shareholder or a legislator. In chapter 4 the most important clauses of the draft remuneration act ('LNT') are described, including an analysis of the extent to which the government already has instruments at its disposal to enforce the LNT within overheid-nv's. Finally, chapter 5 describes the information flow to Parliament regarding overheid-nv's.

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<sup>5</sup> In the draft LNT an evaluation clause is already envisaged after 3 years from the moment that the new law comes into force. We do not know whether this is also the case for the new Corporate Governance policy.



## 2. Participation policy of Sint Maarten

The aim of this chapter is to analyze the design, existence and functioning of Sint Maarten's participation policy and where necessary, to formulate recommendations.

### 2.1. The design of the participation policy

The Kingdom Act Financial Supervision Curaçao and Sint Maarten ('Rijkswet financieel toezicht Curaçao en Sint Maarten') requires the government of Sint Maarten to design a participation policy<sup>6</sup> that meets the internationally accepted standards in the areas of:

- a. Procedures for obtaining and disposing shares in legal entities by the country;
- b. Guidelines for the dividend policy of legal entities in which the country participates, and
- c. Procedures and requirements regarding the appointment and dismissal of board members of legal entities in which the country participates.

In the explanatory memorandum ('Memorie van Toelichting', 'MvT') of the Kingdom Act<sup>7</sup>, the legislator outlines its considerations regarding the instrument of participations ('overheid-nv's'). The legislator underlines that caution should be at place when it comes to the use of private law constructions by the government like the obtaining of shares of public limited companies ('nv's'). According to the legislator caution is also needed regarding the use of the influence that comes along with such participations.

At present Sint Maarten has 12 active participations, in 8 of them the government is the only shareholder and in 3 a minority shareholder (i.e. owning less than 50% of the shares).<sup>8</sup> See table 1 below for an overview.

#	Public entity	Sector	Government share	Responsible policy department	Latest audited financial statement <sup>9</sup>	Dividends (total since 2010) in NAF
1	Sint Maarten Harbour Holding Company N.V.	Maritime	100%	TEATT	2021	0
2	Princess Juliana International Airport N.V.	Aviation	100%	TEATT	2019	0
3	Telecommunication Holding Company N.V.	Telecom	100%	TEATT	2021	4 million
4	GEBE N.V.	Energy	100%	VROMI <sup>10</sup>	2019	19 million
5	Economic Development Cooperation	Economic Services	100%	TEATT	2021	0
6	Sint Maarten Laboratory Services N.V.	Medical	100%	VSA	2021	0
7	Postal Services Sint Maarten N.V.	Post	100%	TEATT	2019	0
8	Luchthaven Veiligheid Financiering Maatschappij	Aviation	100%	TEATT	2010	0
9	Winair N.V.	Aviation	92.05%	TEATT	2020	0
10	Saba Bank Resources N.V.	Banking	28.20%	FIN	2020	0
11	DC-Air Navigation Service Provider	Aviation	18.75%	TEATT	2020	0
12	Ontwikkelingsbank Nederlandse Antillen N.V.	Banking	7.08%	FIN	2020	0
13	Marven NV (inactief) <sup>11</sup>		100%	-	1995	-

Table 1. Overview of the overheid-nv's of Sint Maarten (at level of the holding company)

<sup>6</sup> Article 28. This article was confirmed during Bestuurlijk Overleg of January 22, 2008

<sup>7</sup> Memorie van Toelichting, p. 8.

<sup>8</sup> See draft budget of Sint Maarten 2022, overzicht deelnemingen, p. 77

<sup>9</sup> The years in this column are shared with PwC on July, 7<sup>th</sup> 2022. We note that information provided in the draft budget 2022 differs from these years. We do not know why this is the case.

<sup>10</sup> In 'Organisatiebesluit' of ministry of TEATT, it is mentioned that the ministry is responsible for utility companies 'nutsbedrijven'. See article 2, par. G. However, in practice VROMI exercises the policy responsibility.

<sup>11</sup> "Overzicht deelnemingen" in the draft budget of Sint Maarten 2022 reports that this entity is not active. p. 77

Regarding the dividend policy (area b), Sint Maarten recently adopted a dividend policy framework that originally dated from May 2013. This framework is considered as a “starting template which can be adjusted to finalize the dividend policy of overheid-nv’s after taking into consideration the specific risks of each company”.<sup>12</sup> By law Sint Maarten’s overheid-nv’s are requested to formulate a dividend policy which considers the capitalization criteria for the respective entities and the guidelines provided by the government. The shareholder then approves that entity-specific policy. The recently adopted dividend framework summarizes the most important considerations regarding the dividend policy. A central principle in the framework is that the amount and proposal of dividend distribution can only be on the agenda of the general meeting of shareholders (‘AvA’) if (1) the entity has realized profit (based on its audited financial statements), (2) the required amounts of reservations have been complied with, (3) the intended distribution (after the necessary reservations) does not violate the equity requirement in the Articles of Incorporation (‘Aol’) and complies with the capitalization criteria of the company.

When receiving a dividend proposal by the entity, the shareholder expects specific and reasonable benchmarks to be attached to these relationships in the form of minimum and maximum financial ratios based on the specific situation of each of the entity. The recently adopted dividend framework does not contain guidelines on how the shareholder should assess those ratios or what points of departure it needs to take into consideration to accept or reject the dividend proposal. The same applies to obtaining and disposing of shares and the appointment of senior managers (areas a and c). Also, on those fields no concrete policy frameworks are available.

## 2.2. The existence of the participation policy

This section describes the rationales and procedures as laid down in the participation policy and assesses whether that policy meets the internationally accepted standards as required in the Kingdom Act Financial Supervision.

The current participation policy is laid down in the ‘National Ordinance on the rules for the involvement of the government in overheid-nv’s and foundations’.<sup>13</sup> This ordinance contains rationales (the why’s) behind parts of the participation policy and procedures (the how’s) which the government needs to follow in the three beforementioned areas as outlined in the Kingdom Act Financial Supervision, namely a) obtaining and disposing of shares, b) dividend policy and c) appointment and dismissal of managers (Managing and Supervisory Boards) in overheid-nv’s.

The table on the next page summarizes the rationales of the participation policy as described in the National Ordinance. The importance of rationales is embedded in the fact that it provides key principles for the public ownership of entities from the perspective of guaranteeing the public interests and enables the government to weigh the pros and cons of decisions in the three areas of the participation policy. Rationales also enables the Parliament to control the government and assess whether its actions are in line with them or contribute to their realization.

Table 2 shows that the National Ordinance provides the government as shareholder to a small degree with concrete guidance. For instance, it is not known how the minister (in practice CoM) concretely makes his judgment on disposal of shares (‘in the general interest’) or on the appointment of senior managers and what public interests he needs to seek when deciding on those matters.

The same limited guidance applies, although to a lesser degree, to the ‘advisor of the government on corporate Governance’, the CGC. Where a certain guidance is provided, definitions are not always clear or specific. For instance, the aim of the minister should be to ensure that “as much as possible” each entity has a dividend policy which meet the requirements of ‘balansnormering’.

<sup>12</sup> Framework dividend policy, 6 April 2022, p. 2

<sup>13</sup> The formal title of the law is: ‘Landsverordening van 11 mei 2009 houdende regels ten aanzien van de besluitvorming in zaken betreffende de betrokkenheid van de openbare rechtspersoon Sint Maarten in vennootschappen en stichtingen’



	Obtaining shares	Disposing shares	Dividend policy	Rules of procedures & profiles	Appointing Managers	Dismissal Managers
<b>Minister<sup>14</sup></b>	The minister may obtain shares in nv's except when this is not in the general interest of the country. In any case he may obtain shares in a company of general benefit	No rationale mentioned	The minister ensures that, as much as possible, an overheid-nv has a dividend policy which meet requirements of 'balansnormering'	No rationale mentioned	No rationale mentioned	No rationale mentioned
<b>Corporate Governance Council (CGC)</b>	The CGC ensures that its advice is motivated from the perspective of the general interest	No rationale mentioned	The CGC ensures that its advice takes into consideration 'balansnormering'	The CGC checks whether the rules and profiles are in line with the Corporate Governance Code of Sint Maarten	The CGC ensures that the nominees meet i) requirements as outlined in the Articles of Incorporation of the overheid-nv and ii) the corporate Governance Code of SXM	The CGC ensures that the dismissal meet i) provisions as outlined in the Aol of the overheid-nv; ii) Corporate Governance Code and iii) reasonableness of the argument

Table 2. Overview rationales three fields participation policy Sint Maarten

Although the National Ordinance does provide a definition of that term, namely 'determination of an adequate asset structure that ensures the continuity of the overheid-nv in the long run',<sup>15</sup> it is not defined how 'adequate' will be assessed and what guidelines should be considered in order to have the right asset structure. Ideally this is determined case-by-case grounded on the nature and financial healthiness of the entity (based on recent financial statements). Some case-by-case considerations and concrete numbers can be found in the dividend framework of Sint Maarten (dated May 2013), which was recently adopted. However, the content of the framework is for the most part outdated since the calculated ratios for the separate entities were based on the liquidity and solvency structure of financial statements for the years 2007-2011.<sup>16</sup> This means that still no concrete content has been formulated how to apply 'balansnormering' which makes it unknown how at present the shareholder decides in dividend-related matters.

Furthermore, the definition of 'balansnormering' as outlined in the National Ordinance takes only the interest of the entity into consideration while a dividend policy should also be designed to provide the shareholders with a reasonable yield for their investment in the entity.<sup>17</sup> Since the latter notion is clearly a consideration in the dividend framework, this means that the National Ordinance and the dividend framework are not fully corresponding to one another.

It should be noted that Sint Maarten's participation policy does not contain provisions on managing the shares (besides obtaining and disposing them). Although this is not an omission, as the Kingdom Act Financial Supervision does not cover this specific field, it is usually an important part of a participation policy. This is because it contributes to predictable efforts and commitments by the government as shareholder towards the entity and facilitates the controlling authority of the Parliament. Also, a participation policy usually contains clauses on the approval by the shareholder of the strategy, investments, remuneration and foreign activities (where relevant) and the authority to amend the statutes. These clauses are also missing, although not requested

<sup>14</sup> Although the law assigns the management of the participations to the minister(s), in practice the shareholdership is exercised by the Council of Ministers.

<sup>15</sup> See article 1a.

<sup>16</sup> In its writing to the government (May 31, 2013), consultant BDO who advised the government on the dividend policy and calculated separate ratios like liquidity, solvency and debt service coverage ratio, states that "the ratios calculated provide a first impression of the liquidity and solvency status of overheid-nv's. We would like to emphasize that during the second phase the ratios will be analyzed in detail and specific corridors per entity will be established in consultation with the Ministry of Finance and the respective management boards of the overheid-nv's"

<sup>17</sup> Similar comments were made by Raad van Advies in the drafting process of the National Ordinance. See MvT, p. 14.

either by the Kingdom Act Financial Supervision. At the same time some of the missing parts in the participation policy are reflected in the civil Code book 2 ('BW2'), e.g. the authority to amend the statutes. This means that the National Ordinance and BW2 are not fully aligned with each other, whereby BW2 provides the shareholder with significant approving authority (via the AvA).

Regarding the guidelines directed towards the CGC, one can see in table 2 (above) that for instance the considerations on the rules of procedures, profiles of candidates, appointment and dismissal of managers are relatively concrete. This is because the CGC is required to advise in line with the Corporate Governance Code, allowing for an extensive and concrete assessment.

When it comes to the procedures<sup>18</sup> (the how's) figure 1 below summarizes them as prescribed in the National Ordinance and shows that they are identical across the three areas. It also demonstrates that the stakeholders who are assigned a direct role in the participation policy are the minister and the CGC. The National Ordinance does not prescribe a particular minister.<sup>19</sup> In practice, although not formalized yet through a formal decision, the Council of Ministers ('CoM') exercises the public ownership of shares on behalf of the country. At the AvA's, the full CoM is present, the Prime-Minister opens the meeting, and the chairperson is appointed in line with the former Landsbesluit in which shareholder representatives are appointed.<sup>20</sup> Only the AvA of Winair N.V. has a different procedure where the chairman of the Supervisory Board chairs the meeting.

Regarding the CGC, as figure 1 shows, it has a key role in the participation policy. The explanatory memorandum of the National Ordinance presents the CGC as "the advisor to government on corporate Governance". It is mandatory to seek CGC advise on the three areas. If the minister deviates from those advises, he needs to inform the CGC "immediately in writing". Whether the government follows the procedures in requesting CGC advice on the three areas, is not known. See chapter 4 for more details on Corporate Governance policy and CGC.

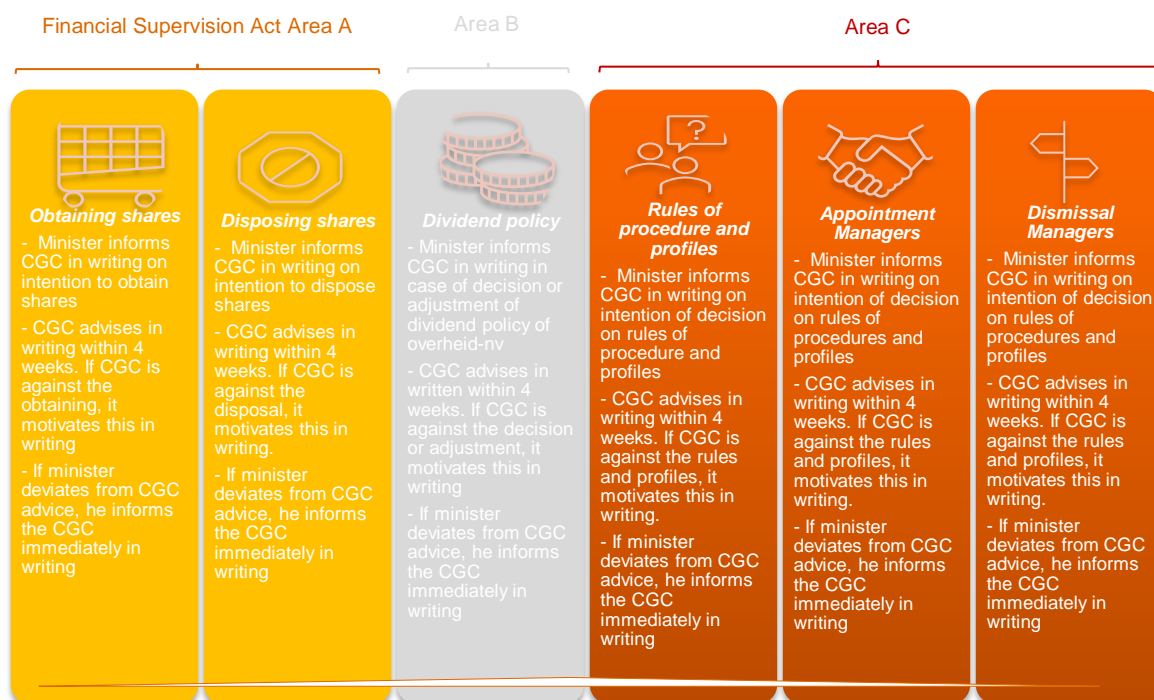


Figure 1. Overview procedures three fields participation policy Sint Maarten

<sup>18</sup> These procedures are laid down in articles 5 to 10 of the National Ordinance

<sup>19</sup> National Ordinance on the rules for the involvement of the government in overheid-nv's and foundations, article 1d.

<sup>20</sup> See Landsbesluit LB-19/0666. Before this procedure came into practice, Sint Maarten had formally laid down which minister represents the country as a shareholder in which overheid-nv. For instance, the minister of General Affairs was the government representative for PSS and the minister of TEATT was the government representative for DC-ANSP. However, in September 2019 CoM formally decided to end this practice and collectively exercise the public shareholder of ownership. The reason was that the LB in practice did not work because of a lack of communication among the ministers and lack of proper transition with a change of government.

Finally, the Kingdom Act Financial Supervision prescribes a participation policy that meets internationally accepted standards. When taking into consideration relevant (i.e. relevant with regard to the design of participation policies, apart from their practical implementation) international standards, the OECD offers a broadly accepted range of ingredients which together set the standard for corporate Governance in overheid-nv's.<sup>21</sup> The table on the next page assesses the design of Sint Maarten's participation policy along four pillars: (1) rationales for state ownership, (2) the role of the state as owner, (3) treatment of other shareholders and investors, (4) disclosure and transparency.<sup>22</sup> These pillars are important as they regulate the behavior of the government as a shareholder towards the entity, the other shareholders (where relevant) and society.

Table 3 demonstrates that the design of Sint Maarten's participation policy does not yet meet the internationally accepted standards.<sup>23</sup> For instance, the government did not formulate a justification of the state ownership nor is there a periodic review or evaluation of the appropriateness of the instrument of state ownership. Regarding the disclosure and information transparency, according to the OECD, high standards of transparency should be applied to both overheid-nv's and the government as shareholder. For example, financial and operating results highlighting areas of concern for the state as an owner and the public should be made public. Transparency is important because government shares in overheid-nv's involve taxpayer's money as well as (financial) risks to society in cases of e.g. liquidity deficits or (financial) distress. At present the Civil Code of Sint Maarten ('Burgerlijk Wetboek', 'BW') nor the Corporate Governance Code requires transparency and information disclosure to the public. The former determines (art. 122) that the overheid-nv six months after the end of the fiscal year (or eight months for smaller nv's), deposits its annual statements for inspection in the office of the entity.<sup>24</sup> Those statements can only be consulted by beneficiaries ('belanghebbenden'). This is at odds with transparency and disclosure guidelines of the OECD since the annual statements are only accessible for beneficiaries and do not have to be published through web-based communication channels. When it comes to the Corporate Governance Code, the Code does not prescribe transparency of information towards the public nor underlines the importance of transparency and disclosure of information regarding financial or operational results. The AvA is the only forum which can deal with the financial statements (art. 28).

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<sup>21</sup> See OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015 edition, p. 17-25. A similar framework was used by the Worldbank in its Corporate Governance assessment of the Princess Juliana International Airport (2019).

<sup>22</sup> We did not use all ingredients from the OECD benchmark since some are not relevant for the questions we are answering in this section. An example of criteria we did not use is 'state-owned enterprises in the marketplace'.

<sup>23</sup> In practice only requirement no. 7 ('Establishing a clear remuneration policy for boards') is now in design and will be applied after the new LNT comes into force.

<sup>24</sup> Because this section focuses on the design of the participation policy, we keep considerations on the functioning of it, for example about the extent to which the annual statements are ready six months after the end of the fiscal year, outside these paragraphs. See section 3.4 on the functioning of the participation policy.

Goal		How?	Relevant for field	Present? <sup>25</sup>
<b>Rationales for state ownership</b>	The state exercises the ownership of overhead-nv's in the interest of the society	1. It should disclose the objectives that justify state ownership	A	No
		2. Subject the rationale and objectives to a recurrent review and carefully evaluation	A	No
<b>The state's role as an owner</b>	The state should act as an informed and active owner, ensuring that the Governance of overhead-nv's is carried out in a transparent and accountable manner, with a high degree of professionalism and effectiveness	3. Establishing well-structured, merit-based and transparent board nomination processes, actively participating in the nomination of all boards	C	No
		4. Setting and monitoring the implementation of broad mandates and objectives, including financial targets, capital structure objectives and risk tolerance levels	B	No
		5. Setting up reporting systems that allow the ownership entity to regularly monitor, audit and assess its performance, and oversee and monitor compliance with relevant corporate Governance guidelines	A	No
		6. Developing a disclosure policy for overhead-nv's that identifies what information to publicly disclose, and mechanisms to ensure information quality. The state should also develop consistent reporting on overhead-nv's, publish annually an aggregate report on them and disclose the report through web-based communications in order to make accessible for the general public	A, B and C	No
		7. Establishing a clear remuneration policy for boards	C	No
<b>Equitable treatment of other shareholders and investors</b>	Where overhead-nv's include other (non-state) investors among their owners, the state and the enterprises should ensure shareholders' equitable treatment and equal access to corporate information	8. The state and overhead-nv should ensure that all shareholders are treated equitably	B	No <sup>26</sup>
		9. Overhead-nv's should observe a high degree of transparency, including as a general rule equal and simultaneous disclosure of information, towards all shareholders	A and B	No
<b>Disclosure &amp; transparency</b>	State-owned enterprises should observe high standards of transparency and be subject to the same high-quality accounting, disclosure, compliance and auditing standards as listed companies.	10. Examples of financial and non-financial information <sup>27</sup> to be disclosed to the public include a clear statement to the public of enterprise objectives and their fulfilment, financial and operating results including areas of concern for the state as an owner and the general public, the Governance, ownership and voting structure of the enterprise, the remuneration of board members and key executives, board member qualifications, selection process, including board diversity policies, roles on other company boards, any financial assistance, including guarantees, received from the state and commitments made on behalf of the overhead-nv, annual financial statements which are subjected to an independent external audit.	A, B and C	No

Table 3. Overview of the compliance of the participation policy with the four most relevant OECD best practices pillars on good Governance of State-owned enterprises

<sup>25</sup> Present in the National Ordinance Corporate Governance or in the Code Corporate Governance Sint Maarten. It is indicated where aspects are present in practice.

<sup>26</sup> The participation policy of Sint Maarten does not contain provisions or guidance on how the government should behave in enterprises where it is a minority shareholder or where multiple shareholders are present. No data was shared with us about the extent to which there is an equal treatment in practice and the extent to which the government of SXM has equal information position.

<sup>27</sup> This is dependent on the size and capacity of the entity. Big entities are expected to report and publish more than smaller ones.

### 2.3. The organization of the participation policy

The previous section outlined the fact that Sint Maarten's participation policy mainly and directly involves the minister (on behalf of the CoM) and the CGC. In this section the complete field of stakeholders is described that has been assigned a formal role regarding Sint Maarten's participation policy. These roles are outlined in different legislative documents among which the (previously mentioned) National Ordinance. Figure 2 (below) presents all stakeholders which are assigned a formal law in the participation's ecosystem of Sint Maarten.

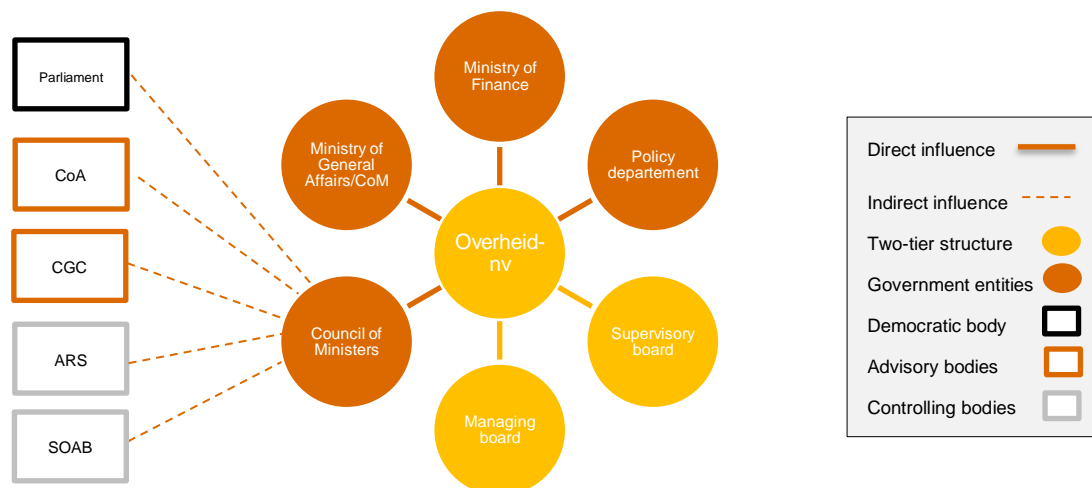


Figure 2. Overview of the stakeholders that are assigned a formal role on the overheid-nv's of Sint Maarten

The figure above demonstrates that beside the Managing Board and the Supervisory Board (which together form the two-tier structure of an overheid-nv) the law (based on several legislative documents) assigns direct or indirect roles to different stakeholders regarding the participations.

For instance, the ministry of Finance is formally responsible for the financial supervision of overheid-nv's, has an advising role to CoM regarding the financial statements of overheid-nv's and a co-advising role on the dividend policy. The ministry is also formally responsible for the "representation of the participation policy". Policy departments like TEATT and VSA represent the interests of Sint Maarten when it comes to policy matters like aviation, transport, energy, telecom, and health. From this perspective policy departments logically play a role in representing the public interests (and their realization) that are at the core of overheid-nv's.

Regarding Sint Maarten's Parliament, it has no direct (controlling) role regarding the participation policy and overheid-nv's. Since the CoM exercises the public ownership of the shares, and the Parliament controls the government (i.e. CoM), the Staten's influence on the overheid-nv's goes via the Ministers (i.e. CoM).<sup>28</sup>

Also, the two advisory bodies, Council of Advice ('CoA') and the CGC, and the two supervising bodies, General Audit Chamber ('ARS') and SOAB, have indirect roles on overheid-nv's that also go through the CoM. CoA advises the government about all draft national ordinances whereby CGC advises the government on the three previous-mentioned areas in the participation policy.

The role of ARS is limited to executing compliance, performance, and integrity audits of the government and is thus merely indirectly involved with overheid-nv's. So, the ARS does not audit overheid-nv's. Regarding the SOAB, it may receive a request from the CoM or a particular minister to review the financial statements of an overheid-nv and advise the government accordingly. But that is not a standard mandate of SOAB and comes only at request. This practice has changed in recent years. Before the SOAB had to review the annual statements of all overheid-nv's. This ensured that one stakeholder had a general overview of all financial details which are relevant to the country's national budget and that the budget cycle had synchronous timelines. No explanation could be provided on the reason why this practice has come to an end.

<sup>28</sup> See Staatsregeling Sint Maarten, art. 32(3) "De Ministers zijn verantwoordelijk aan de Staten".

See table 4 below for an overview of all stakeholders involved including their role and the legal basis for their role.

Stakeholder	Tasks and responsibilities	Legal basis
<b>Council of Ministers</b>	Exercising the public shareholder of ownership on behalf of the country of Sint Maarten	Organisatiebesluit Ministerie van Algemene Zaken, article 16 (paragraph 2d) <sup>29</sup>
	Insofar as the articles of association do not provide otherwise, the AvA, within the limits set by law or the articles of association, all authority not assigned to the board or to others. This includes e.g. the appointment and dismissal of management and supervisory boards, amendments of the Aol, dividend, issue and transfer of shares.	Code Civil Sint Maarten, BW2, articles 127 till 135a.
<b>Ministry of General Affairs</b>	At the direction of the CoM, running the Secretariat of the General Meeting of Shareholders of overheid-nv's in which the government of Sint Maarten has a majority interest.	Organisatiebesluit Ministerie van Algemene Zaken, article 16 (paragraph 2d)
	The 'Documentary Information Provision' division's tasks include performing documentary and archive supporting tasks and taking care of document management	Organisatiebesluit Ministerie van Algemene Zaken, article 17 (paragraph di to dv)
<b>Ministry of Finance</b>	<ul style="list-style-type: none"> <li>- Ensuring management and supervision of the financial administration and information provision</li> <li>- Taking care of financial reports</li> <li>- Ensuring financial supervision of overheid-nv's</li> <li>- Co-advising on dividend policy with regard to overheid-nv's</li> <li>- Advising on, formulating and supervising property policy</li> </ul>	Organisatiebesluit Ministerie van Financiën, article 11 (paragraphs k, l, n, o en q)
	The objective of the Ministry of Finance is to represent the internal affairs of the country in the fields of finance [...] and the participations policy of the country.	Landsverordening Inrichting en Organisatie Landsoverheid, article 14
<b>Policy department (for instance TEATT)</b>	Taking care of matters related to port, airport, utilities and companies providing transportation and telecom services	Organisatiebesluit Ministerie van TEATT, article 2, paragraph g.
<b>Supervisory board</b>	<ul style="list-style-type: none"> <li>- The duties shall in any case include: <ul style="list-style-type: none"> <li>a. Appointments of executive directors (Managing Board);</li> <li>b. Determining their remuneration</li> <li>c. deciding on matters affecting the day-to-day running of to go beyond; and</li> <li>d. Supervising the Managing Board and if necessary, suspending or dismissing members of the Managing Board</li> </ul> </li> <li>- Unless the Articles of Association provide otherwise, the supervisory board is authorized to suspend any member of the Managing Board</li> </ul>	Code Civil Sint Maarten, book 2, articles 18 and 19 (paragraphs 2 and 4).
	<ul style="list-style-type: none"> <li>- Supervise the policy of the Managing Board and renders advise to it incl. ensuring that the policy is in line with Aol and respect sound business principles</li> <li>- Ensure that the managing board draft a multi-year business plan, annual investment- and operational budget and at least 4 financial times a year.</li> </ul>	Corporate Governance Code Sint Maarten, chapter III, section b.
<b>Managing Board</b>	The day-to-day business of the entity	Code Civil Sint Maarten, book 2, article 18

<sup>29</sup> This role for the CoM is derived indirectly from 'Organisatiebesluit Ministerie van Algemene Zaken' since we did not receive other legislative document in which the exact tasks and mandate are outlined.



	<ul style="list-style-type: none"> <li>- Giving guidance to the general course of affairs of the overheid-nv</li> <li>- Giving guidance to the board execution of the multi annual business plan and the budgets as approved by the Supervisory Board</li> <li>- Submitting proposals regarding the distribution of dividends</li> </ul>	Corporate Governance Code Sint Maarten, chapter IV, section a
<b>Parliament</b>	Each member of the States has the right to put questions to the Minister	Staatsregeling Sint Maarten, article 62
	The Parliament controls the government	Memorie van Toelichting Staatsregeling, p. 43
	At State level, Antillean law recognizes the passive information obligation and not the active information obligation	Memorie van Toelichting Staatsregeling, p. 50
<b>General Audit Chamber Sint Maarten (ARS)</b>	Investigating the efficiency and regularity of the country's revenue and expenditure	Staatsregeling Sint Maarten, article 74 and Memorie van Toelichting, p. 55
	Sint Maarten's supreme audit institution. It is an independent body tasked with reviewing Sint Maarten's financial management	Landsverordening Algemene Rekenkamer, articles 20 and 42
<b>Corporate Governance Council (CGC)</b>	Independent, non-political advisor to CoM on matters related to the corporate Governance of overheid-nv's including providing a check on selection procedures, profiles and (inappropriate) board appointments and advising on certain financial decision like dividend and acquisition of shares.	National Ordinance Corporate Governance
	Advising the government on a wide range of areas including the strategy and business performance of overheid-nv's, support the preparation of AvA and in adjustment of statutes	Establishment Decree CGC. Article 1(3)
<b>Council of Advice (CoA)</b>	<ul style="list-style-type: none"> <li>- The Government hears the CoA about all draft national ordinances and national decrees</li> <li>- Parliament hears the CoA about draft national ordinances ('initiatieflandsverordening') submitted to Parliament by one or more members</li> <li>- The CoA is authorized to advise the government if it deems it necessary</li> </ul>	Staatsregeling Sint Maarten, article 69
	The CoA is the last general advisor to the government and also the last advisor to Parliament in case of legislative proposals.	Memorie van Toelichting Staatsregeling, p. 53
	<ul style="list-style-type: none"> <li>- The CoA is heard on all subjects of national ordinances, national decrees and draft Kingdom Acts</li> <li>- The CoA is authorized to issue advice to Parliament on request if it deems this necessary in Sint Maarten's interest</li> <li>- The CoA is authorized to advise the government or the Parliament on its own initiative</li> </ul>	Landsverordening Raad van Advies, articles 13 and 14
<b>SOAB</b>	<p>SOAB is charged with the following activities:</p> <ul style="list-style-type: none"> <li>a. the control of the financial and material management of the public finances and public property of Sint Maarten in the broadest sense of the word,</li> <li>b. checking whether the (annual) accounts have been drawn up in accordance with the regulations and with reality;</li> <li>c. support in the establishment and supervision of the administrative organization and financial administration</li> <li>d. the control of companies, foundations and other institutions in or in which Sint Maarten has a financial interest or to which Sint Maarten provides support, credit or guarantee;</li> </ul>	Landsverordening m.b.t. de aanwijzing van de Stichting Overheidsaccountantsbureau als interne accountant (2010), article III, par. 1a till par. 1d (government) and par. 1e (overheid-nv's)

Table 4. Overview stakeholders in participation policy with direct or indirect role



## 2.4. The functioning of the participation policy

Based on Sint Maarten's civil Code BW2, every fiscal year at least one AvA should be organized by the senior management of an overheid-nv. Only the Supervisory Board and the Managing Board are authorized to convene an AvA.<sup>30</sup> Under certain conditions, also the Shareholder (if he has at least 10% of the shares and when there is a matter of 'reasonable interest') can convene an AvA.<sup>31</sup> The procedure for this, is outlined in BW2, art. 130.

Based on information we received for this research on the total of AvA's between 2020 till 2022 (till March, 30<sup>th</sup>) one can conclude that five entities comply with this requirement in 2020 and 2021. Those entities are Harbour, TelEm, GEBE, Winair and Saba Bank. See table 5 below for the complete overview.

#	Public entity	AvA in 2020	AvA in 2021	AvA in 2022
1	Sint Maarten Harbour Holding Company N.V.	Green	Green	White
2	Princess Juliana International Airport Holding Company N.V.	Red	Green	Green
3	Sint Maarten Telecommunication Holding Company N.V.	Green	Green	White
4	GEBE N.V.	Green	Green	Green
5	Sint Maarten Economic Development Cooperation N.V.	Red	Red	White
6	Sint Maarten Laboratory Services N.V.	Red	Red	White
7	Postal Services Sint Maarten N.V.	Green	Red	White
8	Luchthaven Veiligheid Financiering Maatschappij N.V.	Red	Red	Red
9	Winair N.V.	Green	Green	White
10	Saba Bank Resources N.V.	Green	Green	White
11	DC-ANSP	Red	Red	Red
12	Ontwikkelingsbank van de Nederlandse Antillen N.V.	Red	Red	Red
13	Marven NV (inactief)	na	na	na

Table 5: Overview of all general meetings of shareholders AvA's 2020-2022 (till March), green = AvA was held

It also occurred that per fiscal year multiple AvA's were held on the same entity. GEBE was the entity on which the most AvA's were held between 2020 and 2022. Of the 26 AvA's which were held in total in that period, 8 were on GEBE, 5 were on TelEm and 4 on the Harbour. See figure 3 below for an overview.

<sup>30</sup> BW2, article 128.

<sup>31</sup> In BW2, art. 130(1) and 130(2) the right to convene an AvA is under certain circumstances also provided to the Shareholder. This article reads as follow: "Stemgerechtigden die alleen of samen ten minste tien procent van de stemmen ten aanzien van een bepaald onderwerp kunnen uitbrengen, kunnen het bestuur of de raad van commissarissen schriftelijk verzoeken om een algemene vergadering bijeen te roepen teneinde te beraadslagen en te besluiten over dat onderwerp, mits zij daarbij een redelijk belang hebben. (2) Indien het bestuur of de raad van commissarissen niet binnen veertien dagen na de dag dat het verzoek de vennootschap of het betrokken orgaan heeft bereikt, gevolg geeft aan een zodanig verzoek, kunnen de verzoekers zelf tot bijeenroeping overgaan."

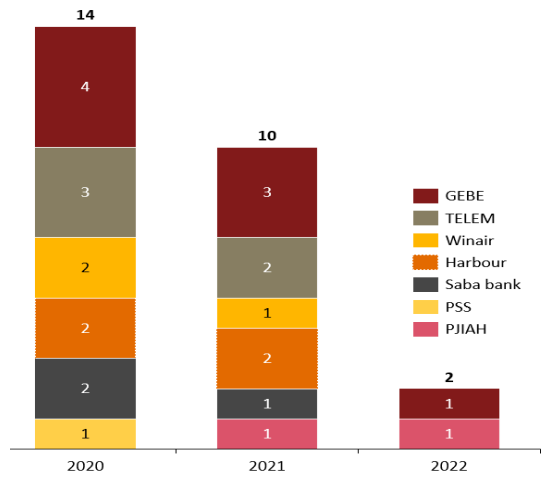


Figure 3: Overview of all general meeting of shareholders 2020-2022 (till March)

When it comes to the subjects that were discussed in each shareholder's meeting, there were in total 84 agenda points on the agenda of the AvA's between 2020 and 2022 (March, 30<sup>th</sup>). In figure 4 below, we clustered 61 agenda points out of 84 so we present an overview of 73% of all agenda points. The remaining 27% of the agenda points do not fit within these categories and are too fragmented to be grouped.

As figure 4 shows, the most recurring theme were the financial statements. At present overheid-nv's have their own auditor, therefore a general and integrated view lacks on their financial situation. Figure 4 also shows that selection procedures, profile, and appointment of members of the Supervisory and Managing Boards were the second most recurring theme. On financial ratios, the AvA's often discussed the liquidity and financial position and requirements of some overheid-nv's. The remuneration policy agenda points were specifically to approve performance bonuses of the Managing Boards. The dividend policy and distribution were the least discussed topics on the AvA's between 2020 and 2022. Whether the advice of the CGC was requested in topics with links to the three areas, as prescribed by law, is not clear in all cases. The same applies to the extent to which the government followed or deviated from those advices. See chapter 4 for more details on the practice of the corporate Governance policy and CGC.

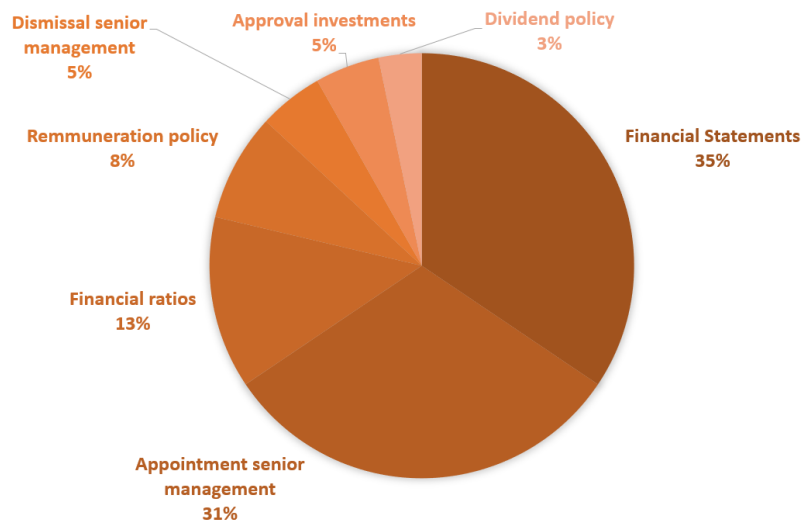


Figure 4: Overview of 73% of the agenda points of the AvA in 2020-2022 (till March)

Based on our document research and on insights collected in in-depth interviews with key stakeholders, familiarity with the participation policy, relevant legislative documents, and the awareness of their existence (and implications) appears to be relatively limited. For example, the government did not request an CGC advice on the dividend framework even though this is mandatory by law. The same applies to formal monitoring of performance by government/ shareholder representatives. There is no system in place for KPI's, tracking of goals and indicators that could signal the performance of overhead-nv's.<sup>32</sup> The reason behind this may lay in the fact that no rationales are formulated per entity on its goals and what public interests it needs to guarantee.<sup>33</sup> The design of these rationales and KPI's is the responsibility of the shareholder. Another reason for the limited familiarity with the participation policy and the exercise of the accompanying ownership rights is, according to the Worldbank, "*the frequent changes in government...in general this results in a system without much institutional memory that is not able to provide consistent oversight and is not able to build capacity to carry out its Governance duties*".<sup>34</sup>

Also, the role of the Ministry of Finance in representing the participation policy is minor. The Ministry used to have a more active role in the past in e.g. informing the Parliament on overhead-nv's. (See chapter 6 on information flow to the Parliament). Also, the role played by policy departments like TEATT seems to be minor, while they are responsible for the policy areas which has a direct connection to all overhead-nv's. Therefore, it is not known what strategy the government at present pursues to manage the entities as efficient companies serving the public interest of the country but without intervening in the day-to-day business (since that is the formal responsibility of the Managing and Supervisory Boards), and how the shareholder assesses investment plans of overhead-nv's in relation to their contribution to the public interests.

Finally, based on our document research and in-depth interviews Sint Maarten has received limited amounts of dividend. Table 1 shows that NAf. 23 million were received in total since 2010: NAf. 4 million from TelEm and NAf. 19 million from GEBE. The other overhead-nv's did not pay out dividend.<sup>35</sup> Different reasons may explain this. First, Sint Maarten did not have a dividend policy until recently. Second, our analysis of the AvA-agenda's (see figure 4 on previous page) shows that only 3% of the analyzed agenda points were related to dividend. This is an indication of limited attention for the matter. Third, it is possible that overhead-nv's which did not pay-out dividend, did not yield any profit and/or did not have sufficient levels of equity reservations to be able to pay out dividend. Fourth, it is also possible that no audited financial statements were (timely) available. This is a necessary condition by law (BW2) which should be fulfilled before paying out dividend to the shareholder.

## 2.5. Conclusions

We conclude that the participation policy of Sint Maarten in its design does not cover all important building blocks of a participation policy and misses parts like managing the shares, rationale of the public ownership and the approval of the strategy, investments, and remuneration. Some of the missing elements are reflected in Sint Maarten's Civil Code, while some are not. Several discrepancies exist between policy frameworks. Those elements which are already part of the participation policy are often insufficiently concrete.

Sint Maarten's dividend policy was written in 2013, and recently (May 2022) adopted. The adopted policy outlines the right considerations. The entity-specific ratios appended to the policy are however outdated and should be revised based on the entities' current capitalization structure and latest financial statements. Based on our research, a total of NAf. 23 million of dividend from

<sup>32</sup> The same conclusion was drawn by the Worldbank. See Corporate Governance Assessment PJIA (2019), p. 73

<sup>33</sup> This was also concluded in part 1 of this research for the five entities which were assessed.

<sup>34</sup> See Corporate Governance Assessment PJIA (2019), p. 72

<sup>35</sup> The dividend framework, which dates back to 2013, mentioned that since 2007 no dividend was received.

Sint Maarten's overheid-nv's is received since 2010: NAf. 4 million from TelEm N.V. and NAf. 19 million from GEBE N.V. No dividend has been paid out by the other overheid-nv's. Four reasons may explain this:

1. Sint Maarten did not have a dividend policy until recently.
2. Our analysis of the AvA-agenda's (see figure 4 on previous page) shows that only 3% of the analyzed agenda points were related to dividend. This may indicate a limited attention on the matter.
3. It is possible that overheid-nv's did not yield any profit and/or did not have sufficient levels of equity reservations to be able to pay out dividend.
4. It may also possible that no audited financial statements were (timely) available. This is a necessary condition by law (BW2) which should be fulfilled before paying out dividend to the shareholder.

The formal procedures of the participation policy are in place and are easy to execute. It is mandatory to seek advice from the CGC on three areas and it is clear what the government should do when deviating from that advice. Lack of clarity exists on its practical adherence: it is not known whether the government in all cases follows the formal procedures, including informing the CGC when deviating from its advice. While the CGC is also able to advise at its' own accord, this does not happen in practice. (See chapter 4 for more details about Sint Maarten's Corporate Governance Policy and Corporate Governance Council)

Furthermore, Sint Maarten's participation policy does not meet the internationally accepted standards as required by the Kingdom act Financial Supervision. Main shortcomings are the lack of clauses on (1) rationale of state ownership, (2) periodic reviews, (2) the role of the government as a shareholder, and the absence of provisions on transparency and disclosure to the public of Sint Maarten.

Regarding the organization of the participation policy, discrepancies can be observed on the allocated roles and responsibilities within the government. The 'National Ordinance on the rules for the involvement of the government in overheid-nv's and foundations' assigns the government (i.e. Council of Minister, CoM) and the CGC with a direct role<sup>36</sup>, while other legislative documents (such as 'organisatiebesluiten') outline that direct roles should also be assigned to the Ministry of Finance and policy departments (such as TEATT). In practice the involvement of both departments is limited. This raises the question which considerations and information are used to support decision-making of the shareholder at the general meeting of shareholders ('AvA'), especially on decisions which may have financial implications on Sint Maarten's budget or consequences for the public interest (e.g. where to invest in the telecom or post sector in order to ensure certain public interests), and how the shareholder organizes the know-how to take the right decisions in the interest of the entity and the country.

Practical implementation of the participation policy appears to be relatively weak and without a clear shareholder strategy. On some overheid-nv's multiple AvA's were held per year while on others no shareholders meeting were organized. Familiarity with the participation policy, relevant legislative documents, and the awareness of their existence (and implications) appears to be relatively limited. Furthermore, no concrete norms or KPI's are defined for overheid-nv's, which means no performance monitoring takes place on the extent to which the overheid-nv's guarantee the respective public interests. The same applies to the periodic review. Sint Maarten does not evaluate whether changing market circumstances influence the justification of public shareholdership, or whether the use of other instrument(s) may be more suitable.

The Parliament seems not to have a direct ex ante or ex post role in overheid-nv's. This should not necessarily be a problem, as long as the information flow to Parliament provides all necessary

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<sup>36</sup> Formally based on BW2 CGC has an indirect influence on the overheid-nv's since only the two-tier structure and the shareholder have direct influence.

details in order to exercise its controlling authority. It may however be worth considering a more active (ex ante) role for the Parliament since it has a fundamental role in authorizing budget decisions and holding government to account. (See chapter 5 for more details on the information provision on overheid-nv's to the Parliament of Sint Maarten).

## 2.6. Recommendations

### Recommendations to the government<sup>37</sup>

Sint Maarten needs a participation policy which is concrete, complete and meets the internationally accepted standards. The following building blocks of such a participation policy may be considered:

- *Rationale of the instrument 'public ownership'* including guidance on the (market) circumstances that may justify using other instruments (like public-private partnerships or private supply). The rationale, which should be subject to a periodic review, also needs to express what public interests the government would like to guarantee per entity and what KPI's it will apply to periodically monitor their realization. It should be noted that dividend is not a primary goal but a precondition for efficient operational management. Therefore, securing dividend cannot be the only goal of owning shares in private companies – overheid-nv's exist to foster public interests. Dividend only expresses that they are managed in an efficient way, which limits the risks for the owner in terms of future financial support or potential write-downs. Dividend should at the same time reflect an adequate yield for investment to the shareholder.
- *Vision of shareholding as an owner:* the shareholder should aim to support senior management of the entity in its effort of efficiently and effectively running the business. This role has limitations since every stakeholder has its own tasks and specific roles. Furthermore, the shareholder cannot and should not intervene in the operational management ('bedrijfvoering') or take over the role of the board in the day-to-day business. The shareholder may indicate the preferred approach when it comes to day-to-day business but needs to show significant restraint before intervening. Ideally the shareholder formulates a vision in the participation policy on how it will act as an informed, predictable, and active (not activist) owner, and ensures that the Governance of overheid-nv's is carried out in a transparent and accountable manner, with a high degree of professionalism and effectiveness. To realize this, capacity and (technical) knowledge building by the government are critical.<sup>38</sup>
- *Authorization mandate of the shareholder:* the participation policy needs to outline on what topics the AvA has the power of approval. Adjustments to BW2 should be made where necessary. Generally (based on international best practices), the shareholder is entitled to approve (after receiving a proposal from the Supervisory Board):
  - a) Strategy of the overheid-nv
  - b) Amendment of Articles of Incorporation
  - c) Selection profiles and procedures of Managing and Supervisory boards
  - d) Appointment, re-appointment, and dismissal of Managing and Supervisory boards
  - e) Remuneration of Managing and Supervisory boards
  - f) Financial statements
  - g) Dividend (and pay-out ratio)
  - h) Investments (above a certain threshold)
  - i) Foreign activities (if relevant)<sup>39</sup>

<sup>37</sup> Where relevant, it is marked that some recommendations needs preferably to be followed-up together with the senior management of the entities themselves.

<sup>38</sup> Also, the Worldbank has signaled the lack of capacity in the government to exercise ownership functions as a risk to the current system. See Corporate Governance Assessment PJIA (2019), p. 71

<sup>39</sup> In many OECD-countries foreign activities by overheid-nv's are not allowed.

- *Disclosure policy:* government shares in overheid-nv's involve taxpayer's money as well as (financial) risks to society in cases of e.g. liquidity deficits or (financial) distress. This means that a high degree of transparency should be in place towards the shareholder and the public. Therefore, we recommend considering to publish the financial statements of overheid-nv's, which would require an adjustment of BW2. We also recommend composing an annual report on all active overheid-nv'. The annual report should provide an accessible manual of each active overheid-nv, covering a standard combination of topics (incl. remuneration policy, remuneration ratio between staff and senior management, key financial ratios and revenues from government). We recommend establishing fixed moment in time on which this report is shared with Parliament to ensure predictability of information. For inactive participations, the annual report should provide underlying motivation for this inactive positioning and formulate an exit strategy (i.e. when and on what conditions). The annual report for each overheid-nv should cover the following five elements, presented in a set and recurring format:
  - I. *Key financial indicators:* as a minimum the following financial indicators and ratios should be presented in each annual report for every overheid-nv: turnover, profit, net profit (after taxes), liquidity ratio, solvability ratio, amount of equity, short-term debt, long-term debt and pay-out ratio. In addition, potential financial assistance (subsidies, loans, equity) from the government needs to be clarified, as well as insight on the biggest risks and most important investment plans.<sup>40</sup>
  - II. *Key organizational indicators:* policy objective for the entity, KPI's, number of FTE, composition of shareholders (in case the government is not the only shareholder) and shareholder rights<sup>41</sup>, and remuneration ratio between staff and senior management.
  - III. *Members of the Managing Board, with function and remuneration* (incl. mandate of the managing board regarding key acts) and the end of their appointment term.
  - IV. *Members of the Supervisory Board, with function and remuneration* (incl. mandate of the supervisory board regarding key acts) and the end of their appointment term.
  - V. Compliance with Corporate Governance Code
  
- *Stakeholder management:* the shareholder needs to define (in consultation with the entity) a view on the contact moments (incl. their frequency) between the shareholder, Supervisory and Managing Boards. Contact should be kept as formal as possible, at fixed moments, with a concrete and professional agenda. Decision-making outside those moments should be limited.
  
- *Strategy and principles of acquisition, management, and disposal of shares:* the government needs to formulate a holistic strategy and thorough principles on these three areas, including forward-looking guidance on situations that may require other decisions. For example, the telecom market in Sint Maarten has multiple providers, one of which is an overheid-nv. What role should this entity play in this (competitive) environment? What added value should it bring along? What public interests should it guarantee and what market circumstances may provide new facts to consider disposal of the shares? Another

<sup>40</sup> It is important that the government, in her capacity as shareholder, timely receives the audited financial statements of overheid-nv's in order to be able to inform parliament. Therefore, enforcement of BW2, article 120, should be strengthened in order to have those financial statements at maximum of six months after the end of the fiscal year.

<sup>41</sup> This may differ case-by-case based on clauses in the Aol's of overheid-nv's. To keep this simple, it is recommended to harmonize all shareholder-rights throughout all Aol's.



example is the electricity sector. In this situation, where no (competitive) market dynamics or multiple providers are present and the natural monopoly is expected to endure in the long run, different considerations will be at the heart of the strategy. As a result, the exit strategy for *overheid-nv's* in the energy sector is expected to look different to the exit strategy on *telecom nv's*.

- For the *acquisition* of shares, the strategy framework should at least contain the following aspects:
  - Strategic importance of the respective entity and the concrete goals and public interests that the government seeks to realize through the acquisition of shares
  - Overview of alternative instruments which the government will consider before the acquisition of shares to reach the same desired outcome and (in case of dismissal) why those alternatives were assessed as not suitable
  - Overview of compliance of the entity with the legislative and policy framework of Sint Maarten regarding e.g. corporate Governance, sustainability
  - Periodic review of the instrument public ownership for each entity
  - Requirement(s) for return on investment
  - Budget restrictions and whether the government has a fixed amount or ceiling in mind for acquisitions
  - A more concrete role for the CGC and other advising bodies like the CoA
  - Role of the Parliament in the participation policy, including whether the government needs an approval from the Parliament before or after acquisition. This is necessary since the Parliament at present, based on the Constitution of Sint Maarten, has a fundamental role in authorizing budget decisions and holding government accountable.
- For the *management* of shares, the strategy framework should at least contain the following aspects:
  - Motivation for management of the shares incl. market or economic circumstances which may justify using other instruments
  - Overview of the public interests that each *overheid-nv's* should guarantee, incl. a clause on the periodic review of these interests (once in 4 to 5 years) to evaluate the legitimacy of the shareholdership (i.e. are the *overheid-nv's* permanent or temporary?)
  - SMART targets and risk management framework for each *overheid-nv* (both preferably to be defined jointly with the senior management)
  - Target ranges for key financial ratios per entity (regularly reviewed), with insight into most up-to-date performance (i.e. based on latest financial statements). Key ratios covering (but not limited to) liquidity, solvency, and debt service coverage. In addition, formulation of a required rate of return ('rendementseis') per entity to guide the dividend policy.
  - Outline of shareholder rights and the approving authority (preferably unified across all *overheid-nv's*)



- Outline of guidelines on good corporate Governance principles and compliance with the Code, incl. transparency and disclosure (the former preferably to be outlined jointly with senior management)
  - Outline of guidelines on foreign activities (incl. mergers and acquisitions)
  - Outline of information disclosure (incl. frequency) to Parliament
  - Working procedures and timelines for dividend pay-out
  - Working procedures between shareholder, CGC and senior management (to be defined jointly with senior management)
  - Working procedures between CoM, AvA-secretariat, Ministry of Finance and policy departments (e.g. TEATT) related to coordination of the AvA and the participation policy in general
  - Working procedures with guidance on circumstances that may lead the shareholder to consider liquidity support, debt cancellation, write-downs and new loan agreements (incl. the role for Parliament in this)
  - Clauses on management of overheid-nv's in which Sint Maarten is not the only shareholder. Key consideration is the extent to which the country may pursue other shareholders to agree with its preferred options.
- For the *disposal* of shares, the framework should at least contain the following aspects:
    - Motivation for disposal, incl. market or economic circumstances which may justify selling of shares
    - The way in which public interests will be safeguarded when the government no longer acts as shareholder
    - Potential agreements or perpetual clauses
- Harmonization (where necessary) of Aol's with BW2 and other legislative frameworks (e.g. the new LNT-law). Ideally the Aol's do not contain any limiting clauses to the approving rights of the shareholder in BW2.
  - Documentation and registration of all relevant procedures and working methods with regard to the participation policy and its practice.
  - *Apart from the content, also the institutional design of the participation policy should be reconsidered, incl. allocation of a central coordination point:* the participation policy requires more (and more effective) coordination and oversight of all overheid-nv's. In addition, AvA's should be prepared according to professional standards which guarantee the predictability and professionalism of the shareholder. The institutional design should enable a situation in which the secretariat of the AvA connects with policy departments (e.g. TEATT) to request expert judgement on key points within policy areas of the department. In addition, the secretariat should connect with the Ministry of Finance – generally positioned at the heart of the participation policy – on finance-related decisions and discussions (on e.g. dividend, efficiency monitoring, implications of investments to dividend and equity, financial ratios). Ideally the Minister of Finance is the 'primus inter pares' regarding these decisions (and other decisions where relevant). The minister should ensure that overheid-nv's are primarily steered from a financial perspective. Both roles (by the policy departments and the Ministry of Finance) should be detailed more explicitly in the participation policy. This ensures unification of government policy and relevant considerations are integrated in a balanced way. To effectively organize the participation policy, the government may also consider:

- Establish more synchronized timelines on publication of financial statements of overheid-nv's, annual statements of the government, and dividend pay-out.
- Related to the above: give SOAB a structural role in auditing financials of overheid-nv's instead of operating only at request. This ensures an integrated overview of financial details of both the country and overheid-nv's and guarantees a more synchronized budget cycle in which relevant data is integrated and presented, supporting (more) meaningful financial reporting.

#### Recommendations to overheid-nv's

- Organize at least one AvA a year per overheid-nv. While this is already required by law, practical adherence appears to be limited.
- Seek a high degree of transparency and information disclosure to the shareholder and society and use web-based communication channels to timely publish relevant financial and operational information (incl. on compliance with Corporate Governance policy and remuneration policy, and details on composition of managing and supervisory boards).

### 3. Corporate Governance Policy

This chapter aims to analyze the corporate Governance policy of Sint Maarten and the extent to which the government as a shareholder and as legislator ensures compliance with that policy and enforces it when necessary. In this analysis we make a connection with what has already been concluded in the B15 track based on the ‘Corporate Governance Improvement Plan for the Airport of Sint Maarten’.<sup>42</sup> In doing so we present a complete overview of the (current developments in the) Corporate Governance policy of Sint Maarten.<sup>43</sup> Finally, we formulate, where relevant, recommendations to improve the corporate Governance policy and its enforcement. Also, in this context we make a connection, where relevant, with the B15 track and the ‘Improvement Plan’.

As already outlined in the introduction of this report, it is important to underline two points. First it should be noted that the draft legislation (‘landsverordening’) of the Corporate Governance (currently in the drafting process) as well as the draft Corporate Governance Code were not shared with PwC, as both documents are still subject to changes. Therefore, we reverted to in-depth interviews with key stakeholders to gather information on the provisions and clauses which at present are envisaged in the draft legislation. Our analysis in this chapter is thus largely based on details provided by key stakeholders and not on document research of the draft legislations itself. We did however receive the ‘Corporate Governance Improvement Plan for the Airport of Sint Maarten’ and could therefore study the identified areas for improvements and proposed recommendations. Other resources that are central in this chapter (e.g. current Corporate Governance Code and BW2) are public documents.

Second, it should be noted that the functioning of the draft Corporate Governance Policy is obviously not assessed since this legislation is still work in progress and did not yet come into force. Therefore, our assessment in this chapter is limited to the functioning of the current corporate Governance policy and the functioning of the current Corporate Governance Council. Thus, at the moment of writing no conclusions can be drawn on the practice of the new Corporate Governance policy. This should ideally be evaluated after the new laws and policies comes into force.

#### 3.1. The design of the Corporate Governance policy

The current corporate Governance policy of Sint Maarten is based on three pillars.

The first pillar is the National Ordinance Corporate Governance (including an explanatory memorandum) in which the legislator outlines that ‘private law arrangements’ like participations might have fundamental consequences for the country and should be used in a careful way. The National Ordinance determines that Sint Maarten should have a Corporate Governance Code and a Corporate Governance Council for an unlimited period, with an autonomous budget and mandate. The Code should adhere to internationally accepted standards on good and transparent Governance of overheid-nv’s and must apply to all overheid-nv’s (at level of the holding company and its subsidiaries, if applicable).<sup>44</sup>

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<sup>42</sup> The document dates from 10 June 2020. It is designed on behalf of the National Recovery and Program Bureau (NRPB) after a request of the CoM. The National Recovery Program Bureau (NRPB) is an implementation unit established on behalf of Government to execute and implement the Sint Maarten Recovery, Reconstruction and Resilience projects financed by the Trust Fund. The Corporate Governance Improvement Plan was drafted on the request of the CoM based on the World Bank review in 2018. The Corporate Governance Improvement Plan serves as a pilot to establish Corporate Governance best practices at the airport and strengthen the Corporate Governance Council and its functioning.

<sup>43</sup> Airport-specific recommendations regarding its legal structure as a holding and related recommendations to improve the Corporate Governance of its subsidiaries are not a part of this chapter. We only used the general recommendations with a link to the Corporate Governance policy of Sint Maarten.

<sup>44</sup> Article 3. The Code should also apply to among other foundations in which the government has the right to appoint members of the supervisory board and/or amend the Articles of Incorporation. See for the exact scope MvT, p. 5

The (current) Code is based on the principle ‘comply or explain’ and may regularly be revised at request of the Minister of General Affairs. Members of CoM (i.e. in practice the minister who is the contact person of the public shareholdership within an *overheid-nv*) should ensure the compliance with the Code through its integration in the statutes and Aol of *overheid-nv*’s. The minister should also make sure that a statement on the compliance is published in the annual report of the *overheid-nv*’s. The ordinance does not contain penalty clauses on non-compliance, as this is already covered in Sint Maarten’s civil Code (BW2). The explanatory memorandum clarifies that beside penalty options under BW2, also sanctions may be imposed by Parliament. “Negligent and careless behavior by the government” by, for instance, not seeking the advice of the CGC may give reason for Parliament to hold the government accountable.<sup>45</sup> Finally, the Ordinance determines that clauses should be seen as ‘*handelingsinstructie*’ which in practice is an order that should be executed.

The CGC should perform as a professional, objective, and independent advisory body which the Minister of General Affairs shall install (and CoM decides). The Ordinance explicitly states that the CGC should not be considered as a controlling or a supervisory body.<sup>46</sup> The CGC advises at request of the CoM (within 4 weeks)<sup>47</sup> or at its own accord and sends all of its advices to the Parliament. The mandate of the Council includes the three areas of dividend policy, obtaining and disposing of shares, and the appointment and dismissal of senior management (including selection procedures and profiles). The budget of the CGC should be designed and submitted to the Minister of General Affairs. *Overheid-nv*’s will contribute to the budget through a distribution formula (‘*verdeelsleutel*’). Currently the four largest *overheid-nv*’s should each pay a quarter of the budget.<sup>48</sup> With its budget the CGC is able to e.g. operate a secretariat and pay for external advice where needed.

The second pillar of the Corporate Governance Policy of Sint Maarten is the establishment decree of the Council Corporate Governance (‘*Instellingsbesluit*’). According to this decree the CGC has several tasks in which it supports the government in a structural way. Figure 5 (below) summarizes those tasks (see left-hand side) and compares them to those mentioned in the Ordinance Corporate Governance. Based on this comparison one can conclude that the common tasks provided to the Council by the Ordinance and decree are two in total, namely: dividend policy and selection procedures and profiles. This means that a large part of the content of the Establishment Decree significantly differs from the National Ordinance. The former outlines a broad range of tasks which are for the most part not reflected in the National Ordinance. Also, the clause on supervising the compliance with the government policy and general guidelines for *overheid-nv*’s<sup>49</sup> might be conflicting with the previously mentioned provision that the CGC is merely established as an advisory body and not as a supervisory one.

To exercise its tasks the CGC is mandated to request necessary information from senior management of all *overheid-nv*’s and conduct performance evaluation of members of senior management. Furthermore, the composition of the CGC should consist of at least three and at most five members. Each member is appointed by the government for a period of four years, selected on the base of a selection profile that is designed by the government, and obliged to observe secrecy. The composition of the Council should be as follows:

- At least one expert of company law with experience in corporate Governance;
- At least one expert with an economic background and knowledge of the local economy;
- At least one expert with a background in finance and experience as a manager.

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<sup>45</sup> MvT, p. 4

<sup>46</sup> MvT, p. 10

<sup>47</sup> See for a more extensive overview of the procedures of the council, chapter 3.

<sup>48</sup> Article 12. Till July 2022 all contributing *nv*’s were current with their payments except for the airport holding company PJIA.

<sup>49</sup> Task viii in article 1, paragraph e.

The establishment decree does not determine whether the members of the CGC may be re-appointed and what their remuneration is. Finally, the CGC is allowed to have a secretariat which may hire external advisors where necessary.



Figure 5. Comparison of Establishment Decree (LHS) and National Ordinance Corporate Governance Sint Maarten

The third pillar is the Corporate Governance Code. The current Code is under revision driven by recent developments, described below, after which the main provisions and clauses that are now part of the drafting process are presented and compared to the ones in the current Code.

In February 2019 the World Bank conducted a Corporate Governance Assessment of the Airport of Sint Maarten. The conclusion was that “*many aspects of international good practice are in place [...] however a number of areas of concern are identified to strengthen corporate Governance and to clarify roles and regularize the government oversight over the government-owned entities.*”<sup>50</sup> The areas of concern which were identified in the World Bank assessment, and which are relevant for this analysis are:<sup>51</sup>

- Commitment to Good Corporate Principles (by entity and by the government as shareholder)
- Structure and operation of the Supervisory and Managing Boards (role, function, composition, training, evaluation, compensation, and relations between both boards)

<sup>50</sup> Worldbank’s Corporate Governance Assessment PJIA (2019), p. 5

<sup>51</sup> Worldbank’s Corporate Governance Assessment PJIA (2019), p. 7-8.

- Transparency and disclosure (scope of information and disclosure of financial and non-financial data to shareholder and society)
- Stakeholder relations (dividend policy, conflict of interests and examination of the role of the shareholder)

The World Bank has recommended among others to design an ‘Improvement Plan’ with a roadmap how and when to implement the different recommendations regarding the strengthening of (the commitment to) Corporate Governance principles. In June 2020 the ‘Improvement Plan’ was presented. It is based on OECD guidelines on corporate Governance as well as the Worldbank framework for good Governance. The plan consists of five areas, three of which are relevant for this analysis:

- Improving the Corporate Governance Framework (for PJIA-companies)
- Strengthening the Corporate Governance Council
- Communication and stakeholder management

To improve these three areas, the ‘Improvement Plan’ identified several priority actions to strengthen the corporate Governance of the Airport of Sint Maarten. Some recommendations were specifically focused on the airport, while others were focused on the corporate Governance framework in general sense. Examples of the latter are a proper corporate structure with a legal framework and guidelines for supervisory and management board directors within overheid-nv’s and secondly, a well-functioning, competent and staffed Corporate Governance Council with authority.<sup>52</sup>

Insights collected through in-depth interviews with key-stakeholders signal that at present various changes are being discussed to implement the priorities actions and recommendations of the ‘Improvement Plan’. In table 6 (below) an overview is presented of the envisaged changes in comparison to the current corporate Governance Code. The overall impression is that the envisaged changes are positive and contain important steps for the practice of the corporate Governance policy in Sint Maarten. Also, the new Code (if the current draft becomes the final one) clearly aims at consolidating commitment to and compliance with the corporate Governance policy by changing the current principle of ‘comply or explain’ in ‘comply’ and strengthening the position of the CGC by e.g. recommending independent and multi-annual funding. Clauses on the appointment, re-appointment, and dismissal of the CGC members are still under discussion.

Furthermore, we note that the ‘Improvement Plan’ recommends the airport and its stakeholders to commit themselves to a high degree of accountability and transparency by among others advising remuneration guidelines by the shareholders and reporting financial and non-financial information to both the government as shareholder and society.<sup>53</sup> This is a vital recommendation of which it would be advisable to broaden its scope to the other overheid-nv’s and the new Corporate Governance Code as well. This would be in line with the statement in the Improvement Plan that *“Communication with the government, stakeholders, as well as the citizens of Sint Maarten is important for fostering understanding and creating common support base”*,<sup>54</sup> and with several other priority actions.<sup>55</sup> The signaling (and moral) value of concrete guidelines on remuneration and information transparency in the Corporate Governance Code and in the statutes of the overheid-nv’s is a vibrant part of sound and responsible business. Broadening the scope to all overheid-nv’s will also solve five of the 10 missing OECD aspects which are presented in the above-mentioned table 3. These five aspects are:

<sup>52</sup> Improvement Plan PJIA, p. 3

<sup>53</sup> Improvement Plan PJIA, p. 24, actions 5i and 6c

<sup>54</sup> Improvement Plan PJIA, p. 21

<sup>55</sup> Like for example improvement actions 2f, 5i and 6c on p. 23 and 24



5. Setting up reporting systems that allow the ownership entity to regularly monitor, audit and assess its performance, and oversee and monitor compliance with relevant corporate Governance guidelines
6. Developing a disclosure policy for overheid-nv's that identifies what information to publicly disclose, and mechanisms to ensure information quality. The state should also develop consistent reporting on overheid-nv's, publish annually an aggregate report on them and disclose the report through web-based communications in order to make accessible for the general public
7. Establishing a clear remuneration policy for boards
9. Overheid-nv's should observe a high degree of transparency, including as a general rule equal and simultaneous disclosure of information, towards all shareholders
10. Disclosure of financial and non-financial information to the public including a clear statement to the public of enterprise objectives and their fulfilment, financial and operating results including areas of concern for the state as an owner and the general public, the Governance, ownership and voting structure of the enterprise, the remuneration of board members and key executives, board member qualifications, selection process, including board diversity policies, roles on other company boards, any financial assistance, including guarantees, received from the state and commitments made on behalf of the overheid-nv, annual financial statements which are subjected to an independent external audit.

	Current Corporate Governance Code	Draft Code (and new national ordinance)
<b>Principle</b>	Comply or explain	Comply whereby deviation is only possible under concrete circumstances after thorough motivation
<b>Objective(s)</b>	Ensuring good business principles including transparent and sound management within overheid-nv's	It will have a broad scope and should ensure among other things preventing independent decisions by ministers (as occurred in the past)
<b>Shareholder's principles</b>	Not mentioned	<ul style="list-style-type: none"> <li>• Refrain from using overheid-nv's for political activities</li> <li>• Recognition of boards' responsibilities towards stakeholder management and responsible business conduct</li> <li>• Assure high standards of transparency incl. high quality of accounting, disclosure, and auditing</li> </ul>
<b>Shareholder's rights</b>	<ul style="list-style-type: none"> <li>• 'Dealing with' financial statements</li> <li>• Influence on general policy</li> <li>• Appointment and remuneration of members of Supervisory Board</li> </ul>	<ul style="list-style-type: none"> <li>• Approval appointment Supervisory Board members after advice council.</li> <li>• <i>[..under discussion at present]</i></li> </ul>
<b>Name Council</b>	Corporate Governance Council	Corporate Governance Authority
<b>Structure Council</b>	One-tier (Board)	Two-tier (Managing and Supervising board) foundation
<b>Structure Council</b>	One chamber conducting tasks in the areas of dividend policy, appointment/dismissal senior management members and acquisition or disposal of shares	Three chambers: (1) performs tasks as independent advisor; (2) assists at own accord in executing shareholder's rights and (3) assists in educating boards members
<b>Composition Council</b>	Independence and objective should be part of the profiles for council members	Professionalism, qualifications, and independence should be part of the profiles for council members
<b>Chairman Council</b>	Not mentioned	It is an option to nominate a Corporate Governance professional from outside Sint Maarten as managing or Supervisory director

<b>Advices Council</b>	Two possible advices: No objection and objection with motivation	Three possible advices: No objection, objection without weighty considerations and objection with weighty considerations; for the latter, if the minister would like to deviate, then the authority can go to court (Hof). Against that court decision, which should follow within two weeks, no further appeal is possible
<b>Financing Council</b>	'Verdeelsleutel' for the four largest overheid-nv's	Structural budget as part of the annual budget of the Ministry of General Affairs
<b>Appointment and dismissal Council</b>	Minister of General Affairs	<i>At present not decided yet, under discussion</i>
<b>Remuneration Boards</b>	<ul style="list-style-type: none"> <li>Supervisory Board: the remuneration of its members should not be dependent of the results of the entity. The remuneration should be as much as possible in line with reimbursements paid to top ranking civil servants and be mentioned in the annual report. A copy of the decision on the remuneration should be sent to the shareholder for its information.</li> <li>Managing Board: the remuneration of its members will consider the remuneration paid to Managing directors of other overheid-nv's and consist of fixed and variable components (e.g. a performance bond). Entitlements to pension benefits, severance pay arrangements and other compensations may be part of the remuneration. Remuneration should be approved by AvA after a proposal of the Supervisory Board</li> </ul>	<p>No concrete clauses on remuneration are envisaged at present. The new Code will however outline the main contours of responsible remuneration policy.</p> <p>Financial statements are not foreseen to become public</p>
<b>Training Boards</b>	No	Yes
<b>Conflicting roles clause</b>	No clauses	No clauses
<b>Transparency of information</b>	<p>Annual report of the overheid-nv's is only to be shared with the shareholder at the AvA. It should contain:</p> <ul style="list-style-type: none"> <li>Compliance with the Code</li> <li>Composition and profiles Supervisory Board members</li> <li>Remuneration Supervisory Board</li> <li>Reporting by external auditor</li> </ul>	Annual report of the overheid-nv's is only to be shared with the shareholder at the AvA
<b>Enforcement</b>	BW2 and 'handelingsinstructie' to make sure that the Aol's are adjusted in line with the Code <sup>56</sup>	Not envisaged at present
<b>Evaluation</b>	Yes, after 3 years	Yes, after 5 years

Table 6: Overview of the current and draft (under review) corporate Governance Code

### 3.2. The practice of the Corporate Governance policy

As outlined before, no conclusions can be drawn on the functioning of the new corporate Governance policy and the newly instructed Corporate Governance Authority since this legislative

process is still in progress. That is why in this section we focus on the functioning of the current corporate Governance policy and the current CGC.

In general, the functioning of the current Corporate Governance policy is perceived as weak, due to the limited commitment by both the government and the majority of overheid-nv's. The former may be driven by the fluid nature of the political environment, frequent changes in government<sup>57</sup> and therefore absence of 'institutional memory'<sup>58</sup> while the latter may be the result of significant management turnover.<sup>59</sup> It should be noted that some overheid-nv's did take promising first steps in the last couple of years to improve the practice of and transparency on corporate Governance by among others organizing educational trainings on relevant topics for their board members and reporting on the own compliance in the annual report.<sup>60</sup>

A second reason for the weak functioning of the current Corporate Governance policy is the lack of data and information disclosure. Sint Maarten has no general reporting or monitoring system which produces data on the compliance with the Code. The lack of data is also visible in the number of Aol's which are adjusted to the Code and in the extent to which the government requests, follows or deviates from the advices of the CGC on the three previously mentioned areas.<sup>61</sup> As outlined before, formally the government should inform the CGC (in writing) in case of deviation. It cannot be ruled out that the government follows the Council's advices, while at the same time, it cannot be ruled out that the government deviates but without a written motivation. See table 7 (below) for an overview.<sup>62</sup>

Year	Total number of advices rendered by CGC	Total advices of the CGC in which the Minister deviated and in which (s)he motivated this towards CGC
2017	11	0
2018	16	0
2019	13	0
2020	14	3
2021	10	2
2022 (until May)	4	0

Table 7. Overview of all issued advices of the CGC Sint Maarten (Source: data CGC)<sup>63</sup>

Furthermore various stakeholders do not see the current CGC playing the role it was designed to play. A reason for this is the lack of capacity and resources of the CGC, in addition to the lack of clarity about the CGC's tasks.<sup>64</sup> The CGC has no secretariat and no structural and reliable resources, as one of the four overheid-nv's which should contribute 25% of the Council's budget has stopped payments. Furthermore, no central and easily accessible forum is available where all advices of the CGC can be found and collected.<sup>65</sup> Also, important instruments that are mandated to the CGC like conducting performance evaluation of members of senior management are not used due to a lack of resources.

<sup>57</sup> The Worldbank (2019) has calculated that since the new Constitution in 2010 there have been had 8 cabinets and 11 ministers of TEATT with each Minister having an average tenure of 270 days. See Corporate Governance Assessment PJIA (2019), p. 71

<sup>58</sup> Corporate Governance Assessment PJIA (2019), p. 72

<sup>59</sup> This was also signaled by the Worldbank. See Corporate Governance Assessment PJIA (2019), p. 72

<sup>60</sup> Concrete examples are resp. the Port of Sint Maarten and TelEm

<sup>61</sup> Those three areas are: dividend, appointment and dismissal of senior board members and obtaining and disposing of shares

<sup>62</sup> In earlier research by the Audit Chamber on administrative appointments for directors (July 2017) the Chamber concluded that advice from the Council was present in 7 of the 23 appointments which occurred between 2015 and May 2017

<sup>63</sup> Information requested on the extent to which the government deviates without a written motivation, was not available

<sup>64</sup> At present the most exercised task is advising on the appointment and dismissal of members of senior management.

<sup>65</sup> It should be noted that all CGC advices are shared with the parliament for its information. We could not find out whether the latter publishes all advices on its website

As outlined before, the tasks of the CGC differ significantly between the ordinance and the decree. At this moment the advices of the CGC relate mainly to the appointment of senior management. On dividend or obtaining/disposing shares no advice has been requested in recent years.

The weak functioning of the current corporate Governance policy was also noticed by the Worldbank in 2019 and led the 'Improvement Plan' to formulate several recommendations to strengthen the corporate Governance policy in Sint Maarten. These recommendations ('action 5') are:

- |  |  |
|--|--|
| a) Review and amend Corporate Governance Ordinance and the Corporate Governance Code for the SXM SOE | e) Independent and sufficient multi-annual funding for the CGC |
| b) Install temporary independent unit to assist SMG in legal & organizational issues                 | f) Appointment procedures, profiles board members              |
| c) Create foundation structure with two tier Governance model, including articles of incorporation   | g) Nominate management and board members                       |
| d) Establish 3 units: independent advice, shareholder assistance, education                          | h) Professional staffing of CGC                                |
|  | i) Full transparency and accountability (permanent)            |

At the moment of writing the government of Sint Maarten seems to show commitment and take decisive steps in implementation these recommendations.

### **3.3. Enforcement practice by the government as shareholder and legislator**

Various stakeholders do not see practical enforcement by the government in her capacities as shareholder and legislator as (pro-)active and effective. Four reasons can be provided for this.

First, the government seems to suffer from a lack of knowledge about the practice of the corporate Governance policy and its rights and obligations as a shareholder and a legislator.<sup>66</sup>

Second, the National Ordinance Corporate Governance does not contain enforcement or penalty clauses. It assumes that the shareholder (and the AvA) will act and decide in line with BW2 and that the Parliament will hold the government accountable for compliance with corporate Governance at overheid-nv's. In practice the former does not occur, while the latter is inherent to the fact that Sint Maarten is a Parliamentary democracy and accountability to the Parliament should or cannot replace formal enforcement clauses. These seem also at the moment of writing not envisaged in the draft national ordinance Corporate Governance.

Third, lack of data and information disclosure from overheid-nv's complicates enforcement. At present no overview can be provided of all statutes or Aol's of overheid-nv's to assess whether the principles of the Code are integrated within them. Also, if the (by the current Code) requested reporting on the compliance with the Code does happen<sup>67</sup>, it only occurs to a limited extent in reports which are not accessible by the public but only by the shareholder. In those annual reports where overheid-nv's do state on compliance with the Code, the signaling value of that information is limited because the information presented is relatively brief.

<sup>66</sup> This was also concluded by the Worldbank. See Corporate Governance Assessment PJIA (2019), p. 71. In this context the Worldbank also underlined a "very high degree of lack of trust between many players in the current system. To some extent this appears to be due to frequent changes in government and participants owing allegiance to different political parties or coalitions. But a lack of clarity over roles and responsibilities also plays a role".

<sup>67</sup> Article 36 Code Corporate Governance

Fourth, as outlined before, the capacity and resources of the ‘advisor corporate Governance’ (as the explanatory memorandum calls the CGC) are not sufficient to be able to exercise its tasks. Therefore, the government is not enough facilitated in having a thorough overview of compliance.

### 3.4. Conclusions

From a design point of view several aspects of good Governance are (on paper) in place or are expected to be in place after the introduction of the new Code and the new National Ordinance Corporate Governance – this however only applies in case the new Code is adopted in the way that is presented and analyzed in this research. In addition, the reforms which are currently being implemented as part of the ‘Improvement Plan’ contain modifications which will clearly improve the corporate Governance practice in Sint Maarten. Different amendments to the National Ordinance and the Code are promising such as the strengthening of the position of the Corporate Governance Council and its structural support to the shareholder. We note that the ‘Improvement Plan’ has identified ways to streamline the role of the CGC and improve the clarity of its tasks.<sup>68</sup> If implemented, these would be a good step forward as well. Sound implementation is key in order for these amendments to have the expected impact.

However, attention is required on three concrete clauses which are not yet envisaged in the new corporate Governance policy and the new corporate Governance Code: (1) information disclosure, (2) remuneration guidelines and (3) enforcement. It is advisable to explicitly integrate clauses on these three areas in order to lift Sint Maarten’s Corporate Governance policy up. It should be noted that the ‘Improvement Plan’ has already recommended these clauses for the airport. Our advice would be to broaden the scope to all overheid-nv’s since these parts are vital part of sound corporate Governance policy.

Without a sound database, commitment and thorough overview, no effective enforcement can take place. The current extent of enforcement is not seen by stakeholders as (pro-)active and effective. The improvements that are at present discussed in the context of the Improvement Plan, especially on the future role of the Corporate Governance Authority, will provide useful ways of strengthening the enforcement on corporate Governance. To assess whether the changes effectively work, we would recommend evaluating the new corporate Governance policies after 3 years from the moment they come into force.

### 3.5. Recommendation

We formulate different ‘need to have’ recommendations. Where relevant we indicate in italic text where they are linked to the ‘Improvement Plan’.

Recommendations to the government (in the assumption that clauses in the draft Code will ultimately be adopted):

- Improve adherence to and pro-active practicing of the corporate Governance policy. Build up sufficient know-how within the government to overlook, and where necessary enforce, good Governance. This can for example be done by raising awareness through trainings and educational programs to government officials. Ensure also that corporate Governance-related policy documents and policies are clearly articulated, documented, formalized, up-to-date and then- crucially- implemented and monitored on an ongoing basis. Express also continuous commitment to this subject by the right “tone at the top”. *[Link with improvement actions 4a and 5a]*
- Improve transparency by both the government as well as the overheid-nv’s, e.g. by requesting annual reports of overheid-nv’s and their Aol’s to become public (as is already

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<sup>68</sup> See for example actions 5a and 5c.

advised in the Improvement Plan for the airport). *[Link with improvement actions 4d, 5i and 6c]*

- Include explicit guidelines on remuneration<sup>69</sup> and enforcement in the new Code and new Ordinance. Although the Code is soft law, it has a signaling (and moral) value which should be used to draw attention to responsible and sound business principles. Details on remuneration of both boards should be published in the annual reports of overhead-nv's. *[Link with improvement action 2f]*
- Foster harmonization between the different (and at parts conflicting) legislative documents by clarifying the tasks of the CGC. They should be proportional with the resources of the CGC. Clarify in the new Code also whether members of the CGC may be re-appointed and ensure their independency through their selection, appointment, and dismissal procedures. *[Link with improvement actions 5a]*
- Design a general and public monitoring system with a database presenting up-to-date documents and facts on the compliance with the Code by all overhead-nv's. Consider also the establishment of a monitoring commission to have a thorough overview of the compliance with the Corporate Governance Code by the different overhead-nv's.
- Evaluate after approximately 3 years the newly adopted corporate Governance policy and the functioning of the new structure of the Corporate Governance Authority.

#### Recommendations to the CGC (future name: Corporate Governance Authority)

- Publish all advices on an own web-based communication channel to give them more exposure. Sharing advices with the Parliament, as already is the case, is important but may not be sufficient since this creates transparency dependency. The CGC needs to communicate directly with the society of Sint Maarten, following the principles of sound and good Governance. *[Link with improvement actions 4d, 5i and 6c]*
- Urge the government for a general and public monitoring system including a database presenting up-to-date oversight and documents on the compliance with the Code by all overhead-nv's. The CGC should have access to this database in order to monitor the compliance if necessary (in the case no monitoring commission is being created).
- Increase advices provided at own accord. Specifically, on strategic decisions with potentially fundamental implications for the overhead-nv's, like multi-annual investments or new activities. Publicize these advices as well. *[Link with improvement actions 5i and 6c]*

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<sup>69</sup> We are aware of the fact that the scope of the draft-LNT which is now in the drafting process will include all overhead-nv's and enforce disclosure of the remuneration details for both boards. In our opinion this does not replace the necessity of concrete clauses on this topic in the Code Corporate Governance since the Code is widely seen as a signaling and guiding document.



## 4. The Standards for Remuneration Act (‘Landsverordening Normering Topinkomens’)

This chapter aims to analyze the way Sint Maarten’s government at present enforces the ‘LNT’ in her capacity as shareholder and legislator and to formulate, where necessary, recommendations to improve the enforcement of this law.<sup>70</sup>

### 4.1. The enforcement options of the LNT by government as shareholder

Sint Maarten’s government in principle has two options to enforce the LNT in overheid-nv’s in her capacity as shareholder.

First, the current Corporate Governance Code of Sint Maarten prescribes that remuneration of the Managing Board of overheid-nv’s is a subject on which the Supervisory Board should advise the AvA, for the latter to approve the remuneration.<sup>71</sup> In that advice the Supervisory Board “takes into consideration the remuneration which is paid to Managing Board of the other Island owned companies”. Regarding the remuneration of the Supervisory Board of overheid-nv’s, the Code requests that “the reimbursement should be as much as possible in line with reimbursements paid to top ranking civil servants of Sint Maarten”. A copy of decisions made by the Supervisory Board about its own remuneration and travel expenses should be sent to the shareholder “for its information”.<sup>72</sup> This means that according to the current Code the AvA should approve the remuneration of the Managing Board but not (necessarily) of the Supervisory Board. As a shareholder the government has the right to put discussion points on the AvA agenda and express consent or objection to the remuneration details of the Supervisory Board. It is unknown how these clauses will be formulated in the new Code of Sint Maarten.

Second, BW2 contains clauses on the approval of remuneration for Managing and Supervisory Board members. In articles 136 and 141, respectively, the mandate to approve the remuneration of both boards is provided to the AvA. “Tenzij de statuten anders bepalen, komt de bevoegdheid de bezoldiging van een bestuurder (commissaris) vast te stellen toe aan de algemene vergadering.”

As is clear in the previous paragraph the ‘tenzij’ provision in practice implies that the statutes<sup>73</sup> of overheid-nv’s may contain limiting clauses on the remuneration policy and the approval rights of the shareholder at the AvA. We did not analyze the separate statutes of the 12 overheid-nv’s as it is outside the scope of this research. Therefore, we cannot assess whether this is a meaningful risk and to what extent statutes at present are in line with BW2 on the approval rights of the shareholder regarding the remuneration policy. At the same time, we consider this an important point since it may restrict the enforcement options of the shareholder.

### 4.2. The enforcement options of the LNT by government as legislator

Sint Maarten currently has a temporary LNT-law which will be replaced by a new and permanent law over the course of 2022. The current temporary law does not contain enforcement clauses as

<sup>70</sup> As outlined in the introduction, it should again be noted that the concept-legislation of the LNT which is now in the drafting process was not shared with PwC because the legislation may still go through changes after the advice of the ‘Raad van Advies’ and the parliamentary discussion. Therefore, we used in-depth interviews with key-stakeholders to gather information on the provisions and clauses which at present are foreseen in the LNT. Our analysis in this chapter is thus mainly based on details provided by key stakeholders and not on document research. Other resources that are central in this chapter, like the Corporate Governance Code and BW2, are public documents.

<sup>71</sup> Corporate Governance Code, article 27.

<sup>72</sup> Idem, article 11.

<sup>73</sup> Sometimes the Statutes are also called the articles of incorporation.

it was created strictly with the goal to have a transitional law in place until the new legislation comes into force. Based on the research conducted, it is been observed, should the government enforce the LNT based on the temporary law, then almost no legal action towards senior managers within overheid-nv's would take place, as highest income remunerations are within the current LNT-standard. In addition, the scope of the temporary LNT-law is limited, e.g. to overheid-nv's with more than 50% government shares.<sup>74</sup> This means that a quarter of the overheid-nv's would fall outside the scope.

The new law, as it is currently being drafted, seems more extensive and covers elements like enforcement, information disclosure, scope, transition period and evaluation obligation. In table 8 (below) a summary is provided of the most important clauses.

Subject	Content <sup>75</sup>
<b>Scope<sup>76</sup></b>	<ul style="list-style-type: none"> <li>All overheid-nv's (holding company as well as its subsidiary companies) in which the government of Sint Maarten has a minority (less than 50%) or majority (more than 50%) share.</li> <li>In case of minority participation, the headquarter of the overheid-nv should be in Sint Maarten.</li> </ul>
<b>Standard</b>	<ul style="list-style-type: none"> <li>Lower than the current norm in the temporary LNT (NAf. 474.236 gross).</li> <li>The standard will include the '25% payment reduction' and all other compensations like dismissal compensation and performance bonus and lump sum/notional amounts are also regulated and included in the LNT. In this context, a connection was sought between the LNT and the WNT in the Netherlands, along with the definition provisions included in the latter.</li> </ul>
<b>System/ supervision</b>	All LNT-institutions are obliged to have their financial statements audited by an external auditor. However, the law does provide the possibility for exemptions by ministerial regulation. Such exemptions will only be made in extraordinary cases. When assessing the Financial Statements, the auditor must check for legal compliance to the LNT and determines whether the LNT has been breached. The LNT-institution will be informed by the auditor to reclaim the remuneration that is above the standard. The auditor is also obliged to inform the Minister of Finance for the minister to act in case the overheid-nv itself did not (timely) reclaim.
<b>Disclosure</b>	Remuneration details of Managing and Supervisory board members should be published in the annual reports of overheid-nv's. Those annual reports should be made public as well.
<b>Enforcement</b>	<ul style="list-style-type: none"> <li>Administrative approach ('bestuurlijke handhaving via last onder dwangsom en terugvordering')</li> <li>The Minister of Finance is the enforcement authority on the LNT. He is obliged to enforce and reclaim when he is informed by the auditor.</li> </ul>
<b>Exceptions</b>	Control by the auditor and disclosure of remuneration details by 'small' LNT-institutions may have a disproportionate impact for small LNT-institutions. To provide them with an exception on this, a ministerial regulation should be signed, which determines lighter accountability standards and requirements.
<b>Anti-accumulation</b>	Yes
<b>Transition period</b>	2 years
<b>Evaluation clause</b>	After 3 years from the date of commencement. Evaluation should be shared with Sint Maarten's Parliament.

Table 8: Overview of the most important clauses of the new LNT law of Sint Maarten

The table above shows the enforcement clauses for the legislator that, as per the new LNT, will come into force. The Minister of Finance will have the authority to enforce and impose a penalty

<sup>74</sup> Usually in overheid-nv's where the government is not the only shareholder an effort obligation ('inspanningsverplichting') is in place in order to pursue the other shareholders to support the legal remuneration norms for the senior management.

<sup>75</sup> This content may change because of the advice of the Raad van Advies or after the parliamentary legislative discussion.

<sup>76</sup> In reality the scope is broader including among others ministries, Ombudsman, Algemene Rekenkamer and foundations receiving governmental subsidies. However, in this table only clauses relevant to overheid-nv's are presented

('last onder dwangsom') to reclaim, after he is informed by the auditor of the overheid-nv's. Also, the entity itself will have the opportunity to reclaim. Important in this are the disclosure clauses. The remuneration details of both boards should be published in the annual report and the report itself should be made public. This information transparency is critical to obtain a clear overview as well as support effective enforcement when necessary. Transparency should also be considered as an important instrument in supervising the LNT-guidelines. Therefore, it is important that in the current draft LNT-law enforcement clauses are envisaged when this transparency ('publicatieplicht') is not followed on.<sup>77</sup>

Furthermore, the scope of the new LNT seems quite broad and includes the minority participations of Sint Maarten. It is important that the new LNT-law has limited options for exceptions and contains an anti-accumulation clause. The latter prevents the cumulative remuneration of one senior manager related to different positions at different overheid-nv's to exceed the LNT-norms. In addition, it is important that the LNT will be evaluated after three years, and the evaluation will be shared with the Parliament.

At the same time, we see two areas of attention in the current LNT-proposal. First, the system is based on entities with audited financial statements, which are on track with their reporting. The day-to-day reality in Sint Maarten is more complicated, which means the LNT-law would ideally require clauses for entities which have no (timely) audited financial statements. This seems at present not foreseen in the current draft. Second, the same challenge will apply to entities which will not publish their annual report. It is not known how the legislator will notice and enforce this.

#### **4.3. Enforcement practice of the LNT as shareholder and legislator**

At present BW2 does provide the AvA and the shareholder with the authority to approve the remuneration of both boards. Based on the analysis of AvA topics (see previous chapter 3 'Participation policy') in the period 2020-2022 one can see that the shareholder did approve the remuneration (incl. performance bonus) of some overheid-nv's. It is however unknown whether this has happened also for the other entities before 2020. It is also not known if and what standards the shareholder has put central in its approval decision and which considerations were weighted in its decision (including whether KPI's or performance contracts were available). Therefore, we do not have any data on the enforcement of LNT by the shareholder.

As a legislator no enforcement has taken place so far, since (as outlined before) the current law does not contain enforcement clauses and is meant to be a temporary law. Since the new LNT-law has not come into force yet, no findings can be formulated on its enforcement in practice.

#### **4.4. Conclusions**

In principle, Sint Maarten has different options as a shareholder and as a legislator to enforce the LNT, despite the fact that the Corporate Governance Code (soft law) and the civil Code BW2 (hard law) do not provide the AvA with the same mandate. This means that the government at present has the possibility as a shareholder to approve (or reject) the remuneration policy of overheid-nv's. For some overheid-nv's, the government did approve the remuneration in the last three years (see our analysis of the AvA agendas in chapter 2). It is however not known what considerations supported approval of the government, nor how the remuneration for other overheid-nv's was approved.

Also, it is noteworthy to mention that most of the Articles of Incorporation of the overheid-nv's were drafted and adopted before the introduction of the Corporate Governance Code and the amendments to the Civil Code Book 2 (BW2), as such, they may contain conflicting or limiting clauses and may restrict the shareholder's authority to approve or reject the remuneration. We did not investigate the separate statutes of overheid-nv's to see whether this is the case, as this is

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<sup>77</sup> The current draft LNT-law contains an enforcement clause in article 13 to administer a last onder dwangsom in the event article 10 ('publicatieplicht') is infringed upon.

outside of the scope of this research. This ambiguity may change after the adoption of the new LNT-law. If implemented in its current draft, it seems to have thorough administrative clauses and offers the shareholder clear guidelines for its approval decisions at the AvA. The new LNT-law is an administrative instrument which enables the government to enforce the law and facilitate transparency of information. The effectiveness of the new LNT-law depends however on two key conditions. First, the financial statements need to be timely audited and approved by the shareholder. Second, the Minister of Finance needs to take decisive measures when being informed on breaches of the LNT-law. In this light we see two areas of attention:

1. In the current draft of the LNT, no clause is formulated on the case where an *overheid-nv* does not have audited financial statements or when it lags in its financial reporting
2. It can be argued that the draft-LNT will not automatically overrule the statutes of *overheid-nv*'s in case they contain limiting clauses on the remuneration and/or on the approving authority of the shareholder. Legal discussion is imaginable when it comes to the question of whether or not the LNT goes against the core system of BW 2. Especially in a situation where an existing top income earner does not voluntarily agree to the new legal regime and publication obligation. For an effective enforcement of the LNT-guidelines, the government as a shareholder is advised to make sure that the LNT-guidelines are integrated in the statutes of the respective *overheid-nv*'s and that they are fully corresponding.

No enforcement has taken place in the last years, as the new LNT-law is not yet in place and the temporary LNT-law did not contain clauses on abovementioned areas.

## 4.5. Recommendations

### Recommendations to the government

Although the draft LNT is a good and important step in the right direction, we see room for improvement regarding an effective enforcement of the LNT by the government as a shareholder and as a legislator.

- Enforcement of LNT as shareholder:
  - Ensure that the new Code Corporate Governance (which is now in the drafting process executed under B15) is in line with provisions of the new LNT-law and BW2 regarding the norms and authorization rights of the remuneration policy. The Code is an important (moral) guideline on principles of responsible and sound business and should therefore contain explicit clauses on the approval rights of the shareholder of the remuneration of both boards. High degree of transparency is also recommended in the Code. Therefore, the government needs to consider adjusting the Code and request the publication of the remuneration details in the annual report and publicize the latter.
  - Ensure that the statutes and Aol's of *overheid-nv*'s have no conflicting or limiting clauses when it comes to the LNT-norms and authorization rights of the remuneration policy. If that is the case and the government would aim to effectively enforce the LNT, then the statutes of the respective *overheid-nv*'s should be brought in line with the new LNT-law and with BW2. The shareholder is authorized to amend the statutes of an *overheid-nv* at the AvA and demand that it be brought in line with LNT-law and with BW2.
- Enforcement of LNT as legislator:
  - Integrate provisions in the new LNT-law on cases where *overheid-nv*'s lag in their financial reporting or do not have audited financial statements.

- Integrate provisions how non-publication of the annual reports including remuneration details by overheid-nv's will be enforced.
- Consider publishing an annual overview by the ministry of Finance with all remuneration details of overheid-nv's and share this with Sint Maarten's Parliament.<sup>78</sup>

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<sup>78</sup> Ideally this overview also contains the remuneration details of all LNT-related stakeholders but that is outside the scope of this research

## 5. Information flow to Sint Maarten's Parliament

This chapter aims to analyze the way the government informs the Parliament regarding overheid-nv's and formulate, where necessary, recommendations to improve the flow of information.

It should be noted that according to BW2 the Parliament has no direct role in the participation policy of Sint Maarten. The same applies to its role in the operational management of the overheid-nv's (neither does the CoM as shareholder). In case the Parliament requests to receive information about a particular overheid-nv, this should be channeled via the President of the Parliament to CoM, based on roles and responsibilities as laid down in BW2. The country's Civil Code namely stipulates that only the AvA (in which CoM represents the shareholder) and the two-tier structure of the overheid-nv (Supervisory and Management Boards) are the bodies that are to be involved in the respective overheid-nv. However, based on the Constitution, the Parliament of Sint Maarten has a fundamental role in authorizing budget decisions and holding government accountable. Therefore, information provision to Parliament should enable it to be well-informed in taking financial decisions related to overheid-nv's like for instance liquidity support, credits, deductions, or dividend amounts. In this chapter the flow of information is therefore assessed to ensure the principles of checks and balances are upheld and enables the Parliament to exercise its oversight of the adherence to corporate Governance best practices of the CoM (in its capacity as shareholder). Ministers, and not the overheid-nv's, are accountable to Parliament and have the obligation to provide it with information as requested. Special arrangements may be in place in case the Parliament requests competitive or confidential business information, as is customarily disclosed by the respective overheid-nv's.

### 5.1. The information flow requirements

The basis of the information flow to Parliament can be found in three legislative documents.

First, based on the explanatory memorandum<sup>79</sup> of the Constitution of Sint Maarten, the government does not have an active information obligation towards the Parliament but merely a passive one. This means that the government only informs the Parliament after (written or oral) questions or information requests by the latter.<sup>80</sup> Ministers are accountable to Parliament and have the obligation to provide it with information when requested as per articles 62 and 63 of the Constitution. The answers should be, according to the rules of order of Parliament, provided within three weeks. If that is not feasible, a notification should be sent to Parliament with the underlying reason.<sup>81</sup>

Second, the 'Comptibiliteitslandsverordening' requires the Minister of Finance to send the annual budget and financial statements of the country of Sint Maarten to Parliament. In both documents, which are presented to Parliament for establishment ('vaststelling'), an overview should be provided of all participations of the country.<sup>82</sup> This means that sharing the financial statements of the respective participations with Parliament is currently not a formal requirement.

Third, the 'Rijkswet financieel toezicht' requires the government to regularly report to the 'College financieel toezicht' (Cft) on the implementation of the budget during the current budget year.<sup>83</sup> Since the COVID-19 pandemic the Cft has requested the government to report on the financial

<sup>79</sup> 'Memorie van Toelichting Staatsregeling Sint Maarten goedgekeurd in ontwerp door Eilandsraad, 21 juli 2010', p. 50

<sup>80</sup> Staatsregeling, article 62 and 63. For example in the Netherlands the government is obliged to inform the parliament on a pro-active base when it comes to budget-relevant matters. The idea behind this is that otherwise the parliament cannot exercise its controlling rights. Since July 1<sup>st</sup> 2021 this information obligation is expanded. At present the Dutch government is also obliged to publish all preparation documents which underlies new laws

<sup>81</sup> Rules of order of the parliament, Article 69a

<sup>82</sup> Comptibiliteitslandsverordening, resp. article 12 (1i) and article 18 (1i)

<sup>83</sup> Rijkswet financieel toezicht, Article 18



situation of overheid-nv's and the extent to which the government expects liquidity deficits and related risks to the country's budget. These 'Uitvoeringsrapportages' (UR) are also shared with Parliament for its information.

## 5.2. The practice of the information flow

At present four information flows can be observed on an active base, three of which are originated by the government. See table 9 below for a complete overview.

#	Document	Author	Shared with	Content	Frequency
1	Overview draft national budget ('overzicht van deelnemingen') and an explanatory paragraph ('bijlage 2 toelichting')	Government	Parliament (for decision) & Cft	Overview of all participations of the government incl. its share and the year of the latest available Financial Statements. Recently the government added an explanatory paragraph in which it elaborates on overheid-nv's with the highest risks for the budget. <sup>84</sup>	Annual
2	Overview financial statements of the government	Government	Parliament (for information) & Cft	Describes the realization of forecasts as outlined in the national budget incl. relevant details on overheid-nv's. <sup>85</sup>	Annual
3	'Uitvoeringsrapportages' (UR)	Government	Parliament (for information) & Cft	Describes the financial situation of overheid-nv's and the extent to which the government expects liquidity deficits and budget risks.	Quarterly
4	Advises on appointment or dismissal of members of managing boards and supervisory boards	Corporate Governance Council	Parliament (for information) & government	Based on its legal tasks, the CGC send all its advices to Parliament. Although its advising mandate is about dividend, obtaining and alienating of shares and appointment/dismissal of senior management, in practice advises on the latter are the most frequent ones.	As often as occurring

Table 9: Overview information flow to Sint Maarten's Parliament on overheid-nv's

Beside the above-mentioned documents, no formal obligation exists to share the financial statements of overheid-nv's with the Parliament. In practice members of Parliament poses questions to government in which they – in some cases – request those statements. As a response the Parliament is invited to send an official request to the relevant representative of the overheid-nv within the government. Eventual audits by SOAB of a particular overheid-nv should be requested in the same way.<sup>86</sup> These audits may be confidential and should therefore be shared in a manner that takes this confidentiality into account.

Based on insights collected through in-depth interviews we observe that the information flow to Parliament on overheid-nv's is not based on a clear and well-defined information provision framework. For example, in 2018 the Minister of Finance shared the financial statements of overheid-nv's with Parliament while in the following years this did not recur. Another example is that GEBE N.V. shared in 2019 and 2022 its financial statements with Parliament while no formal requirement obliges it to do so. In fact, only the government is obliged to share information with Parliament and not overheid-nv's since only ministers (in their capacity as shareholder) are

<sup>84</sup> In the latest draft budget, this information is 'Overzicht van deelnemingen', to be found on p. 77 (pdf page 101) and explanatory paragraph to be found on p. 65 of appendix 2 (pdf-page 182). The current entities in that paragraph are GEBE, PSS, airport, TelEm, Winair and Port of Sint Maarten

<sup>85</sup> In the latest financial statements, this information is to be found on page 41, 42 and 46

<sup>86</sup> An example of this are questions UV/030/2021-2022 in which the Prime Minister, in her capacity as the representative of TelEm within CoM was requested to share the SOAB audit and the annual statements of TelEm with the parliament

accountable to Parliament.<sup>87</sup> Information collected through our in-depth interviews also signal a limited understanding of the relevant roles and responsibilities of all relevant stakeholders in the participation policy. See table 10 below for an overview of information shared between 2017 and 2022 (April), besides the documents which are outlined in table 9.

#	Date Received by Parliament	From	Subject
<b>2017</b>			
1	11/aug/2017	MinFIN	Advice concerning the Financial Report, First Half Year 2017
<b>2018</b>			
2	20/sep/2018	MinFIN	2016 Financial Statements of Government Owned Companies: 1. NV GEBE 2. St. Maarten Harbour Holding Company 3. Sint Maarten Telecommunication Holding 4. PJIAE Holding 5. UTS 6. Winair 7. Saba Bank 8. OBNA 9. SLS 10. DC-ANSP
3	24/sep/2018	MinFIN	Update Financial Statements 2013-2017 of Country Sint Maarten
<b>2019</b>			
4	21/jan/2019	MinAZ	Copy PowerPoint presentation financial assistance to PJIA
5	18/feb/2019	MinAZ	SOAB Report -Manpower & Financial Assessment PSS N.V.
6	22/maa/2019	GEBE	The Financial Report of N.V. G.E.B.E. as per December 31, 2017.
7	20/nov/2019	GEBE	2018 Financial Statements
<b>2020</b>			
8	6/nov/2020	TelEm	PowerPoint presentation financial update TelEm Group presented during Central Committee meeting no.09
<b>2021</b>			
9	31/maa/2021	MinVROMI	Copy PowerPoint presentation, GEBE Financial situation, CC 18
10	7/may/2021	MinFIN	March 2021 monthly financial report
11	21/jul/2021	MinFIN	Answers to questions received in writing regarding short and long-term financial-economic solutions for Sint Maarten (dated May 18, 2021)
12	4/okt/2021	MinVROMI	Updated Answers to questions posed by MPs during the continuation of Central Committee meeting no. 18 PY/2020-2021, regarding the financial status of NV GEBE.
13	06/okt/2021	MinTEATT	Copy PowerPoint presentation on the State of Affairs Port St. Maarten Group presented during CC no. 3, on Wednesday, October 6, 2021.
14	07/okt/2021	MinAZ	Copy PowerPoint presentation on State of Affairs Winair N.V. presented during CC no. 4, on October 7, 2021.
15	29/nov/2021	MinFIN	PowerPoint Presentation Financial Statement 2017&2018 Sint Maarten.
<b>2022</b>			
16	1/apr/2022	GEBE	Financial Statements 2019

Table 10: financial information provided by the government to Parliament on overheid-nv's 2017-2022 (April)

<sup>87</sup> Nor are overheid-nv's in principle obligated to give account to anyone outside the AvA which includes parliament. Also, overheid-nv's are in principle not obliged to appear in Parliament to provide information directly. An exception to this is if parliament initiates a parliamentary inquiry (article 64 of the Constitution). According to BW2 and the OECD guidelines the AvA is the only authorized platform wherein important decisions related to said company's finances, Governance and objectives are made. Therefore, only the AvA has a right to information. So, in case the parliament has questions on overheid-nv's, it can pose questions to CoM which can pose these questions during the AvA to the boards of overheid-nv's

Table 10 shows that the Parliament has been informed 16 times between 2017 and 2022 on overheid-nv's. The information was in 4 times provided by overheid-nv's GEBE and TelEm.

Regarding the information depth from the government, the overview in the annual budget (incl. the explanation in appendix 2) and the country's financial statements are relatively brief with limited depth while the UR's do state information regarding overheid-nv's but declare at times that no information is available.<sup>88</sup> In 2020 and 2021 the Parliament requested meetings regarding five overheid-nv's, which were spread out over a longer period of time. Some members voiced their wish to have those meetings more often. This possibly may signal an increasing need for factual or technical information which at present is not being fulfilled sufficiently through the current flow and depth of information.

Figure 6 below provides a concrete example of the depth of information on overheid-nv's as presented in the latest draft budget in December 2021.

*3.5 Overheidsbedrijven*

De negatieve effecten van de COVID-19-crisis hadden ook een effect op de financiële situatie van overheidsbedrijven. In 2020 moesten ze ook hun reserves gebruiken en waren er over de hele linie negatieve resultaten. De negatieve resultaten van de afgelopen tijd zullen naar verwachting geen direct effect hebben op de werking van de overheid. Waar mogelijk hebben overheidsentiteiten ook kostenbesparingen doorgevoerd om de schokken als gevolg van COVID19 op te vangen en zijn maatregelen genomen om de verslechterde liquiditeitsposities te verbeteren. De belangrijkste overheidsentiteiten worden hieronder kort besproken.

GEBE: De financiële situatie bij GEBE is momenteel nog steeds goed. Geen onmiddellijke zorgen over liquiditeitspositie en solvabiliteit. Naar verwachting zal in 2020 een positief resultaat worden behaald. Voor 2021 worden de opties voor het afsluiten van een nieuwe lening voor kapitaalinvesteringen en het versterken van de cashflow onderzocht.<sup>89</sup>

...

POST NV: De financiële situatie bij POST NV is momenteel nog niet helemaal naar behoren. Ze zijn bezig om diverse maatregelen te implementeren om de financiële situatie te verbeteren. Op dit moment is het nog niet zichtbaar wat de impact zal zijn van de nog te implementeren maatregelen.

Figure 6: Examples of information on overheid-nv's in the draft budget 2022, p. 65

As highlighted (see underlined sentences) in figure 6, the information to Parliament seems to hint at a possible negative financial reality for overheid-nv's without presenting key financial ratios or relevant facts as motivation. Figure 6 also demonstrates that the forward guidance by the government is limited. Ideally it signals whether the negative results may have indirect effect on the public finance if the expectation is that it won't "have direct effect on the government's finance". And if indirect effects may appear, what can those effects look alike and how worrisome are they for the national budget? Forward guidance would also be advisable if information on a particular overheid-nv is presented like "not quite right yet" ("nog niet helemaal naar behoren"). More explanation helps in offering the Parliament perspective on how possibly to act and how key financial ratios should develop to get the situation 'right'.<sup>90</sup>

The number of questions that the Parliament poses to government on overheid-nv's in the period 2019 till 2022 is outlined in table 11 below. It also demonstrates the total of answers and other requests that the Parliament submitted on overheid-nv's. Since we did not receive data which links the questions to the answers set, we cannot conclude (nor exclude) on the extent to which

<sup>88</sup> We have requested the UR's but did not receive them. The statement on the content of the UR's is based on insights collected during our in-depth interviews

<sup>89</sup> In the final draft of the national budget of January 19<sup>th</sup>, 2022 (IS-462) a reference was made to the draft budget in order to read the most recent financial ratio's on GEBE. See p. 65

<sup>90</sup> In chapter 2 we also addressed the correctness of information. We observed that the dates which were received for this research on the latest audited financial statements differs that the ones that we outlined in the draft budget 2022

Parliament's questions are answered. One may however observe an increased interest from the Parliament for overhead-nv's in the period 2019-2022.

Year	Questions (in sets) <sup>91</sup>	Answers (in sets)	Requests <sup>92</sup>
2019	5	6	1
2020	1	0	2
2021	11	8	0
2022 (till June 2022)	7	2	1
<b>Total</b>	<b>24</b>	<b>16</b>	<b>4</b>

Table 11: the total of question sets, answer sets and information requests from the Parliament on overhead-nv's  
(Source: data Parliament Sint Maarten)

### 5.3. Conclusions

Although Sint Maarten's Constitution determines that the country has no active information obligation towards Parliament, the government does inform the Parliament on an active base. This occurs through the draft budget (annually), the country's financial statements (annually) and the 'Uitvoeringsrapportages' (quarterly). The depth of the information is however limited, as key financial ratios are not (consistently) provided. The same applies to forward guidance or concrete details on potential future risks and the impact on the country's budget. Therefore, the signaling value of information is restricted. This may be solved after implementing many of the recommendations of the 'Improvement Plan' and broadening the focus of the ones that are directed at the airport to all overhead-nv's (especially those under 'action 4' and 'action 6c').

In the last couple of years, the Parliament seems to have more interest for overhead-nv's. This may signal an increasing need for factual and technical information, which is at present not being fulfilled sufficiently through the current flow of information. The importance of meaningful information flow to Parliament lays in its budget authority of the way taxpayer's money is spend and in its controlling mandate of the government as a shareholder.

### 5.4. Recommendations

To improve the flow of information to Parliament and provide a thorough overview of the (financial) performance of overhead-nv's to monitor possible risks to the budget, the following recommendations to the government may be considered:

- Improve the depth of information shared with the Parliament on overhead-nv's in order to have more impact and signaling value on possible financial risks to the national budget
- Design (in corporation with the president of the Parliament) a concrete framework on the procedures of communication on overhead-nv's between government and Parliament. This is necessary in order to have a consistent flow of information and create awareness of the roles and responsibilities of each stakeholder as laid down in the Constitution, BW2 and relevant Corporate Governance documents as well
- Although sharing the latest financial statements of the respective participations with Parliament is currently not a formal requirement, it may be advisable to consider doing so (or providing a summary of the most important financial ratios in the draft budget). This facilitates the Parliament in exercising its budget authority, monitoring possible risks to the budget, and holding the government (in her capacity as shareholder) accountable. Consider organizing technical briefings in which the shareholder explains those statements and answers questions about their content.

<sup>91</sup> It is not known how many questions and answers each set contains. A set is a collection of questions considered as an entity unto itself.

<sup>92</sup> By requests we mean information requests other than questions. In 2019: Interpellation request, in 2020: two separate meeting requests with various overhead-nv's, in 2022: sharing request of a particular agreement.

# A. Appendix

## A.1. List of Interviews

#	Stakeholder	Date
1	Director SOAB Sint Maarten	6 June 2022
2	Clerk of the Parliament of Sint Maarten	6 June 2022
3	Managing Board Audit Chamber	7 June 2022
4	Chairlady Supervisory Board Port of Sint Maarten N.V.	7 June 2022
5	Member Supervisory Board TelEm N.V.	8 June 2022
6	Chairman and members Corporate Governance Council	8 June 2022
7	Secretary-General Ministry of Finance	8 June 2022
8	Legal Advisor Prime Minister/Minister of General Affairs	9 June 2022
9	Minister of Finance Sint Maarten	9 June 2022
10	Legal Advisor Cabinet of the Minister of Finance	9 June 2022
11	Ambtelijk secretariaat College financieel toezicht	9 June 2022
12	Implementation-Team Corporate Governance of the Airport Group of Companies	9 June 2022
13	Legal advisors Minister of General Affairs	9 June 2022
14	Member Cabinet Minister of Finance	9 June 2022
15	Members Cabinet Minister of TEATT	10 June 2022

## A.2. List of consulted documents

- Report Administrative Appointments (Audit Chamber)
- Administrative Appointments part 2 (Audit Chamber)
- Bestuursreglement College financieel toezicht
- Chapter Compliance Corporate Governance TelEm N.V.
- Comptabiliteitslandsverordening Sint Maarten
- Corporate Governance Assessment for Princess Juliana International Airport
- Corporate Governance Improvement Plan for the Airport of Sint Maarten
- Corporate Governance law
- Corporate Governance Code Sint Maarten
- Dividend policy Sint Maarten
- Instellingsbesluit Corporate Governance Council
- Landsbesluit Corporate Governance council Sint Maarten
- Landsverordening Algemene Rekenkamer
- Landsverordening Ombudsman
- Landsverordening Raad van Advies
- Landsverordening Inrichting en Organisatie Landsoverheid
- Memorie van toelichting Comptabiliteitslandsverordening
- Memorie van Toelichting Landsverordening Corporate Governance
- Memorie van toelichting Rijkswet financieel toezicht Curaçao en Sint Maarten
- Memorie van toelichting Staatsregeling
- Non-official translation Rijkswet Financial Supervisory
- Organisatiebesluit Ministerie van Algemene Zaken
- Organisatiebesluit Ministerie van Financiën
- Organisatiebesluit Ministerie van TEATT
- Organisatiebesluit Ministerie van Justitie
- Overview financial information provided to the Parliament on overheid-nv's 2017-2021
- Overview of the agenda topics of AvA's of 2020-2022
- Reglement van Orde Staten van Sint Maarten
- Reglement voor de Gouverneur van Sint Maarten
- Staatsregeling Sint Maarten
- Statuut voor het Koninkrijk der Nederlanden
- Tijdelijke Landsverordening normering topinkomens en aanpassing arbeidsvoorwaarden bij (semi) publieke sector entiteiten
- Uitspraak Constitutioneel Hof tijdelijke landsverordening normering topinkomens en aanpassing arbeidsvoorwaarden bij (semi) publieke sector entiteiten
- Wijziging van het Reglement van Orde van de Staten van Sint Maarten
- Winair communication protocol (May 2021)





**PRIME MINISTER OF SINT MAARTEN**  
Minister-President van Sint Maarten

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Philipsburg, December 13, 2022

**Subject: View on reports plan of action Review (semi) public entities Sint Maarten**

We have taken note of the five reports Review (semi) public entities Sint Maarten on SLS, PSS, NV GEBE, SMHDF, and BTP, the public report on the Review (semi) public entities Sint Maarten and the report on the Analysis Policy frameworks Sint Maarten.

These reports are made by an external audit bureau as part of Theme B of the Country package: Costs and effectiveness in the public sector.

These reports are the final products of the plan of action Review (semi) public entities Sint Maarten as taken up as Theme B.2 of the Implementation Agenda and consist of two trajectories: 1) the audit of five selected (semi) public entities and 2) the analysis of the policy frameworks. PriceWaterhouseCoopers Netherlands with the support of the Government of Sint Maarten conducted the research to ascertain the system theory of public organization evaluation (trajectory 1) and the analysis of the policy frameworks (trajectory 2).

The objective of the research of trajectory 1 was to provide specific recommendations concerning the selected (semi) public entities (SLS, PSS, NV GEBE, SMHDF, and BTP), and of trajectory 2 to provide concrete recommendations for a policy framework. Both objectives must contribute to the effectiveness of the policies, the governance, and the efficiency of operational management of the public enterprises, to prevent future losses and thus financial risks for the budget of the Government.

With regard to trajectory 1 the recommendations can be divided in recommendations that have to be addressed by the government of Sint Maarten and recommendations which have to be addressed by the entities themselves, or by both entities. Regarding the recommendations for the government, we can find ourselves in the recommendations provided in the Public Summary of the Review of trajectory 1. These key recommendations are worked out further in the trajectory 2 report delivered by the PriceWaterhouseCoopers Netherlands (PWC NL) project team.

To further improve the efficiency and effectiveness of the entities and Government, as the shareholder, and or policy maker, in this regard, the Government of Sint Maarten supports this Country Package to achieve the intended results, for trajectory 1, outlined above. However, given our capacity and budgetary constraints, a more targeted and comprehensive approach for each entity would have to be scoped in which the entities should start with the implementation of the recommendations they have to address themselves, but the government of Sint Maarten will first focus on the entities where urgent intervention is needed.

The plans of approach going forward will coincide with the recommendations outlined in the Trajectory 2 Report presented, as well as the Country Package B15, where Corporate Governance for the Airport is being addressed. This will enhance the activities of B15, but also the Vision of the Government in improving the public sector efficiency and limiting the risks to our national budget.

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## Trajectory 2

With regard to trajectory 2, recommendations were given for the themes: Participation policy of Sint Maarten, Corporate Governance Policy, The Standards for Remuneration Act ('Landsverordening Normering Topinkomens'), and Information flow to Sint Maarten's Parliament.

### 1. Participation policy of Sint Maarten:

Taking article 28 of the Kingdom Act financial supervision Curacao and Sint Maarten into consideration, Sint Maarten should have legislation in place on a) obtaining and disposing of shares, b) dividend policy, and c) appointment and dismissal of managers (Managing and Supervisory Boards) in overheid-nv's, that meets the internationally accepted standards.

As c) will be taken up partly in theme B.15 of the Country package, a) and b) remain. Based on the available capacity, the need to improve the liquidity situation in a short term at this moment, and the template concept general dividend policy guideline that Government can mandate the Government Owned Companies to use as a starting template which can be adjusted to finance their dividend policy, after taking into consideration the specific risks of each company, the priority should be at establishing the dividend policies, and more precise the dividend payments.

For dividend payments, payout ratio's per company have to be established. These ratio's will secure responsible pay-outs and gives guidance to management's expected performance. In essence, three analyzes are required to determine a payout: i) financial (liquidity, solvency, capital ratio, etc), ii) market/sectoral analysis (how is the competition moving, the influence of raw material prices, etc), and iii) added value of public ownership (is there (still) rationale). It would be recommended to discuss this follow-up trajectory with TWO to execute the analysis to determine the dividend payout ratio on TelEm, SLS, WINAIR, and Port St. Maarten.

### 2. Corporate Governance Policy:

The effectiveness of St. Maarten's Cooperate Governance policy can be improved. The activities under the B15 Country Package encompass the Corporate Governance Improvement Plan of the PJIA companies and the Corporate Governance Council. The project aims to improve the corporate Governance practice in St. Maarten by amending the relevant regulations and the Corporate Governance Code.

The amendments intend to strengthen the position of the CGC and its structural support to the shareholder. The 'Improvement Plan' has identified several ways to streamline the role of the CGC (by among others establishing a Corporate Governance Authority) and improve the clarity of its tasks. Once implemented, these amendments would be a good step forward as well.

As mentioned above a new National Ordinance and Code are under development (Country Package B15). The new Code is not yet public, but its content was made available to PWC for the purpose of this evaluation. The new Code will improve aspects of good Governance– assuming the new Code is adopted in the way that is presented to PWC in this research.

However, PWC highlighted that attention is required on three concrete clauses which are not yet envisaged in the new corporate Governance regulation and -Code, namely:

- (1) information disclosure to the St. Maarten community,
- (2) remuneration guidelines, and

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(3) enforcement clauses.

PWC advises explicitly integrating these clauses in the three areas in order to lift Sint Maarten's Corporate Governance policy. The 'Improvement Plan' has already recommended these clauses to Princess Juliana International Airport N.V. We would recommend broadening the scope of this recommendation to all overheid-nv's.

The enforcement of the current Code is not seen as fully effective. The foreseen improvements, especially on the future role of the Corporate Governance Authority, will provide useful ways of strengthening the enforcement of Corporate Governance. To assess whether the changes effectively work, it is recommended to evaluate the new corporate Governance policies after three years from the moment they come into force.

Based on the activities currently undertaken by the Implementation Team, we are of the opinion that the analysis of PWC is premature and does not fully take the objectives of the B15 activities into account. Nevertheless, we acknowledge given the fact that the Corporate Governance Code dates back to 2009, and the enforcement of the current Code is not viewed as effective, we welcome the advice from PWC and have shared these with the Implementation Team, who has confirmed that these recommendations will be included in the deliverables of the B15 activities.

3. The Standards for Remuneration Act ('Landsverordening Normering Topinkomens' (LNT)):
  - a. With regard to the recommendations on the Enforcement of LNT as shareholder, an update would be preferred to bring the statutes and the AoI's in line with the LNT norms and the provisions of the Civil Code Book 2 regarding the norms and authorization rights of the remuneration policy.
  - b. With regard to the recommendations on the Enforcement of LNT as a legislator, it should be noted that Government is not the legislator, but Parliament is. Noteworthy to mention is the draft LNT was approved by Parliament on November 10, 2022. Considering the different roles of Government and Parliament and the limited capacity, the priority would be for Government to put in place the Ministerial Regulations in accordance with article 10 of the legislator-approved LNT, once the LNT goes into effect as such remuneration details will be publicized accordingly. Based on the evaluation in accordance with article 25 of the LNT the need to implement the need to integrate provisions in the LNT for a lack of financial reporting or not having audited financial statements, can be decided on.
4. Information flow to Sint Maarten's Parliament:

PWC NL observed that although the Constitution of St. Maarten determines that the Government has no active information-sharing obligation to Parliament, the Government does inform the Parliament on an active basis.

This occurs through the draft budget (annually), the country's financial statements (annually), and the 'Uitvoeringsrapportages' (quarterly). The depth of the information is, however, limited as key financial ratios are not (consistently) provided. The same applies to forward guidance or concrete details related to potential (future) risks and the impact thereof on the country's budget. Therefore, the signaling value of information is restricted. This may be solved after implementing many of the recommendations of the 'Improvement Plan' and broadening the focus of the ones that are directed at the airport to all overheid-nv's.

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PWC recommends the Government consider their advice, to improve the flow of information to Parliament, and provide a thorough overview of the (financial) performance of overheid-nv's to monitor possible risks to the budget.

The Government agrees that it is important to submit our Financial Statements timely, in reference to the budget right of the Parliament of Sint Maarten.

We will continue to work on communication procedures with the Presidium of Parliament, considered that all information shared with the House of Parliament is related to the budget right of Parliament and not related to the operational affairs.

The Government of Sint Maarten appreciates the findings of the Review, as these will form the basis of the way forward as it relates to Public Financial Management and Corporate Governance adherence on St. Maarten. Based on the National Development Vision, these themes form part of the overall objective as we move to strengthen the organization, our entities and companies with longevity, effectiveness, and efficiency.

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