



CORPORATE GOVERNANCE COUNCIL

ST. MAARTEN

Responsiveness
Integrity
Quality
Service
Transparency
Accountability
Responsibility

To the Honorable Chairlady of the Parliament of Sint Maarten,
Mrs. Gracita R. Arrindell,
Parliament Building,
Wilhelminastraat 2,
Sint Maarten.

Philipsburg, October 25, 2011

Subject: Reminder of letter dated February 23, 2011, nr. 2011/30 and
final call to action.
Nr: 2011/68.

Esteemed Chairlady of Parliament,

Introduction

When on February 23, 2011 the Corporate Governance Council (CGC) submitted to you an extensive letter covering various outstanding matters relating to the operation of the CGC, the CGC was hopeful that in keeping with the constitutional reality (Sint Maarten obtaining country status), Parliament would be willing to take co-ownership of among other things the administrative development that Sint Maarten aspired and had agreed to. After all Parliament's authority is now anchored in the Constitution of Sint Maarten. The Constitution has been established on July 21, 2010 by the Island Council of the Island Territory of Sint Maarten. It is published in the National Gazette (AB Sint Maarten 2010, nr. 25)

Historical background

As you know, the CGC is a government appointed independent advisory organ established in accordance with the legislative framework consisting of the Island Ordinance Corporate Governance¹ published in the National Gazette (Ab Sint Maarten 2009, nr. 11), the decree to install the CGC as well as the Corporate Governance Code.

For your information, we wish to re-iterate in brief that the CGC came about at the insistence of the Dutch. During the political steering group meeting held on January 22, 2008 in the Belair Community Center, Mrs Ank Bijleveld-Schouten (State Secretary of the Netherlands), Mrs Emily de Jong-Elhage (Prime Minister of the Netherlands Antilles), Mrs Zeta Jesus-Leito (Commissioner of the island territory of Curacao) and Mrs Sarah Wescot-

¹ As a consequence of the change in constitutional status, the island ordinance Corporate Governance that was in force at October 10, 2010 now has the legal effect of a National Ordinance (see publication 2010 GT. nr.30). Consequently, for executive council and island council must be read Council of Ministers respectively Parliament, being the legal successors of the former institutions

Williams (Commissioner of the island territory of Sint Maarten) agreed to and signed an agreement which called for legislation to regulate proper procedures in the field of corporate governance where government owned corporations and government controlled foundations are concerned. This agreement also formalised the discussions which took place going back to the approved Final declaration of November 2, 2006 as agreed to collectively by the Netherlands, the Netherlands Antilles, the island territory of Curacao and the island territory of Sint Maarten. The agreement of January 22, 2008 was ratified unanimously by the Island Council of the Island Territory of Sint Maarten. By ratifying that agreement, Government has basically approved to ensure the introduction and the enforcing of good corporate governance of the government owned corporations in their relationship with the Government. The consequence of this is now to totally execute the premise of that agreement by way of legislation. A copy of the agreement of January 22, 2008 is attached for your information. (appendix A)

This agreement was later anchored in the Kingdom Law known as " Rijkswet financieel toezicht Curacao en Sint Maarten". (appendix B). Reference is made among others to article 28 of that law which confirmed that the Countries Curacao and Sint Maarten had established legislation to introduce the corporate governance code. This legislation had to comply with internationally accepted standards in that area. In accordance with article 32 of that Kingdom Law, the Council Financial Supervision (CFT) shall report on the execution of the agreement mentioned earlier as well as the proper execution of same. Please note also that this Kingdom Law has been established in keeping with article 38 of the Charter for the Kingdom of the Netherlands.

Legislative framework

On May 11, 2009 the Island Council of the Island Territory Sint Maarten established:

- 1) the Island Ordinance Corporate Governance, published in the National Gazette (Ab Sint Maarten 2009,11):
- 2) the Corporate Governance Council (EB May 11, 2009,nr. 930); and:
- 3) the Corporate Governance Code (EB May 11, 2009, nr. 931) and amended by (EB December 16, 2009, nr. 1756).

Please note that these decisions were taken by the legitimate government of the Island Territory of Sint Maarten. Bear in mind also that a copy of these documents was already made available to each member of Parliament by virtue of our letter dated December 16, 2010, nr, 2010/20 to which we respectfully refer.

Installation

The members of the CGC (five in total) were only installed on February 26 2010. Prior to their official installation the members each received two letters from the Government of Sint Maarten with among other things the following content:

"Hierbij deel ik u mede dat het bestuurscollege van het eilandgebied Sint Maarten bij besluit van 17 november 2009 u heeft benoemd tot lid van de Corporate Governance Council mits het antecedentenonderzoek en de verklaring omtrent gedrag positief zijn. Van harte feliciteer ik u met deze benoeming. U gelieve mij binnen een week na heden te berichten dat u de benoeming aanvaardt.

The letter continues:

"Voor de goede orde attendeer ik u erop dat uit artikel 4 van het Instellingsbesluit Corporate Governance Council volgt dat de leden van de Corporate Governance Council benoemd worden voor een periode van 4 jaar op basis van de van te voren door het bestuurscollege opgestelde functieprofielen".

“Tevens attendeer ik erop dat in artikel 12 van de eilandsverordening Corporate Governance is bepaald dat de kosten van de Corporate Governance Council, waaronder de honorering van haar leden, voor rekening komen van de vennootschappen en stichtingen conform een met die rechtspersonen nader overeen te komen en door het bestuurscollege in een eilandsbesluit vast te leggen verdeelsleutel”.

As a matter of courtesy, we offer the following translation of the aforementioned text:
*“You are hereby informed that the Executive Council of the Island Territory of St. Maarten by resolution of November 17th 2009, **appointed** you as a member to the Corporate Governance Council, provided the screening and the statement on good conduct turn out to be positive.*

*I sincerely congratulate you on this appointment.
You are kindly requested to inform me within one week from today whether you accept the appointment”.*

The letter continues:

“For the record, I would like to point out that Article 4 of the resolution establishing the Corporate Governance Council provides that the members to the Corporate Governance Council shall be appointed for a period of 4 years based on the function profiles drawn up by the Executive Council beforehand.

I also wish to draw your attention to the provision laid down in Article 12 of the island ordinance Corporate Governance stipulating that the costs of the Corporate Governance Council, including the remuneration of its members, will be borne by the companies and foundations based on an allocation formula to be further agreed upon by said legal entities and to be established by the Executive Council”.

The other letter states in part:

“Het moge u duidelijk zijn dat de Corporate Governance Council voorbestemd is om een zeer belangrijk adviesorgaan te worden voor het eilandgebied Sint Maarten en dat u als lid van de Corporate Governance Council een omvangrijk en uitdagende taak op zich genomen heeft. Om u een indruk te geven van de aard en omvang van de door de Corporate Governance Council te verrichten werkzaamheden – en deze zijn niet gering – volgt hieronder een overzicht.

Aanvang werkzaamheden van de Council

In artikel 12 eilandsverordening Corporate Governance is bepaald dat de kosten van de Council en haar secretariaat voor rekening komen van de overheidsvennootschappen en –stichtingen conform een nader overeen te komen en door het Bestuurscollege in een eilandsbesluit vast te leggen verdeelsleutel. De Council doet het bestuurscollege een begroting ter goedkeuring toekomen voor de kosten verband houdende met de te verrichten werkzaamheden. Dit heeft tot gevolg dat de Council een beleidsprogramma zal moeten concipieren van te verrichten werkzaamheden en aan de hand hiervan een begroting zal moeten opstellen van de met deze werkzaamheden gemoeide kosten.

Onafhankelijkheid

Essentieel voor het functioneren van de Council is het verwerven van respect en autoriteit. Daartoe moet de Council in staat zijn om onafhankelijk van de aandeelhouder/het bestuurscollege/eilandsraad te kunnen adviseren. Derhalve is het belangrijk dat de Council zich (a) niet laat leiden door politieke issues en (b) niet door de politiek of bestuurders onder druk kan laten zetten omwille van een gunstig resultaat of uitkomst.

Taken Corporate Governance Council

De eilandsverordening Corporate Governance bepaalt in artikel 4 lid 2 dat de Council het eilandgebied adviseert, gevraagd en ongevraagd, over de toepassing van de in de eilandsverordening en Code opgenomen bepalingen.

Het takenpakket van de Council richt zich op "good corporate governance" bij:

- *De naamloze vennootschappen met statutaire zetel op één van de eilandgebieden van de Nederlandse Antillen en waarvan de aandelen, geheel of ten dele rechtstreeks of door tussenkomst van een derde in economische of juridische eigendom in handen zijn van het eilandgebied Sint Maarten.*
- *De stichtingen waar het Bestuurscollege de bevoegdheid heeft te beslissen terzake van de benoeming of ontslag van één of meer bestuurders of terzake van de wijziging van de statuten.*

Het waarborgen van de belangen van het Eilandgebied als aandeelhouder en als belanghebbende bij de overheidsstichting, staat hierbij voorop.

Te overzien is dat de werkzaamheden van de Council in de beginfase aanzienlijk zullen zijn. Dit komt onder meer doordat er in het verleden geen routine is opgebouwd van het op reguliere basis houden van Algemene Vergadering van Aandeelhouders. Ook is er in sommige gevallen werk te verrichten in de relatie tussen het Eilandgebied Sint Maarten als overheid en de verschillende overheids N.V.'s. Daarnaast zal de Council mogelijk ook als klankbord kunnen dienen voor directies en Raden van Commissarissen bij de invoering en uitvoering van de regels van "corporate governance". De werkzaamheden zullen een meer planmatig karakter moeten hebben waarbij voor alle overheids N.V.'s en -Stichtingen twee maal per jaar vergaderingen worden gehouden: eenmaal over de jaarstukken en eenmaal over het beleid en budget.

As a matter of courtesy, we offer the following translation of the aforementioned text: "May I point out to you that the Corporate Governance Council is destined to become a key advisory body for the island territory of St. Maarten and that you, as member to the Corporate Governance Council, have taken on a major and challenging task.

To give you an impression of the nature and scope of the activities to be carried out by the Corporate Governance Council – and these are not minor – an overview is listed below.

Starting activities of the Council

In Article 12 of the island ordinance Corporate Governance it is stipulated that the costs of the Council and its secretariat shall be borne by the government owned companies and foundations, based on an allocation formula to be further agreed upon and established by the Executive Council in an island resolution. The Council shall submit a budget to the Executive Council for its approval in connection with the costs related to the work to be carried out.

Consequently, the Council will have to draw up a policy plan for the work to be carried out and based on that, a budget of the costs associated with the work will have to be prepared.

Independence

For the functioning of the Council, the issue of gaining respect and authority is essential. In this respect, the Council must be able to advise independently of the shareholders/the Executive Council/Island Council. As such, it is important that the Council will (a) not allow itself to be influenced by political issues and (b) not be put under pressure by politics or directors on account of a favorable result or outcome.

Duties of the Corporate Governance Council

The island ordinance Corporate Governance stipulates in Article 4, paragraph 2 that the Council shall provide solicited and unsolicited advice to the island territory on the application of the provisions laid down in the island ordinance and the Governance Code.

The range of duties of the Council shall focus on "good corporate governance" at:

- *The limited liability companies with registered offices on one of the island territories of the Netherlands Antilles and the shares of which fully or in part, directly or through a third party in economic or legal title, are owned by the island territory of St. Maarten.*
- *Foundations where the Executive Council has the powers to decide on the appointment or dismissal of one or more board members or on the amendment of the articles of incorporation.*

In this respect, safeguarding the interests of the Island Territory as shareholder and as interested party in the government foundation is fundamental.

It is anticipated that in the initial stages, the amount of work of the Council will be considerable. This is partly because in the past, no routine was built up for holding General Meetings of Shareholders on a regular basis". Besides, in some cases, work will have to be done regarding the relationship between the Island Territory of Sint Maarten as government and the different government owned companies. In addition, the Council could also serve as a sounding board for managements and Supervisory Boards of Directors when introducing and implementing rules of "corporate governance".
So far the contents of the relevant letters.

In view of the particular importance that was given to the installation of the CGC for achieving the Country status on "10-10-10", we considered this as "starting pains". This also forced us to plough on with the important task at hand. After operating under sub-optimal circumstances for the past months, we have come to the conclusion that there is no urgent desire to deal with matters concerning the Corporate Governance Council. At least no one has taken the responsibility for actively following up with the CGC. There is a profound need to handle these matters efficiently to avoid misunderstanding.

Execution of tasks

The CGC is duty bound to execute the tasks and responsibilities attributed to it by order of the Island Ordinance Corporate Governance, the resolution/decreed by which it was established, the Corporate Governance Code as well as other written instructions. The instructions given are clear and are expected to be carried out. The CGC is managing to marginally execute its tasks and responsibilities ever since its installation even without the legislated input of Government.

The CGC finds itself in the situation that it has had to operate without the required staffing, facilities and resources.

The non-execution of the various responsibilities assigned to the government of Sint Maarten has caused the CGC to call on you to execute your authority where implementing of the legislative framework was concerned. In this context we refer to our letter of February 23, 2011, nr. 2011,30 of which a copy is attached, (appendix C) and in which various outstanding matters were brought to your attention. In concluding that letter we made an appeal to you to use your authority under the Constitution of Sint Maarten (the fact that you are now an independent body) to invite the Council of Ministers to execute the Island Ordinance Corporate Governance (Ab Sint Maarten 2009,11) to uphold the law and to deal with the various requests of the CGC.

Regretably we must establish now (8 months later) that you have not even acknowledged receipt of our letter nor inform the CGC as to the outcome of this appeal. These unfortunate realities force the CGC to express its fear that there appears to be a crisis in government where it relates to confirming to the "rule of law". After all the integrity of governance is under siege. When there is a crisis in government corrective measures are usually the result and the CGC is concerned how this matter is viewed by the stakeholders concerned. The absence of enforcing rules where checks and balances is concerned on generally accepted international principles of corporate governance, can be translated as giving way to democracy at its lowest end. In the message of the Chairlady of Parliament on the occasion of observing International Day of Democracy it is reported that she said: " The people of Sint Maarten must continue to build their democratic institutions as they move forward together with nation building. We as a nation believe in the fundamentals of representative democracy. We must be proud of our democratic principles. Democracy is the only system of government that can provide better advancement to people's fundamental rights and freedoms'.

The CGC is mindful of the oath which the members of Parliament have taken on October 10, 2010 where it concerns the following paragraph: "*I swear (promise) allegiance to the King and the Constitution of the Kingdom, that I shall always help to uphold the Constitution of Sint Maarten and that I shall champion the interests of Sint Maarten to the best of my ability*".

The CGC was hopeful that in view of the new dimensions of politics and government (introduction of dualism) the Parliament would assume its rightful and legal position and see to it that government upholds the established laws of the land. Unfortunately this is not the case and the CGC is still awaiting proper and timely compliance of the relevant law. Failure to comply with the law in general leads principally to non-compliance of procedures and processes, not following work rules and lack of treating subjects with respect etc. When Parliament also fails to uphold the premise of the oath of the office, the CGC must acknowledge and identify this blatant weakness in governance.

In this context the CGC refers to the Constitution of the Kingdom where it is stated: "*Each of the countries shall promote the realization of fundamental human rights and freedoms, legal certainty and good governance*". It is Sint Maarten's duty to assist in safeguarding these rights and responsibilities including legal certainty and good governance.

Budget

The CGC by virtue of article 12 of the island ordinance Corporate Governance **must** submit its budget for the fiscal year 2012 before October 31st 2011. The CGC intends to comply with that instruction. As you are undoubtedly aware, the CGC has submitted, in line with the requirements of this ordinance, its budget for 2010 and 2011 as follows:

- On March 9, 2010 an advance to the tune of f. 200,000,00 was requested;
- On April 26, 2010 the budget for the remaining of fiscal year 2010 was submitted whilst taking into consideration that the budget could not have been submitted in accordance with the legal framework since the CGC was only installed on February 26, 2010;
- On October 4, 2010 as a consequence of a meeting with the executive council on August 3rd 2010 te CGC submitted a revised budget for the fiscal year 2010. This revised budget was based on information and recommendations concluded at that meeting;
- On October 25, 2010, as a consequence of the new constitutional status, the revised budget for the fiscal year 2010 was again submitted;

- On December 13, 2010, coming to the end of the fiscal year 2010, the CGC requested the approval of Government on the submitted revised budget over 2010.
- On April 21, 2011, in keeping in line with the request of the Secretary General of the Ministry of Finance, the CGC submitted the expenses incurred over 2010 to the total and itemized tune of f.238.869, 00;
- On October 25, 2010 the budget for the fiscal year 2011 was submitted. Please note that this budget was in line with the revised budget of the year 2010.

On April 4th 2011 the CGC received the enclosed letter (appendix D) from the Minister of Finance to which we respectfully refer. The CGC has responded to that letter by virtue of it's letter dated April 21, 2011, nr. 2011/36 (appendix E) to which we also refer. In keeping with the Minister's request to meet with the Ministry of Finance, please be informed that we have met with that Ministry on April 15th 2011 and provided the Secretary General of that Ministry with the information which she requested. We did that by way of our letter dated April 21, 2011, nr. 2011/35 (appendix F).

The CGC has motivated the costs of its operation while keeping in line with the key values we have formulated to execute our tasks and responsibilities, namely: discipline, responsiveness, integrity, quality service, transparency, accountability and responsibility. At the heart of these values we consider accountability as being at the core of empowering the people to perform well, to demonstrate taking initiative and to act responsibly. When a climate of accountability exists, things work smoothly; and when it is absent procedures fail and policies are ignored.

Non response Parliament

In view of the fact that we have had **no** response from Parliament on the genuine appeal to you as the highest governmental body in the land, the CGC is saddened by this show of neglect. The Government of Sint Maarten is already on record for not doing the most common activity in governance, namely formalizing its positions and decisions. The CGC was thus forced to embrace the opportunity afforded to it when it was invited to make a presentation to Parliament on Thursday, June 28th 2011 about its activities during its existence. At that presentation, we called on Parliament to take up the challenge and to lead through change. The change referred to during that presentation was a clear call to make/take the needed decisions, however difficult and to clearly explain why these decisions are necessary.

Following this presentation referred to above, the annual report of the CGC over 2010 was also presented to Parliament. We ask your specific attention for this document. In that report is recorded all the activities and interventions of and by the CGC during that year. Attached to that report were copies of the following documents:

- i. A free translation of the island ordinance Corporate Governance;
- ii. The established Code of Conduct;
- iii. An analysis of inconsistencies in the island decree establishing the Corporate Governance Council;
- iv. The established Policy Plan;
- v. The budget for 2010;
- vi. The agreement of the political steering group dated January 22, 2008;
- vii. The official island ordinance corporate governance as promulgated on May 15th 2009;
- viii. The official decree to establish the Corporate Governance Council;

- ix. The House rules of the Corporate Governance Council;
- x. The speech delivered by the Chairman of the Corporate Governance Council at the opening of the seminar held on November 5, 2010 and organized in collaboration with professional services firm PriceWaterhouseCoopers and law firm Van Eps Kunneman & Van Doorn.

In case it may be considered as overkill that the CGC is meticulously recording its activities and interventions, please take note that this is done in order to serve the government of Sint Maarten as best as possible as it is aimed at keeping constant and meaningful dialogue between the stakeholders. As an autonomous Country Sint Maarten cannot get to the top without meaningful commitment from every established organ. The executive council has already established on May 11, 2009 that after three (3) years of existence the CGC will have to undergo an external evaluation. November 17th 2011 will mark the start of the third year of existence of the CGC. We have thus already been put on the defense.

Final appeal

Since up to present we have had no indication if the government of Sint Maarten is even able and/or willing to commit to their responsibility under the legislative framework as agreed to during the political steering group meeting of January 22, 2008 we are making a last appeal to you to take the decision necessary to:

- 1) safeguard the funding of the operations of the CGC over the two years of its existence, to wit 2010 and 2011 and to:
- 2) determine the future position of the CGC from here on.

The CGC is committed and still prepared to carry out its tasks and responsibilities as formally instructed and will await passively your decision as requested. As reiterated earlier, it is now up to Parliament to take corrective measures that are deemed necessary and to make sure that they are enforced/executed. All this is to be done in accordance with The Constitution that the members of Parliament on October 10, 2010 swore to uphold.

Transparency

In view of one of the key values the CGC has formulated to execute its tasks and responsibilities, namely transparency and taking into account the fact that the provisions of our national ordinance on open government are applicable (see the national gazette 2010 GT no 26) the CGC is aware that its documentation and information is open for the public. In keeping with that point of departure, a copy of the annual report of the CGC over 2010 which has been presented to Parliament as well as the Council of Ministers on June 28, 2011 will now be made available to the public. A copy of this letter with appendixes will also be made available to all the members of Parliament of Sint Maarten.

Respectfully,
On behalf of the
Corporate Governance Council,

Louis Duzanson
Chairman