



MINISTER OF FINANCE - SINT MAARTEN
MINISTER VAN FINANCIËN - SINT MAARTEN

Postadres:
Government of Sint Maarten
Ministry of Finance

Government Administration
Building

Post Office Box 943
Philipsburg
Sint Maarten

Bezoekadres:
Soualuga Road #1
Pond Island, Great Bay,
Sint Maarten.

To: Parliament of Sint Maarten
Attn: Chairman of Parliament Mr. William Marlin
Secretary General of Parliament Mrs. Nancy Guishard-Joubert
Wilhelminastraat 1
Philipsburg
Sint Maarten

Date: October 31, 2019
Our reference: DIV #9410-H
Subject: Response to questions (second round) on PJIA State of Affairs (OV34)

STATEN VAN SINT MAARTEN	
Ingek. 01 NOV 2019	
Voignr. 15/232/19-20	
Par.	AG

Dear Honourable Chairman Marlin,

On October 28, I received a letter of Member of Parliament, Mr. Claude "Chacho" Peterson with a number of questions regarding the current state of affairs at the Princess Juliana International Airport. Through this letter, I would like to provide answers to these questions and emphasize the urgency of the situation at hand.

1. What is the present financial situation of the airport? Specifically as it relates to the liquidity to pay personnel (payroll), service providers, contractors, loans and taxes and social premiums for the coming months.

Answer: *The financial position of the Airport is extremely fragile. There is an urgent need for a cash injection through the release of insurance proceeds that are currently restricted by the bondholders. The bridge loan of 20 million US dollars that was provided by the Government of Sint Maarten and the Government of the Netherlands is almost fully exhausted. At this moment, the Airport is only able to fulfil its most urgent financial obligations in November, including payroll, service providers, contractors, loans, taxes and social premiums. As of December 2019, the Airport lacks the cash basis to cover its monthly operational costs. Until the agreements with the World Bank, the European Investment Bank and the Bondholders are effective, the Airport is also not able to make the necessary capital investments and start with the next phase of the reconstruction of the Terminal. Any additional day of delay in the signing of the relevant agreements weakens the short-term financial situation of the Airport further, and undermines the medium to long-term financial outlook of the company. In order to minimize the impact of the delayed signing, the NRPB and PJIAE are continuing all technical preparations for the Airport Terminal Reconstruction Project with the support of technical teams of the World Bank, the European Investment Bank and the Royal Schiphol Group. These preparations will allow the project teams to hit the ground running once the funding becomes available.*

2. What is the current status of payments to the bondholders? Is PJIA in default? If yes, to what degree and what are the consequences?

Answer: *PJIAE remains technically in default as the company does not meet the debt service coverage ratio (DSCR) of 1.25. In terms of meeting its quarterly obligations towards the bond holders, PJIAE has serviced its debt and is up to date with their payments. However, in order to avoid an actual default of the Airport, the bondholders have to sign off on a monthly waiver of the Airport's obligations towards the bondholders. The main consequence of this situation is that the Airport and the country are facing the increasingly dangerous risk that the bondholders refuse to sign the waiver and decide to accelerate on the bond. This would likely result in bankruptcy proceedings against the Airport. The precise consequences of actual bankruptcy proceedings are difficult to predict. Yet, it is fair to assume that bankruptcy proceedings will delay the reconstruction of the airport for months, if not years and that such proceedings will put the jobs of all employees of the airport, and the employees of the service providers to the airport at serious risk.*

3. What is the current status of the insurance pay-out based on the court case? How much has PJIA received to date? How much is pending? What are the next steps to finalize this matter?

Answer: *The arbitration panel has ruled that PJIAE has a principal claim (therefore not including interest) of USD 71,864,341. This includes the amount already paid out by Nagico. The amount awarded can be specified as follows:*

- a) *Material damage: USD 51,269,728.*
- b) *Business interruption damage: USD 17,963,013.*
- c) *Costs of advisors: USD 2,631,600.*

The arbitration panel has ruled that in respect of the material damages, there is no underinsurance and the average clause therefore does not apply. It has ruled that the deductible of 2% of the insured sum does apply, leaving a total amount for material damages of USD 51,269,728.

PJIAE also claimed damages in respect of its furniture. The arbitration panel has ruled that, in order to give a decision on this part of the claim, it requires further information on (a) what part of the furniture was destroyed as a result of Irma and (b) what the replacement value is. The arbitration panel has invited PJIAE to collect this information and submit an additional claim in respect of the furniture.

Thus far, the balance of US\$17 million rounded (71 million awarded – 54 million already paid) still need to be settled by NAGICO.

The use of insurance proceeds by PJIAE is currently restricted by the Bondholders. This restriction will be lifted in accordance with the terms of the agreement with Bondholders, once this agreement is executed by the Government of Sint Maarten.

4. In an article in The Daily Herald on October 24, it stated: "The Bondholders concerned about instability. Geerlings said the bondholders are concerned about the motion of no confidence against five ministers which was passed by Parliament on September 25, and whether the incoming interim government will honour the agreements with the World Bank and the EIB or instead seek to reverse them. The motion of no confidence also instructed the caretaker Council of Ministers not to enter into any contracts with third parties, whether collectively or individually. The World Bank and the EIB are considered third parties".

What steps have you, the care-taker government and the National Recovery Program Bureau (NRPB) and PJIA taken to remedy this situation?

Answer: *On September 25, when the motion of Parliament was adopted, the agreements with the World Bank, the European Investment Bank (EIB), the Airport and the Bondholders had already been approved by the Council of Ministers and were scheduled to be signed upon the entry into force of the 2019 budget on October 4. The Council of Ministers received signed national decrees authorizing the responsible Caretaker Ministers to sign the agreements on behalf of the Country Sint Maarten with the World Bank, the EIB and the Airport on September 26. The last national decree, authorizing the responsible Caretaker Ministers to sign the agreement with the Bondholders, was received from the Cabinet of the Governor on October 4.*

The last signed decree was accompanied by a letter of the Cabinet asking the attention of the Minister of Finance to questions about the uncertain legal effect of the motion of September 25. The letter specifically referred to the legal advice of one of the involved law firms working for the Government and the NRPB, which concluded that as a result of the motion of September 25, it is not fully certain that the Caretaker Ministers are authorized to sign the relevant agreement legal agreements. This legal advice was shared by the Government with the Cabinet of the Governor earlier that week. The reason for sharing this advice is that it was agreed up front with the Bondholders that the respective law firm would provide an unqualified legal opinion to the Bondholders that all authorizations on the side of the Government of Sint Maarten are in order prior to actual signing. The delivery of this unqualified legal opinion is a co-called condition precedent for the effectiveness of the agreement with the Bondholders. In order words, there is no valid agreement until an unqualified legal opinion has been provided. Similar legal opinions are also required for the agreements with the World Bank and the EIB. In general, legal opinions of a law firm provide the necessary comfort for a third party outside of Sint Maarten such as the Bondholders that an agreement with the Country Sint Maarten will remain valid and cannot be overturned by a future Government.

Based on the letter of the Governor and the legal advice of the relevant law firm, the caretaker Government and the NRPB took the following steps to clarify the legal effect of the motion of September 25 and as such to remedy the emerging situation.

First of all, in consultation with the Governor, the "Formateur" was approached by the Director of the NRPB with the request to provide clarity on the intended scope of the motion of September 25. After several conversations with the Director and the Governor, the Formateur confirmed on October 9 that, according to herself and the majority of Parliament that signed the motion the current outgoing government is not



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restricted from carrying out any matters that were already agreed upon prior to the motion of September 25 and that the fact that Governor has signed of the national decrees should serve as sufficient confirmation that the legal agreements can be executed by the outgoing government.

The second step that was simultaneously taken by the Government and the NRPB is that several constitutional experts were consulted on the legal effect of the motion of September 25. This step resulted in an unqualified legal opinion of a second law firm dated October 21 confirming that the Caretaker Ministers are duly and validly authorized to execute and deliver the agreement with the Bondholders on behalf of the Country Sint Maarten.

This unqualified legal opinion, and the underlying legal analysis, specifically refer to the confirmation of the Formateur to the Director of the NRPB, the assignment of the Governor to the Formateur to form an interim government that gives priority to execute the agreements made by the Netherlands regarding the financing of the national recovery of Sint Maarten, including the financing of the rehabilitation of the airport, the signed national decrees, and the decisions of the Council of Ministers on the relevant agreements prior to the motion of September 25.

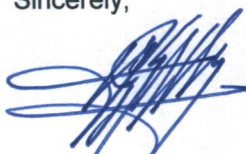
This unqualified legal opinion, and the underlying legal analysis, was presented to the legal counsel of the Bondholders on October 23.

After analysing the unqualified legal opinion, the Bondholders informed the Government of Sint Maarten and the NRPB on October 24 that they still require a 'declaratory motion of Parliament' which resolves that the Caretaker Ministers can sign the relevant legal agreements.

In light of the very fragile financial situation that the Airport is in, and the fact that any delay in the signing of the relevant legal agreements can have very detrimental consequences for the reconstruction and continued functioning of the Airport, I look forward to discussing the proposed way forward during the urgent reconvening of the public meeting on the state of affairs at PJIA.

I trust to have informed you sufficiently.

Sincerely,



Perry F.M. Geerlings
Minister of Finance (demiss.)

Appendix: email correspondence C. Connor/MP S. Jacobs
Legal memorandum VEKD
Legal opinion Prof. A. van Rijn, plus translation
Legal opinion Lexwell

CC: Prime Minister, Mr. W. Smith
Minister of TEATT, Mr. S. Johnson
Director of the NRPB, Mr. C. Connor
Governor of Sint Maarten, Mr. E. Holiday

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Geerlings, Perry

From: Claret Connor <c.connor@nrpbsxm.org>
Sent: Thursday, October 10, 2019 2:15 PM
To: Geerlings, Perry
Subject: FW: Main Urgent Points Airport

FYI

Kind Regards

Claret Connor

Director
National Recovery Program Bureau

From: Silveria Jacobs <silveria.jacobs@gmail.com>
Sent: Thursday, October 10, 2019 12:16 PM
To: Claret Connor <c.connor@nrpbsxm.org>
Subject: Re: Main Urgent Points Airport

Claret,

the Governor of Sxm won't sign off on something unlawful, so the stakeholders shouldn't be wary if all decisions were taken before the fall of government and the motion against this government.
I'll give you a call ASAP after this meeting.

Regards,

S. Jacobs

Sent from my iPad

On 8 Oct 2019, at 22:08, Claret Connor <c.connor@nrpbsxm.org> wrote:

MP Jacobs

As we have discussed and as I've promised here are the urgent immediate bullet point issues surrounding the airport financing along with a request by NRPB:

The motion of the new majority prohibits the caretaker government from signing any agreements with third parties.

Because of this motion, legal counsel in its advice to the negotiations which is required on behalf of the agreements, has strongly advised that the caretaker ministers should not sign the completed agreements on behalf of the Government of St Maarten **without a clear declaration** by the new majority given authorization to the caretaker ministers to do so. (see attached drafted by NRPB Legal Advisor)

The Airport is in desperate need of the awarded Insurance proceeds that is held by the bondholders, it is agreed that (\$5-million) of the insurance is to be released at the signing of the above mentioned agreements by the Bondholders

Airport bridge loan from the Netherlands and Government of St Maarten has been depleted and PJIAE will be facing financial shortfalls at the end of October

Bondholders, EIB and Trust Fund Loans LB's have been vetted and counter signed by Governor Holiday. All parties expected to have the Government of St Maarten sign the agreements on Monday October 7th

Request;

The NRPB has requested as part of the transition of Government to establish a meeting with the Formateur and the St Maarten Trust Fund Steering Committee, to apprise her of the ongoing and future projects, work plans and financial overview

<image003.jpg>

<Draft proposed motion of Parliament - 03102019.docx>

Geerlings, Perry

From: Silveria E. Jacobs <Silveria.Jacobs@sxmparliament.org>
Sent: Thursday, October 10, 2019 5:47 PM
To: Geerlings, Perry
Cc: veritas@kabgsxm.com
Subject: Re: Airport Loan Facility Agreements ready to sign

Dear Minister Geerlings,

I have taken note of your correspondence.
It is therefor the discretion of His Excellency the Governor to ensure the motion is upheld.

Hoping to have informed you sufficiently,

MP S. Jacobs
Formateur

Sent from my Samsung Galaxy smartphone.

Geerlings, Perry

From: Geerlings, Perry
Sent: Wednesday, October 9, 2019 5:28 PM
To: silveria.jacobs@sxmparliament.org
Cc: Romeo, Leona; veritas@kabgsxm.com
Subject: Airport Loan Facility Agreements ready to sign

Importance: High

Honorable MP Jacobs (Formateur), good afternoon,

By way of this email I would like to inform you, also in light of your formation instruction, that we have completed all negotiations regarding the loan facility for our airport and signed the corresponding LB's. Therefore, we are now ready to sign all corresponding agreements and contracts with the World Bank, the European Investment Bank, the bondholders and PJIA.

The signing is scheduled for next week in Washington. This will allow the Airport to finally start the procurement processes for the reconstruction as well as provide the airport immediately with an urgently needed Opex injection of US\$5 million. This will enable them to meet their financial obligations for October and beyond, including payment of the utilities and personnel salaries.

But because of the motion of no confidence passed against the government, the bondholders, among others, would appreciate to receive some clarity regarding your support for this final exercise. There is some hesitation regarding the mandate to sign because of the motion and a legal advice given.

Your support would immediately solve this issue and will allow, as mentioned earlier, the airport to finally start its trajectory of reconstruction and provide them with the urgent funds needed by next week.

Thanking you for your kind consideration in this urgent matter, I am looking forward to your positive reply.

Sincerely yours,



Perry F. M. Geerlings

Minister of Finance of Sint Maarten (demissionair)

Government Administration Building

Soualiga Rd.#1, Philipsburg, Sint Maarten

Office:+1(721)-520-6077

Lexwell
T.a.v. mevrouw mr. F. Jansen
Harbour View
Falcon Road 2
PHILIPSBURG
SINT MAARTEN

Per e-mail verzonden aan fjansen@lexwell.net

Behandelaar :	prof.mr. A.B. van Rijn	Functie :	advocaat/partner
Tel.nr. :	(071) 581 53 20	Ons kenmerk :	19-00584
Fax nr. :	(071) 581 53 22	Uw kenmerk :	
E-mail :	a.vanrijn@declercq.com	Datum :	18 oktober 2019

Betreft: **19-00584/Lexwell/Opinie PJIAE**

Geachte mevrouw Jansen,

In verband met de situatie die is ontstaan doordat het kabinet Marlin-Romeo het vertrouwen van de meerderheid van de Staten heeft verloren, zijn ontslag heeft aangeboden en de regering daarbij tevens gebruik heeft gemaakt van haar bevoegdheid op grond van artikel 59 Staatsregeling tot het ontbinden van de Staten en het uitroepen van nieuwe verkiezingen, heeft u mij gevraagd u te adviseren omtrent de vraag of (het bevoegd gezag van) het land Sint Maarten thans bevoegd is de Concession Undertaking and Disbursement Agreement tussen het land Sint Maarten, PJIAE N.V. en de Financiers van PJIAE rechtsgeldig aan te gaan.

Ten behoeve van de advisering heeft u mij toegezonden:

- Brief van de minister-president van Sint Maarten van 23 september 2019 inzake de uitkomsten van de vergadering van de ministerraad van 19 september 2019 inzake de Concession Undertaking and Disbursement Agreement.
- Landsbesluit van 4 oktober 2019 met kenmerk LB-19/0633 inzake het aangaan van de Concession Undertaking and Disbursement Agreement.
- Geluidsfragmenten met openbare verklaringen van Statenlid en formateur Silveria Jacobs.



Logo of Advocaten • Notariaat in 155 jaar opname West-Indische

• Advocaten • Notariaat
Hoge Rijndijk 306
2314 AM Leiden
T +31 (0)71 581 53 00
F +31 (0)71 581 53 81

• Advocaten
WTC The Hague
Prinses Margrietplantsoen 33
2595 AM Den Haag
T +31 (0)70 205 57 00

• Postadres
Postbus 11051
2301 EB Leiden
www.declercq.com
info@declercq.com

• Kwaliteitsrekening de Clercq notaris Heemstra
IBAN: NL66 RABO 0319 4364 54
BIC: RABONL2U
• BTW nr: NL 0084.90.703.B.01

Ik ben tevens in het bezit van de ontbindingsbesluiten van 23 september en 3 oktober 2019 en van de motie van wantrouwen van 25 september 2019.

Naar aanleiding van de door u gestelde vragen bericht ik als volgt.

Algemeen

Wanneer een kabinet of een of meer ministers het vertrouwen van de Staten hebben verloren, zijn zij op grond van artikel 33 lid 2 Staatsregeling verplicht hun ambt ter beschikking te stellen. Zij doen dit door hun ontslag aan de gouverneur aan te bieden. Voor de naleving van deze verplichting maakt het geen verschil of een kabinet in reactie op het vertrouwensverlies tevens gebruik maakt van het ontbindingsrecht ex artikel 59 Staatsregeling.

In het algemeen zal de gouverneur op de ontslagaanvraag reageren door deze in beraad te houden en het kabinet c.q. de minister(s) te vragen 'al datgene te blijven verrichten wat zij in het belang van het land noodzakelijk achten' of woorden van gelijke strekking.¹ Het demissionaire kabinet c.q. de demissionaire ministers blijven dan in functie totdat het opvolgende kabinet of de opvolgende ministers zijn aangetreden. Ratio hiervan is dat de continuïteit van het bestuur moet zijn gewaarborgd.

Aanblijven zal voor individuele ministers alleen geen optie zijn wanneer het parlement uitdrukkelijk heeft aangegeven het onmiddellijke vertrek van die minister(s) noodzakelijk te vinden, meestal omdat sprake is geweest van een bijzonder, in het handelen van die minister gelegen voorval dat langer aanblijven niet aanvaardbaar laat zijn en daarom tot een onmiddellijk vertrek noopt. Aan zo'n opvatting van het parlement moet dan gevolg worden gegeven. De portefeuille van de desbetreffende minister kan dan worden waargenomen door een collega-minister totdat een opvolger is benoemd. Met het oog op de noodzakelijke continuïteit moet in ieder geval altijd een voldoende aantal (demissionaire) ministers in functie blijven. Voor de minister-president geldt om redenen van continuïteit altijd dat diens ontslag niet kan ingaan voordat zijn opvolger is benoemd. Artikel 40 lid 2 Staatsregeling eist dit.²

Zolang aan een minister niet formeel ontslag is verleend geldt dus dat hij intussen datgene moet blijven verrichten wat hij in het belang van het land noodzakelijk acht. Het staatsrecht zwijgt over wat hieronder moet worden verstaan. In de literatuur wordt over het algemeen de opvatting gehuldigd dat deze formule betekent dat de minister zich behoort te beperken tot het afdoen van lopende zaken. Dit houdt in dat geen controversiële beslissingen worden

¹ Vgl. R.K. Visser, In dienst van het algemeen belang. Ministeriële verantwoordelijkheid en parlementair vertrouwen, Den Haag: Uitgeverij Boom 2008, p. 241.

² Zie voor dit alles: Arjen van Rijn, Handboek Caribisch Staatsrecht, Den Haag: Boom juridisch 2019, #237.

genomen, tenzij een snelle beslissing noodzakelijk is.³ Tot lopende zaken kunnen bijvoorbeeld worden gerekend: het normale overheidsbeheer inclusief het beheer van de geldmiddelen, de rechtshandhaving, het voldoen aan wettelijke verplichtingen en handelingen om te voorkomen dat termijnen verlopen.⁴ Er bestaat voor de desbetreffende minister echter geen rechtsplicht om de werkzaamheden tot lopende zaken te beperken.⁵ De toelaatbaarheid van het handelen van de demissionaire minister wordt staatsrechtelijk gezien uitsluitend gereguleerd door de vertrouwensregel: de minister mag doen wat het parlement hem toestaat en hij mag niet doen wat het parlement hem niet toestaat. Acht het parlement een bepaald handelen van de minister niet passend gelet op zijn demissionaire status, dan kan het eisen dat hij alsnog per direct aftreedt.⁶ Met andere woorden: het handelen van een demissionaire minister is niet in staatsrechtelijke maar wel in politieke zin aan beperkingen onderworpen.⁷

In die lijn kan het parlement er ten behoeve van de politieke duidelijkheid zelf toe overgaan om bepaalde onderwerpen controversieel te verklaren, zodat het demissionaire kabinet c.q. demissionaire ministers weten welk handelen voor het parlement onaanvaardbaar is.⁸ Het kabinet c.q. de ministers weten dan precies waar zij aan toe zijn en welke speelruimte zij hebben zonder in politieke problemen te komen. Het behoort tot de exclusieve vrijheid van het parlement te bepalen wat het al dan niet controversieel acht. De rechter is in beginsel niet bereid om zich in de keuzes die het parlement in dit verband maakt te mengen.⁹

³ M. Jacobs, *Politiek in Schimmenland. De verhouding tussen Tweede Kamer en demissionair kabinet 1945-2002*, Den Haag: Ministerie van Binnenlandse Zaken en Koninkrijksrelaties 2008, p. 26, met verwijzing naar P. Bovend'Eert (**bijlage**); R.K. Visser, *In dienst van het algemeen belang. Ministeriële verantwoordelijkheid en parlementair vertrouwen*, Den Haag: Uitgeverij Boom 2008, p. 241.

⁴ J.G.C. Wiebenga, *De status van een demissionair kabinet*, in: *Liberaal Reveil* 1989, nr. 4, p. 128-132, p. 129 (**bijlage**).

⁵ M. Jacobs, *Politiek in Schimmenland. De verhouding tussen Tweede Kamer en demissionair kabinet 1945-2002*, Den Haag: Ministerie van Binnenlandse Zaken en Koninkrijksrelaties 2008, p. 26, met verwijzing naar P. Bovend'Eert (**bijlage**).

⁶ M. Jacobs, *Politiek in Schimmenland. De verhouding tussen Tweede Kamer en demissionair kabinet 1945-2002*, Den Haag: Ministerie van Binnenlandse Zaken en Koninkrijksrelaties 2008, p. 26, met verwijzing naar C.A.J.M. Kortmann.

⁷ M. Jacobs, *Politiek in Schimmenland. De verhouding tussen Tweede Kamer en demissionair kabinet 1945-2002*, Den Haag: Ministerie van Binnenlandse Zaken en Koninkrijksrelaties 2008, p. 27.

⁸ Zie bijvoorbeeld de door de Tweede Kamer in 2017 opgestelde lijst van controversiële onderwerpen: *TK 2016-2017*, 34707, nr. 1 (**bijlage**).

⁹ Vgl. Voorzieningenrechter Den Haag 1 juni 2012, ECLI:NL:RBSGR:2012:BW7242 (**bijlage**); JB 2012/174 m.nt. J.L.W. Broeksteeg.

Actuele staatsrechtelijke situatie

Op 23 september 2019 heeft het kabinet Marlin-Romeo de consequentie getrokken uit het feit dat het vertrouwen van de meerderheid van de Staten niet meer aanwezig was en zijn ontslag aan de gouverneur aangeboden. Ik begrijp dat de gouverneur (ook dit keer) de ministers heeft gevraagd al datgene te blijven verrichten wat zij in het belang van het land noodzakelijk achten of woorden van gelijke strekking.

Tegelijk heeft de regering gebruik gemaakt van haar bevoegdheid ex artikel 59 Staatsregeling en de Staten ontbonden, met gelijktijdige uitschrijving van nieuwe verkiezingen op 25 november 2019. Bij wijzigingsbesluit van 3 oktober 2019 heeft de regering vervolgens de verkiezingen tot 9 januari 2020 uitgesteld omdat de voorbereidingstijd te kort bleek. In het ontbindingsbesluit van 23 september 2019 heeft het kabinet als redengeving voor het uitschrijven van nieuwe verkiezingen onder meer genoemd dat er een situatie is ontstaan die het nemen van belangrijke beslissingen door het parlement blokkeert, waaronder de belastinghervorming, dat deze beslissingen alleen genomen kunnen worden met een stabiele volksvertegenwoordiging en regering en dat het nu aan de kiezers is om een uitspraak te doen.

Bij motie van 25 september 2019 hebben de Staten ook formeel hun vertrouwen aan de leden van het zittende kabinet onttrokken. In diezelfde motie wordt tevens geëist dat de minister-president en de minister van Justitie per direct vertrekken. Ook instrueert de motie de demissionaire 'caretakers' een aantal beslissingen niet te nemen en 'not to enter into any contracts with third parties, neither collectively nor individually'. Deze motie kan mede worden gelezen als aanwijzing door de Staten van onderwerpen die als controversieel moeten worden beschouwd. Met andere woorden: houdt het demissionaire kabinet of een demissionaire minister zich daar niet aan, dan moet rekening worden gehouden met de politieke sanctie dat de desbetreffende minister(s) niet langer hun ambt mogen blijven vervullen en per omgaande moeten vertrekken.

Aan minister-president Romeo-Marlin is op 10 oktober 2019 formeel ontslag verleend met gelijktijdige benoeming van (demissionair) minister Smith tot (demissionair) minister-president.

Intussen is de formatie op gang gekomen van een interim-kabinet, dat het zittende kabinet voor de resterende periode tot aan de Statenverkiezingen en de formatie van een definitief kabinet op grond van de uitslag van die Statenverkiezingen moet gaan vervangen. Tot formateur is het Statenlid Silveria Jacobs aangewezen. Zij verklaart in de mij ter beschikking gestelde geluidsfragmenten in het openbaar onder meer dat 'the government is not restricted from carrying out things that were already in process' en dat de regering 'is allowed to carry out what was agreed upon before', alsmede dat 'the Governor reiterated that as well and that he would not be signing off on anything that was new'.

Bevoegdheid tot tekenen van de Concession Undertaking and Disbursement Agreement

De vraag of de Concession Undertaking and Disbursement Agreement door het bevoegd gezag van het land Sint Maarten mag worden ondertekend moet in het licht van bovenstaande worden beantwoord.

Ik constateer dat de ministerraad op 19 september in zijn vergadering de definitieve uitonderhandelde versie van de overeenkomst heeft goedgekeurd en dat de minister-president dit bij brief van 23 september 2019 schriftelijk aan de National Recovery Program Bureau heeft verklaard c.q. bevestigd.

Ik constateer tevens dat bij landsbesluit van 4 oktober is bepaald dat de overeenkomst zal worden aangegaan en dat de minister van Financiën en de minister van Toerisme, Economische Zaken, Verkeer en Toerisme worden gemachtigd om de overeenkomst namens het land Sint Maarten te tekenen.

De motie van wantrouwen draagt de demissionaire 'caretakers' op een aantal beslissingen niet te nemen en 'not to enter into any contracts with third parties, neither collectively nor individually'. Van 'enter into any contracts' is bij de Concession Undertaking and Disbursement Agreement naar mijn mening geen sprake zolang er alleen nog handelingen moeten worden verricht die als formaliteit zijn te beschouwen, zoals het ondertekenen van een vóór 23 september 2019 reeds geheel uitonderhandelde en door de ministerraad goedgekeurde overeenkomst. In het onderhavige geval is sprake van een gedegen, geheel uitonderhandelde en door de ministerraad goedgekeurde overeenkomst waarvan, zo begrijp ik, zowel de inhoud als de (financiële) consequenties geheel vaststaan. Ik kan niet beoordelen of aan de kant van het bestuur nog een reële vrijheid of optie bestaat alsnog van instemming met het contract af te zien, maar neem aan dat die vrijheid op grond van de precontractuele goede trouw hoe dan ook aan zekere beperkingen onderhevig is. Maar ook wanneer er nog een reële vrijheid jegens de andere contractspartijen zou bestaan, ben ik van mening dat er alle reden bestaat om een ondertekening van de Concession Undertaking and Disbursement Agreement als afhandeling van een lopende zaak te beschouwen. Hiervoor biedt de motie van wantrouwen de ruimte.

Dit wordt bevestigd door de omstandigheid dat de gouverneur het landsbesluit van 4 oktober 2019 heeft ondertekend en niet gebruik heeft gemaakt van zijn bevoegdheid op grond van artikel 21 Reglement voor de Gouverneur. Dit artikel verplicht de gouverneur als vertegenwoordiger van de koninkrijksregering om zijn handtekening onder een verordening of besluit te weigeren als hij de verordening of het besluit in strijd acht met - kort gezegd - internationale regelingen en/of het recht en/of het belang van het Koninkrijk. Dit kan aan de orde zijn wanneer de deugdelijkheid van het (financieel) bestuur door de

contracten in het geding zou zijn. Hoewel de gouverneur van zijn bevoegdheid ex artikel 21 Reglement voor de Gouverneur slechts op zeer terughoudende wijze gebruik mag maken, kan ik mij niet voorstellen dat hij dit niet zou doen wanneer hij ernstige twijfels zou hebben over de legitimatie van het demissionaire kabinet om een overeenkomst van een dergelijke maatschappelijke en financiële reikwijdte aan te gaan. De mondelinge verklaring van de formateur dat 'the Governor reiterated that as well and that he would not be signing off on anything that was new' bevestigt naar mijn oordeel dat de ondertekening van de Concession Undertaking and Disbursement Agreement kennelijk ook door de gouverneur als afhandeling van een lopende zaak wordt beschouwd.

Uit de verklaring van de formateur volgt naar mijn oordeel tevens dat ook de huidige nieuwe meerderheid in de Staten dit zo ziet. Er mag van worden uitgegaan dat de formateur, die zich blijkens de wijze waarop zij haar woorden kiest van haar positie en de draagwijdte van haar verklaring bewust is, de opvatting van de meerderheid in de Staten vertolkt, nu zij ook zelf als Statenlid tot die meerderheid behoort en als formateur het vertrouwen van die meerderheid geniet. Dit maakt de verklaring van de formateur tot een relevant gegeven.

Op grond van het bovenstaande ben ik van mening dat de beide in het landsbesluit van 4 oktober 2019 gemachtigde ministers ondanks hun demissionaire status bevoegd zijn om de Concession Undertaking and Disbursement Agreement te ondertekenen.

Overige aspecten

Uit het landsbesluit van 4 oktober 2019 blijkt dat voor het aangaan van de Concession Undertaking and Disbursement Agreement nog geen grondslag in de begroting 2019 voorhanden is. Die grondslag wordt echter vooruitlopend op de wijziging van de begroting gevonden in artikel 50 lid 1 sub 1 van de Comptabiliteitslandsverordening: afwijking van de begroting indien het landsbelang zulks acuut vordert. Daaronder valt de situatie dat de gevolgen van een ramp moeten worden opgevangen. Het oordeel of sprake is van een acuut landsbelang komt op grond van artikel 50 lid 3 Comptabiliteitslandsverordening toe aan de minister-president. Met die beoordeling moet de ministerraad instemmen (artikel 50 lid 4 Comptabiliteitslandsverordening).

Met betrekking tot het oordeel of sprake is van een acuut landsbelang heeft de minister-president uiteraard grote vrijheid. Zijn inschatting is in beginsel leidend. Ik teken echter wel aan dat de vraag mogelijk is of twee jaar na de orkaan Irma nog sprake is van een acuut landsbelang waarin de gevolgen van die ramp moeten worden opgevangen in die zin dat onmiddellijk handelen in afwijking van de begroting noodzakelijk is. Tegelijk kan het zijn dat juist nu sprake is van een cruciaal moment in het proces van wederopbouw van de luchthaven, waardoor (verder) uitstel van ondertekening niet verantwoord is en er dan ook noodzaak bestaat om nu te handelen. Zo'n afweging moet worden geacht binnen de

marges van de beoordelingsvrijheid te vallen. De handtekening van de gouverneur onder het landsbesluit kan als een bevestiging worden gezien dat door de wijze waarop van de beoordelingsvrijheid gebruik is gemaakt de deugdelijkheid van bestuur niet in gevaar is geraakt.

Met betrekking tot de aanvaardbaarheid van de ondertekening wijs ik er ten overvloede op dat uiteraard ook voor het overige moet zijn voldaan aan de voorschriften van de Rijkswet financieel toezicht en van de Comptabiliteitslandsverordening. Dwingende wettelijke voorschriften moeten onder alle omstandigheden worden nageleefd.

Tot slot merk ik op dat de rechtspraak van de Caribische rechter met betrekking tot het afscheidingsbeleid hier niet aan de orde is. Afscheidingsbeleid houdt in, 'dat vlak vóór een bestuurswisseling inhoudelijk twijfelachtige of onvoldoende voorbereide besluiten worden genomen of toezeggingen worden gedaan, met als kenbaar motief het volgende bestuur, waarvan men aanneemt dat dit anders zou beslissen, voor een fait accompli te stellen, met alle consequenties van dien voor de schaarse openbare goederen en middelen. Dit brengt met zich mee, mede gelet op de kleinschaligheid van de gemeenschappen op de eilanden binnen het hofressort, dat in voorkomende gevallen, in het algemeen belang, een inhoudelijke rechterlijke controle op onder meer zuiverheid van oogmerk een extra accent dient te krijgen.'¹⁰ De rechter vindt dat deze vorm van 'politiek favoritisme' qua strekking strijd oplevert met de goede zeden en de openbare orde.¹¹ Bij de Concession Undertaking and Disbursement Agreement is geen sprake van een inhoudelijk twijfelachtig of onvoldoende voorbereid besluit.

¹⁰ GEA-Aruba 6 april 2018, ECLI:NL:OGEEA:2018:278, r.o. 4.4. Arjen van Rijn, Handboek Caribisch Staatsrecht, Den Haag: Boom juridisch 2019, #344.

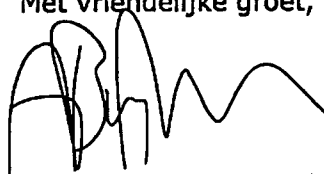
¹¹ GEA-Aruba 18 september 2013, ECLI:NL:OGEEA:2013:2; GEA-Sint Maarten 31 mei 2017, ECLI:NL:OGEEA:2017:25. GEA-Aruba 28 maart 2018, ECLI:NL:OGEEA:2018:162, r.o. 4.6: het enkele feit dat een minister een contract sluit nadat het kabinet demissionair is geworden brengt op zichzelf nog niet mee dat sprake is van afscheidingsbeleid; daarvoor zijn bijkomende omstandigheden nodig.

Conclusie

Op grond van het bovenstaande ben ik van mening dat de beide in het landsbesluit van 4 oktober 2019 gemachtigde ministers ondanks hun demissionaire status bevoegd zijn om de Concession Undertaking and Disbursement Agreement te ondertekenen, waarbij ik erop wijs dat ook voor het overige dient te zijn voldaan aan de wettelijke eisen.

Tot zover mijn advies. Tot nader overleg ben ik uiteraard steeds bereid.

Met vriendelijke groet,



Prof. mr. Arjen van Rijn

Dear Mrs. Jansen,

In connection with the situation that has arisen because the Marlin-Romeo Cabinet has lost the confidence of the majority of the members of parliament, the Marlin-Romeo Cabinet has offered its resignation and the government has made use of its authority pursuant to Article 59 of the constitution of Sint-Maarten for the dissolution of the parliament of Sint Maarten and the proclamation of new elections, you have asked me to advise you on the question whether (the competent authority of) the country of Sint Maarten is now authorised to enter into the Concession Undertaking and Disbursement Agreement between the country of Sint Maarten, PJIAE N.V. and the Financiers of PJIAE in a legally valid way.

For the purpose of the advice, you have sent me:

- Letter from the Prime Minister of Sint Maarten of 23 September 2019 regarding the results of the meeting of the council of ministers of 19 September 2019 regarding the Concession Undertaking and Disbursement Agreement.
- National decree of 4 October 2019 with reference LB-19/0633 on entering into the Concession Undertaking and Disbursement Agreement.
- Sound fragments with public statements of member of state and *formateur* Silveria Jacobs.

I am also in possession of the dissolution decisions of 23 September and 3 October 2019 and the motion of no-confidence of 25 September 2019.

In response to the questions you have asked, I will reply as follows:

General

If a cabinet or one or more ministers loses the confidence of parliament, they are obliged by Article 33, paragraph 2, of the Constitution to make their office available. They do this by offering their resignation to the Governor. For the fulfilment of this obligation, it makes no difference whether a cabinet, in response to the loss of confidence, also makes use of the right of dissolution pursuant to Article 59 of the Constitution.

In general, the Governor will respond to the application of dismissal by keeping the dismissal under consideration and asking the cabinet and/or the minister(s) to 'continue to do whatever they consider necessary in the interest of the country' or words of similar scope. ¹ The outgoing cabinet or ministers will then remain in office until the successor cabinet or ministers have taken office. Reason for this is that the continuity of the governance must be guaranteed.

Remaining in office shall not be an option for individual ministers if the parliament has explicitly indicated that it considers the immediate departure of the minister(s) necessary, usually because there has been a special incident in the actions of that minister that makes staying in place for a longer period of time unacceptable and therefore necessitates an immediate departure. Such an opinion of the parliament would have to be followed up. The portfolio of the minister in question can then be taken over by a fellow minister until a successor has been appointed. To ensure the necessary continuity, a sufficient number of (outgoing) ministers must always remain in office. For reasons of continuity, the prime minister must always ensure that his resignation cannot take effect until his successor has been appointed. Article 40 paragraph 2 of the Constitution requires this. ²

¹ See. R.K. Visser, *In dienst van het algemeen belang. Ministeriële verantwoordelijkheid en parlementair vertrouwen*, Den Haag: Uitgeverij Boom 2008, p.241.

² See for all of this: Arjen van Rijn, *Handboek Caribisch Staatsrecht*, Den Haag: Boom juridisch 2019, #237.

As long as a minister has not been formally dismissed, he must, in the meantime, continue to do what he considers necessary in the interests of the country. Constitutional law is silent about what is meant by this. The literature generally takes the view that this formula means that the minister should confine himself to dealing with current cases. This means that no controversial decisions will be made unless a quick decision is necessary.³ Current matters may include, for example, normal government management including treasury management, law enforcement, compliance with legal obligations, and actions to prevent deadlines from expiring.⁴ There is, however, no legal obligation for the concerned minister to limit the work to current affairs.⁵ From a constitutional point of view, the admissibility of the outgoing minister's actions is only regulated by the principle of legitimate expectations: the minister may do what parliament allows him and he may not do what parliament does not allow him to do. If the parliament considers that certain actions by the minister are not appropriate in view of his outgoing status, it can demand that he resigns with immediate effect.⁶ In other words, the actions of an outgoing minister are not subject to restrictions in a constitutional sense but are subject to restrictions in a political sense.⁷

For the sake of political clarity, the parliament may decide to introduce controversial amendments to certain subjects, so that the outgoing cabinet or ministers will know what action is unacceptable to the parliament.⁸ The cabinet or ministers will then know exactly where they stand and what room for manoeuvre they have without getting into political trouble. It is part of the exclusive freedom of the parliament to decide what it considers controversial or not. In principle, the judge is not prepared to interfere in the choices made by parliament in this respect.⁹

³ M. Jacobs, *Politiek in Schimmenland. De verhouding tussen Tweede Kamer en demissionair kabinet 1945-2002*, Den Haag: Ministerie van Binnenlandse Zaken en Koninkrijksrelaties 2008, p.26, with reference to P. Bovend'Eert (**appendix**); R.K. Visser, *In dienst van het algemeen belang. Ministeriele verantwoordelijkheid en parlementair vertrouwen*, Den Haag: Uitgeverij Boom 2008, p.241.

⁴ J.G.C. Wiebenga, *De status van een demissionair kabinet*, in: *Liberaal Reveil* 1989, nr. 4, p. 128-132, p. 129 (**appendix**).

⁵ M.Jacobs, *Politiek in Schimmenland. De verhouding tussen Tweede Kamer en demissionair kabinet 1945-2002*, Den Haag: Ministerie van Binnenlandse Zaken en Koninkrijksrelaties 2008, p.26, with reference to P. Bovend'Eert (**appendix**).

⁶ M. Jacobs, *Politiek in Schimmenland. De verhouding tussen Tweede Kamer en demissionair kabinet 1945-2002*, Den Haag: Ministerie van Binnenlandse Zaken en Koninkrijksrelaties 2008, p.26, with reference to C.A.J.M. Kortmann

⁷ M. Jacobs, *Politiek in Schimmenland. De verhouding tussen Tweede Kamer en demissionair kabinet 1945-2002*, Den Haag: Ministerie van Binnenlandse Zaken en Koninkrijksrelaties 2008, p.26.

⁸ See, for example, the list of controversial subjects drawn up by the Lower House of Parliament in 2017: TK 2016-2017,34707, nr. 1 (**appendix**).

⁹ See. *The Court in preliminary relief proceedings in The Hague* 1 June 2012, ECLI:NL:RBSGR:2012:BW7242 (**appendix**); JB 2012/174 with legal commentary from J.L.W. Broeksteeg.

Current constitutional situation

On 23 September 2019, the Marlin-Romeo Cabinet offered its resignation to the governor. I understand that the governor (again this time) has asked the ministers to continue to do whatever they consider necessary in the interests of the country or used similar words to this effect.

At the same time, the government made use of its power under Article 59 of the Constitution and dissolved the parliament, while calling new elections on 25 November 2019. By amending its decision of 3 October 2019, the government subsequently postponed the elections until 9 January 2020 because the preparation time proved to be too short. In the resolution to dissolve of 23 September 2019, the cabinet stated that the reason for calling new elections included the fact that a situation had arisen that would block important decisions being taken by parliament, including the tax reform, that these decisions could only be taken with a stable parliamentary representation, and that it was now up to the voters to make a decision.

In a motion of 25 September 2019, the majority of parliament members also formally withdrew their trust from the members of the current cabinet. The same motion also calls for the prime minister and the minister of Justice to leave immediately. Also, the motion instructs the outgoing 'caretakers' in office not to make a number of decisions and 'not to enter into any contracts with third parties, neither collectively nor individually'. This motion can also be read as an indication by the members of parliament of subjects that should be considered controversial. In other words: if the outgoing cabinet or an outgoing minister does not comply with this, the political sanction can be that the minister(s) in question may no longer be allowed to continue to perform their duties and must leave immediately.

Prime Minister Romeo-Marlin was formally dismissed on 10 October 2019 with the simultaneous appointment of (outgoing) Minister Smith as (outgoing) Prime Minister.

In the meantime, the formation of an interim government has started, which will have to replace the current cabinet for the remaining period until the general elections and the formation of a definitive cabinet based on the results of the general elections. Silveria Jacobs, a member of the parliament, has been appointed as a *formateur*. In the sound fragments made available to me, she explains publicly that 'the government is not restricted from carrying out things that were already in process' and that the government 'is allowed to carry out what was agreed upon before', as well as that 'the Governor reiterated that as well and that he would not be signing off on anything that was new'.

Authority to sign the Concession Undertaking and Disbursement Agreement

The question whether the Concession Undertaking and Disbursement Agreement may be signed by the competent authority of the country of Sint Maarten must be answered in the light of the above.

I note that the council of ministers approved the final negotiated version of the agreement at its meeting on 19 September, and that the prime minister stated this in writing to the National Recovery Program Bureau by letter of 23 September 2019.

I also note that by national decree of 4 October it has been determined that the agreement will be entered into and that the Minister of Finance and the Minister of Tourism, Economic Affairs, Traffic and Tourism will be authorized to sign the agreement on behalf of the country of Sint Maarten.

The motion of no-confidence restricts the outgoing 'caretakers' not to make a number of decisions and 'not to enter into any contracts with third parties, neither collectively nor individually'. In my opinion, 'enter into any contracts' does not apply to the Concession Undertaking and Disbursement Agreement as long as only actions that can be regarded as a formality, such as the signing of an agreement that has already been fully negotiated and approved by the council of ministers before 23 September 2019, have to be carried out. In this case, the agreement in question is sound, completely negotiated and approved by the council of ministers, the content and (financial) consequences of which are, I understand, entirely certain. I cannot judge whether there is still a real freedom or option on the part of the administration to agree to the contract or to see it, but I assume that this freedom is subject to certain restrictions on the grounds of pre-contractual good faith in any case. However, even if there were still a real freedom towards the other contracting parties, I believe that there is every reason to regard the signing of the Concession Undertaking and Disbursement Agreement as the settlement of an ongoing case. The motion of no-confidence offers room for this.

This is confirmed by the fact that the Governor signed the national decree of 4 October 2019 and did not make use of his authority under Article 21 of the Governor's Regulations. This article obliges the Governor, as the representative of the Royal Government, to refuse to sign a regulation or decision if he considers the regulation or decision to be in conflict with - in short - international regulations and/or the law and/or the interest of the Kingdom. This may be the case when the soundness of the (financial) management is being compromised by the contracts that would be at issue. Although the Governor can only exercise his powers under Rule 21 of the Rules of Procedure for the Governor with great restraint, I cannot imagine that he would not do so if he had serious doubts about the legitimacy of the outgoing cabinet to enter into an agreement of such social and financial scope. The oral statement by the *formateur* that 'the Governor reiterated that as well and that he would not be signing off on anything that was new' confirms in my opinion that the signing of the Concession Undertaking and Disbursement Agreement is apparently also regarded by the Governor as the settlement of an ongoing case.

It also follows from the statement of the *formateur*, in my opinion, that the current new majority in the parliament also sees this as the case. It can be assumed that the *formateur*, who is aware of her position and of the scope of her statement, expresses the opinion of the majority in the parliament, now that she herself belongs to that majority as a member of state and enjoys the confidence of that majority as a *formateur*. This makes the statement of the *formateur* a relevant fact.

On the basis of the above, I am of the opinion that, despite their outgoing status, the two ministers authorized by the national decree of 4 October 2019 are authorized to sign the Concession Undertaking and Disbursement Agreement.

Other aspects

The national decree of 4 October 2019 shows that there is no basis in the 2019 budget for entering into the Concession Undertaking and Disbursement Agreement. However, this basis is found in Article 50(1)(1) of the National Accountability Ordinance: deviation from the budget in anticipation of the amendment of the budget if the national interest demands it immediately. This includes the need to deal with the consequences of a disaster. The prime minister is responsible for deciding whether or not there is an acute national interest on the basis of Article 50 paragraph 3 of the National Accountability Ordinance. This assessment is subject to the approval of the council of ministers (Article 50(4) of the National Accountability Ordinance).

The prime minister is, of course, free to decide whether or not there is an acute national interest. In principle, his assessment is leading. However, I would like to point out that it is possible to ask whether, two years after Hurricane Irma, there is still an acute national interest in dealing with the consequences of that disaster in terms of the need for immediate action to be taken in contravention of the budget. At the same time, there may be a crucial moment in the process of rebuilding the airport at this particular time, as a result of which (further) postponement of the signing is not justified and there is therefore a need to act immediately. Such a balancing test must be regarded as having been carried out within the margins of discretion. The signature of the Governor under the national decree can be seen as a confirmation that the manner in which the discretion has been exercised has not endangered the soundness of the administration.

With regard to the acceptability of the signature, I would like to point out that, of course, the provisions of the Financial Supervision Act and the National Accountability Ordinance must also be complied with for the rest. Mandatory legal requirements must be complied with under all circumstances.

Finally, I would like to point out that the case law of the Caribbean court on the policy of secession is not at issue here. Separation policy means that just before a change of administration, decisions or promises are made with regard to content that are dubious or insufficiently prepared, with the obvious reason that the next administration, which is assumed to decide otherwise, should be presented with a *fait accompli*, with all the consequences that this would have for the scarce public goods and resources. This entails, also in view of the small scale of the communities on the islands within the courts jurisdiction, that in certain cases, in the general interest, an additional emphasis should be placed on substantive judicial control of, among other things, purity of purpose.¹⁰ The court finds that this form of 'political favoritism' is contrary to good morals and public order as far as its purport is concerned.¹¹ The Concession Undertaking and Disbursement Agreement does not constitute a decision of doubtful or insufficiently prepared content.

¹⁰ GEA-Aruba 6 April 2018, ECLI:NL:OGEEA:2018:278, paragraph 4.4. Arjen van Rijn, Handboek Caribisch Staatsrecht, Den Haag: Boom juridisch 2019, #344

¹¹ GEA-Aruba 18 September 2013, ECLI:NL:OGEEA:2013:2; GEA-Sint Maarten 31 May 2017, ECLI:NL:OGEEA:2017:25. GEA-Aruba 28 March 2018, ECLI:NL:OGEEA:2018:162, para. 4.6: the mere fact that a minister concludes a contract after the cabinet has resigned does not in itself mean that there is a question of a farewell policy; this requires additional circumstances.

Conclusion

On the basis of the above, I am of the opinion that, despite their outgoing status, the two ministers authorized by the national decree of 4 October 2019 are authorized to sign the Concession Undertaking and Disbursement Agreement, and I would like to point out that the legal requirements must also be met for the rest.

So much for my advice. I am, of course, always ready for further consultation.

With a friendly greeting,

Prof. mr. Arjen van Rijn

MEMO

To [REDACTED]
[REDACTED]
[REDACTED]

From VanEps Kunneman Van Doorne, counsel to the Country of Sint Maarten

Regarding Legal opinion VanEps Kunneman VanDoorne [REDACTED]
[REDACTED]

Date 22 October 2019

Ladies and Gentlemen,

Introduction

The Country of Sint Maarten ("SXM") has requested us to prepare a memorandum providing background in relation to our draft legal opinion in connection with the governmental decision process to enter into various agreements in relation to the financing of the restoration of the airport in Sint Maarten and the adoption of a certain motion on 25 September 2019 by a majority of the members of parliament of SXM. In this memorandum, the various agreements, relating to or to be made in connection with the financing of the restoration of the airport in Sint Maarten, are collectively referred to as the "**Agreements**" and these include the Concession Undertaking and Disbursement Agreement as further identified in our draft for our legal opinion of 21 October 2019.

Preparation and governmental action up to and including 22 September 2019

Up to and including 22 September 2019 various legislative and governmental steps have been taken in connection with and for the authorization of the Agreements. If the political developments that have taken place since 22 September 2019 (which are described below) would not have taken place, there would be no issue as to any possible contestation of subsequent action by SXM to enter into the Agreements, provided that the supplemental budget would indeed be adopted which supplemental budget would, in connection with the WB Grant Agreement and the on-lending agreement(s) of the funds so to become available under that WB Grant Agreement, provide that an additional amount of USD 22 million will be on-lent by SXM in addition to the USD 50 million from funds made available from the WB Grant Agreement which on-lending up to that USD 50 million has been approved by the existing budget as adopted.

Developments since 22 September 2019

On 23 September 2019, the ministers of SXM have submitted their resignation. As a result, the ministers of SXM are considered to be acting onward as caretaker ministers until installation of substituting ministers. As such, acting as caretaker ministers, such caretaker ministers of SXM are authorized to continue to conduct ongoing affairs as long as permitted by parliament and therefore subject, however, to any restrictions that may be imposed by the majority of parliament members. Under constitutional

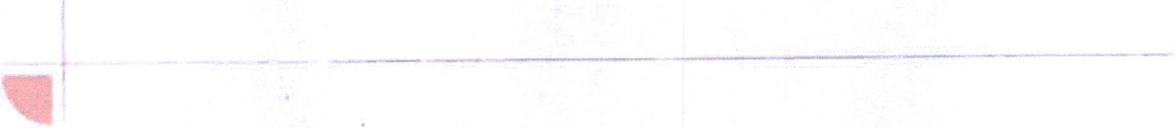
laws and practice, during a caretaker government situation, parliament is at such time the sole governmental body that has democratic legitimacy and therefore any such restrictions as imposed then by a majority of parliament will be binding upon and will indeed restrict the authority of the caretaker ministers irrespective of the completion of any prior resolutions/decisions to the extent such resolutions/decisions have not resulted in the completion of any matters to give effect to such resolutions and decisions.

On 25 September 2019 a motion was adopted by a majority of members of parliament of SXM that prohibits the entry into any agreements (such motion the "**25 September Motion**"). The 25 September Motion could qualify as a restriction as described above. From a legal perspective, it may be argued that the 25 September Motion affects the authority of SXM and the relevant ministers to enter into the Agreements. Although there is no direct statute or provision in written law that provides that in this situation there is indeed lack of authority, based on the views of legal commentators and examples in case law, there is a colorable argument to be made for a successful challenge of such authority. It is therefore that the 25 September Motion in conjunction with the status of the ministers acting as caretaker government has changed the dynamics from how such dynamics would have been in a situation where such events would not have transpired.

Since it is up to parliament or any successor government to argue that because of the 25 September Motion there is an issue with the authority, a possible contestation would only arise if parliament or a successor government would do so. In this respect it is relevant that on 10 October 2019, Ms. Jacobs, member of parliament of SXM, being one of the parliament members who supported the 25 September Motion and who has been appointed by Governor to form a new interim cabinet, made certain statements in this respect. The contents of such statements are that the 25 September Motion does not extend to the Agreements and that therefore notwithstanding such motion SXM and the relevant ministers are authorized to enter into the Agreements. As noted, Ms. Jacobs is not just any of those parliament members: on 30 September 2019, the Governor of SXM has requested Ms. Jacobs to form an interim cabinet. From a political point of view, it may be expected and we presume that she would be speaking on behalf of the parliament members who supported the motion and who form now a coalition. The request to form a new interim cabinet includes the direction to such new interim cabinet "[...] to execute the agreements made with The Netherlands regarding the financing of the national recovery of Sint Maarten, including the financing of the rehabilitation of the airport [...]". We understand that Ms. Jacobs has accepted that request without reservation. So, it may be very well that despite the 25 September Motion, parliament and a successor government would not invoke the 25 September Motion to challenge the authority of SXM when entering into the Agreements.

Opinion

Our firm has been requested to prepare and issue a legal opinion that covers, among other matters, the authority of SXM and its (caretaker) minister(s) to execute the Agreements. In that opinion we will need to address the possibility of an argument for a challenge of the authority because of the 25 September



Motion. On the other hand, such challenge may, given the above, prove later on only to have been a theoretical risk. As we cannot exclude the possibility of that theoretical risk, for the purposes of the opinion and given the current state of affairs and our understanding of the position of Ms. Jacobs and the other parliament members who supported the 25 September Motion on the purport thereof, we will need to include in our legal opinion assumptions and reliance wording to the effect that indeed SXM and the relevant cabinet and ministers, notwithstanding the 25 September Motion, are fully authorized to enter into the Agreements.

DRAFT: FOR DISCUSSION PURPOSES ONLY

The Bank of New York Mellon
And the Noteholders

Re: CONCESSION UNDERTAKING AND DISBURSEMENT AGREEMENT

St. Maarten, October 21, 2019

Ladies and Gentlemen:

We have acted as Sint Maarten counsel to Princess Juliana International Airport Exploitiemaatschappij N.V. ("PJIAE") in connection with i) the execution of the Concession Undertaking and Disbursement Agreement dated as of September 23, 2019 (the "Undertaking Agreement") entered into by and among the Country Sint Maarten, represented by the Minister of Finance and the Minister of Tourism, Economic Affairs, Transport and Telecommunication (the "SMG"), PJIAE, The Bank of New York Mellon (the "Trustee") as Trustee, Account Control Agent, Issuing Agent, Registrar and Paying Agent, and each of the Noteholders party hereto and accepted and agreed to by RBC Trust (Trinidad & Tobago) Limited, as Sint Maarten Collateral Agent ("RBC").

Unless otherwise defined herein, terms used herein are used as defined in the Undertaking Agreement.

In our capacity as such counsel, we have been requested to issue a legal opinion regarding the due and valid authorization of the SMG in connection with the Undertaking Agreement, in light of recent political developments in Sint Maarten.

We have examined, and have relied upon as to matters of fact, the documents delivered to you, and upon originals or copies of such records and documents we considered appropriate, including:

- (a) the Undertaking Agreement;
- (b) a letter from the Prime Minister of Sint Maarten dated September 23, 2019, reporting on the outcome of the Council of Ministers meeting dated September 19, 2019, in which the Undertaking Agreement was approved;

Falcon Drive 2 - Harbour View - P.O.Box 1020 - Sint Maarten
T +1(721) 542 4670 - F +1(721) 542 4693 - info@lexwell.net - www.lexwell.net

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- (c) a National Decree dated September 23, 2019 with reference LB-19/0642, as subsequently amended through National Decree dated October 3, 2019 with reference LB-19/0675, in which it is resolved that the Parliament of Sint Maarten is dissolved effective February 10, 2020 and that elections will be held on January 9, 2020;
- (d) a motion from the Parliament of Sint Maarten dated September 25, 2019, in which it is established that the Prime Minister (Mrs. Marlin-Romeo) and the Minister of Justice (Mr. De Weever) are to be removed from office effective immediately, and in which the Caretaker Council of Ministers is instructed not to enter into any contracts with third parties, neither collectively nor individually;
- (e) a press-release from the Cabinet of the Governor of Sint Maarten dated September 30, 2019, in which it is stated that Ms. Jacobs was requested to form an interim government as *formateur*, and furthermore to give priority to execute the agreements made with the Netherlands regarding the financing of the national recovery of Sint Maarten, including the financing of the rehabilitation of the airport;
- (f) a National Decree dated October 4, 2019 with reference LB-19/0633, in which the Governor resolves that the Undertaking Agreement be executed;
- (g) voice notes from Ms. Jacobs, member of the Parliament of Sint Maarten and appointed as *formateur* as referenced under (d), of unknown date, in which she unequivocally confirms that, according to herself and the majority of Parliament that signed the motion referenced under (c), the current outgoing-government is not restricted from carrying out any matters that were already agreed upon prior to the motion referred to under (c), and that the fact that the Governor had signed of on the National Decree referred to under (e) should also serve as sufficient confirmation that the Undertaking Agreement can be executed by the outgoing-government;
- (h) a press-release from the Government of Sint Maarten dated October 10, 2019, in which it is stated that the Council of Ministers accepted the resignation letters of Prime Minister Mrs. Romeo-Marlin and Minister of Justice Mr. De Weever, and that the Council of Ministers appointed Minister of Education, Culture, Youth & Sport Mr. Smith as Prime Minister;
- (i) a legal opinion from prof. mr. A.B. van Rijn, professor in Constitutional Law at University of Curacao, dated October 18, 2019, in which it is confirmed that the Minister of Finance and the Minister of Tourism,

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Economic Affairs, Transport and Telecommunication are authorized to sign the Concession Undertaking on behalf of Sint Maarten, despite their current status as outgoing ministers;

- (j) a letter from the Prime Minister of Sint Maarten dated October 21, 2019, confirming that:
- the decision of the Council of Ministers referenced under (b) related to the Undertaking Agreement substantially in the form as the draft that was available on September 19, 2019 and that the Execution Version of the Undertaking Agreement is substantially in the same form as the draft that was approved;
 - the National Decree referenced under (e) resolves that country Sint Maarten shall enter into the Undertaking Agreement in the form of the execution version thereof as attached to that National Decree;
 - the Undertaking Agreement is entered into by country Sint Maarten in its capacity of regulator of the Sint Maarten aerodrome.

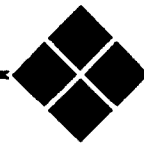
In rendering the opinions expressed below, we have assumed, without independent investigation or verification of any kind, that all documents and files submitted to us as originals are correct, authentic and originating from the person(s) of which it is stated that they are originated from, and the signatures on all documents that we have examined are genuine.

On the basis of such examination, and our consideration of those questions of law we consider relevant, we are of the opinion that:

The Minister of Finance and the Minister of Tourism, Economic Affairs, Transport and Telecommunication have been and are, on the date hereof, duly and validly authorized to execute and deliver the Undertaking Agreement on behalf of the SMG.

Members of this Firm are admitted to practice law in Sint Maarten, and we express no opinion herein as to the laws of any jurisdiction other than the laws of Sint Maarten in effect as of the date hereof and as they are interpreted under presently published case law of St. Maarten courts, to the extent expressly referred to herein.

This opinion is furnished to you solely for your benefit and only in connection with the transactions contemplated by the Undertaking Agreement. This opinion may not be used, circulated, quoted, made public, relied upon or otherwise referred to for any other purpose without our prior written consent.



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ATTORNEYS AT LAW

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Yours truly,

Lexwell N.V.
By: Mark Kortenoever

Falcon Drive 2 - Harbour View - P.O.Box 1020 - Sint Maarten
T +1(721) 542 4670 - F +1(721) 542 4693 - info@lexwell.net - www.lexwell.net

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