



Minister of VROMI
The Honourable Mr Egbert J. Doran
Soualuiga Road 1
Philipsburg, Sint Maarten

Ref. no.: IC-ADV/21.045

Subject: Advice on the draft Long Lease Policy of the Ministry of VROMI

Philipsburg, December 23, 2021

Honourable Minister,

On September 29, 2021, you requested the Integrity Chamber to provide advice on a potential land issuance policy for the Department of Domain Affairs (DIV: 9697/21). You stated your intention to establish and implement a policy in the short term, starting with the issuance of land in long lease for residential use to individuals, whether it may be for first time issuance, renewals, or the transfer of real property. The Integrity Chamber was asked to assess the criteria used in the development proposal for government owned land, which was recently approved.

Based on this request, the Integrity Chamber held meetings on October 29, 2021, and November 24, 2021, with relevant stakeholders within the Ministry of VROMI, to discuss the current procedures regarding the application for and the assignment of long lease land, as well as the underlying supporting documents. This was done to determine the challenges and areas for improvement in the process, to ensure that any advice given is practical and effective. During this process, a Draft Land Issuance Policy (*Beleid Uitgifte Domein Grond*) was presented to the Integrity Chamber. As a result, the Integrity Chamber bases its advice on this draft policy.

The Integrity Chamber applauds the efforts of the Ministry of VROMI to establish and implement a policy on the issuance of long lease land. Land on Sint Maarten is a scarce and valuable asset. A policy can ensure the minimization and prevention of possible integrity-related risks relating to the issuance of long lease land and avoid perceived arbitrariness in the procedure.

Introduction

Pursuant to Article 16, first paragraph of the *National Ordinance Integrity Chamber*, the Integrity Chamber is tasked with giving advice and making proposals on policies to generally improve integrity throughout government and its entities.

The basis for this advice of the Integrity Chamber, is the request from the Minister of VROMI, the National Ordinance on the issuance of property (*Verordening op de uitgifte van eigendommen*), and the Draft Land Issuance Policy.

Below the advice is categorised into three topics, (1) advice relating to the draft policy, (2) advice relating to the internal procedures and (3) general advice.

1 Review of draft policy

The draft land issuance policy was reviewed by the Integrity Chamber for shortcomings, loopholes, or other integrity-related risks. The following factors should be taken into consideration.

- The draft policy does not cover renewals, transfer of property, or the extension of long lease land rights. Additional provisions should be established to include these aspects. This would ensure a comprehensive framework that will also avoid integrity risks in these areas.
- The draft policy contains several general conditions that applicants must meet to qualify for long lease land. These conditions are at the discretion of the Minister. The Integrity Chamber advises that the conditions are critically assessed, to ensure that they are not unnecessarily (dis)advantageous or creating biases within the process. Conditions should always be objective and reasonable. The following examples may be considered:
 - The condition that applicants must be employed full-time. This may unnecessarily disadvantage persons that are part-time or self-employed.
 - There is a minimum income requirement. This puts persons with a higher income at an advantage. A maximum income could also be considered.
- The condition that applications older than 18 months will no longer be taken into consideration, can be regarded as unfair to persons who have previously applied, but have not received a response. To avoid this, we advise the Ministry to reach out to these persons, so that they can be given the opportunity to meet the new conditions.
- Possible consequences for non-compliance with the conditions once long lease land has been issued, are not included in the draft policy. During the application procedure, applicants should be aware of the requirements based on the National Ordinance on the issuance of property (such as initiating construction within six (6) months). The possible consequences for not meeting the requirements should also be made clear. Being aware of the requirements and the consequences can help to prevent non-compliance.

2 Internal Procedures

To ensure effective execution of the policy, and to avoid inconsistency in its interpretation, internal procedures are necessary. These procedures prevent possible integrity-related risks and misconducts. Persons involved in the issuance of long lease land may be vulnerable to and can encounter different types of integrity risks:

- Conflicts of interest: handling an application of close family and friends. The civil servant may be inclined to give preferential treatment in the processing of the application.
- Misuse of information: civil servants, in their capacity, may also become aware of internal information such as the availability of government land, which can be used for their personal benefit or the benefit of family and friends.
- Bribery: this includes the wilful offering, promising, or giving of any financial or other advantage to a civil servant or decision-maker in an attempt to gain long lease land rights. This conflicts with the ethical performance of the civil servants' duties.

To counter these types of integrity risks the Integrity Chamber recommends the following:

- Develop written internal procedures, detailing the different steps in the process from receipt of the application to the final decision on land issuance. The procedures should include the involved employees and their role, the verification and processing of information, and the stages of client contact. Reasonable timeframes for the entire administrative process, should also be established. This allows for transparency and accountability in the procedure.
- Checks-and-balances to ensure the proper execution of the policy. For example, the two-person principle, where at least two people are required for processes, to prevent misuse and errors.
- Rules for an alternative decision-making process when there is a perceived conflict of interest. For example, removing involved employees that apply for long lease land from the application and evaluation process. This should be done on a case-by-case basis. A process, such as the decision-making by the Council of Ministers, can be considered for involved employees (and their spouses) that have applied for long lease land. An alternative decision-making process can also be utilised during periods of political transition, to prevent perceived misuse of authority.
- Ensure protection of personal information. During the application process, the Ministry will be requesting and receiving sensitive information from individuals and businesses. There is risk of the misuse of this information by persons that are involved in the application process or who otherwise have access to the data. If this information is improperly shared or leaked, this infringes on the rights of the applicants. The Ministry should therefore ensure that this data is secured and that the laws regulating personal data protection are enforced.

- A system should be created specifically to notify irregularities related to the issuance of long lease land and the related processes and procedures. This notification system should be known to employees, as well as the public. It is important that an environment is created where persons feel safe to report issues.
- The civil servants must be aware of policy and procedures and know the accepted and unaccepted behaviours. Consequences of misconducts as outlined in the legislative framework (e.g., *Landsverordening Materieel Ambtenarenrecht*) must be known and applied when necessary.

3 General Advice

The Integrity Chamber further advises the implementation of the following general measures. These measures will ensure the efficient and effective execution of the procedures concerning the issuance of long lease land.

- Comprehensive Land Registry System

The Ministry should establish a comprehensive land registry system that is updated with all relevant information and corresponds with data from the Cadaster. The registry could include information such as an overview of all government owned land, the development of the land, the purpose of the land, and the lessors of Government leased land. This will increase efficiency within the Ministry and will improve the application and issuance process for long lease land.

- Approval of draft regulations and reinforcement of existing legislation

For the consistent execution of policies, it is important that current draft regulations, such as the Draft Zoning Plans, are officially ratified. This enforces the appropriate use of government land. It is also essential that existing legislation is reinforced (*Verordening op de uitgifte van eigendommen*) to ensure that persons that have already been issued long lease land are adhering to the conditions of receiving the land.

- Complaint procedure

Persons that feel that the procedure was not properly executed, or whose application was denied, have the right to object. There should be a procedure in place for this, so that these cases can be reviewed, and persons can receive a motivated explanation. The complaint procedure can also provide valuable information that allows for the overall improvement of the policy and procedures.

- Awareness of policy and procedures

It is necessary that civil servants, as well as the public, are aware of the policies governing the application and issuance of long lease land. Once finalized the policy should be published and necessary application forms and related procedures should be easily accessible.

- Evaluation

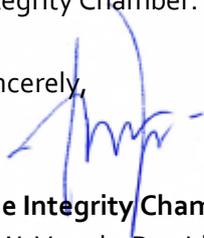
After the implementation, the Integrity Chamber advises that the legislative framework is evaluated on effectiveness, and whether the goals and objectives of the policy have been met. The Integrity Chamber can play a role in this evaluation.

In conclusion, the Integrity Chamber hopes that this advice, and the feedback given during the meetings with the relevant stakeholders within the Ministry, will help with the establishment and execution of a comprehensive policy on the issuance of long lease land. The Integrity Chamber is available to assist with the implementation and practical execution of this advice.

You are kindly requested to provide a motivated response to this advice within eight (8) weeks of the date of this letter. A copy of this advice will be submitted to Government and Parliament, in accordance with Article 18 of the *National Ordinance Integrity Chamber* and published in the National Gazette. Your written response to this advice will also be published in the National Gazette.

If you have any questions regarding this advice, do not hesitate to contact the Integrity Chamber.

Sincerely,



The Integrity Chamber

H.W. Vogels, President

R.A. Boasman

H.R. Lodder