



CORPORATE
GOVERNANCE COUNCIL

ST. MAARTEN

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To the Council of Minister of Country Sint Maarten,
Attn Mrs. Sarah Wescot-Williams,
Administration Building,
Clem Labega Square,
Sint Maarten

Philipsburg, May 9, 2011.

Subject: Appointment Mrs. Regina M. Labega as managing director of
Princess Juliana International Airport Exploitiemaatschappij N.V.
Nr. 2011/40.

Esteemed Council of Ministers,

The Corporate Governance Council hereby confirms receipt of the letter from the Minister of Volkshuisvesting, Ruimtelijke Ordening, Milieu en Infrastructuur dated April 21, 2011, nr. 290A/11, the enclosed letter of Mr. Joseph W. Peterson (Managing Director of the Princess Juliana International Airport Houdstermaatschappij N.V.), the application letter of Mrs. Regina M. Labega and the assessment report as submitted by PriceWaterhouseCoopers.

In connection with the above we would like to comment and advise you as follows:

Legislative framework

Article 8.1 of the Eilandsverordening Corporate Governance states:

"Indien door of namens het bestuurscollege wordt beslist of meebeslist over de vaststelling van de door de vennootschap of stichting bij een benoeming of voordracht tot benoeming van

Temporary meeting address: A.T.Illidgeroad 106, Suite 2, Sint Maarten

bestuurders te hanteren profielschets en procedure regels, meldt het bestuurscollege het voornemen tot die vaststelling schriftelijk en gemotiveerd aan de Corporate Governance Council”.

We note that the documentation provided to us does not contain a copy of the “*profielschets*” which apparently has been drafted for this function as we can ascertain from page 6 of the PWC assessment which mentions: “The following set of competencies is based upon the job profile for the position of Managing Director....” Based on Article 8 the draft of the *profielschets* should have been submitted to the Corporate Governance Council **prior to** finalizing it. Whilst we appreciate that it has not yet been the “modus operandi” of the government to comply with this specific requirement, we would like to point out this contravention urging you to ensure that this is taken up as part of the standard operating procedures to comply with the legal requirements for Corporate Governance.

Request: Please provide us as soon as possible with the *profielschets* for this position.

We also note that we have not received the “*procedure regels*”, which we understand to be the rules applicable for the recruitment and selection process. In this particular case it seems that certain “*procedure regels*” were followed (as an independent assessment was part of the selection process). Whilst we appreciate that it has not yet been the “modus operandi” of the government to comply with this specific requirement, we would like to point out this contravention urging you to ensure that this is taken up as part of the standard operating procedures to comply with the legal requirements for Corporate Governance.

Request: Please provide us as soon as possible with the recruitment and selection procedure followed for this position.

Article 9 of the Eilandsverordening Corporate Governance states:

1. *Indien door of namens het bestuurscollege wordt beslist of meebeslist over de benoeming of voordracht tot benoeming van een bestuurder, meldt het bestuurscollege het voornemen tot benoeming of voordracht schriftelijk en gemotiveerd aan de Corporate Governance Council.*

2. *De Corporate Governance Council adviseert over de vraag of een voornemen als bedoeld in het eerste lid, voldoet aan de statuten van de vennootschap of stichting en aan de toepasselijke regelgeving, waaronder de procedure regels en de profielchets, bedoeld in artikel 8, eerst lid, en de Corporate Governance Code.*

We would like to point out that whilst you have submitted the intended appointment to us in writing, the text of the letter can hardly be considered as duly motivated. If the letter of Mr. Peterson is to be considered as the motivational background, we fail to find a motivation why this candidate should be appointed over and above any other candidates that may have applied for the position.

Request: Please provide us as soon as possible with your motivation to appoint this candidate (also motivating why her over and above any other candidates that may have applied for the position).

In view of our comments made above regarding the absence of the "*profielchets*" and "*procedure regels*" we cannot confirm that these have been complied with. As requested above please provide the lacking documentation so that we have a foundation of documentation to be able to ascertain whether or not we can confirm as required by law.

Articles of Association ("Statuten") of PJIAE N.V.

First of all we would like to advise you that (like you) we will be addressing compliance with the Articles of Association based on the Deed of Incorporation dated September 13, 1996. We would like to point out that according to documentation we received at our installation the Articles of Association have been amended by Deed of Amendment dated January 10, 2006 and July 31, 2009. We only have a copy of the Deed of Amendment of January 10, 2006 but not of the resulting "*Doorlopende Tekst*". We do not know whether this has been provided by the notary's office but can advise you that it is not only common practice but also required that the Notary provides next to the Deed of Amendment also the "*Doorlopende Tekst*".

We would further like to point out that the Articles of Association are not in compliance with the Corporate Governance Code on more than one element (as also elucidated below).

Recommendation: Please check your records whether a "Doorlopende Tekst" has been provided and if not available request Notary Simon of the office of Alexander & Simon on Curacao to provide this.

Request: Should you receive the "Doorlopende Tekst" we would appreciate receiving a copy for completion of our files.

Article 7 of the Articles of Association deals with the composition of management. To the extent relevant Article 7 states:

- 1. De Vennootschap wordt bestuurd door een Directie, bestaande uit een of meer Directeuren, onder toezicht van een Raad van commissarissen. Indien er meerdere Directeuren benoemd zijn zal de Raad van Commissarissen, na overleg met de Directeuren, een taakverdeling van de Directeuren vaststellen. Ieder Directeur of Plaatsvervangend Directeur dient zich te gedragen naar de door de Algemene Vergadering van Aandeelhouders te geven aanwijzingen betreffende algemene lijnen van het te volgen financiële- sociale en economische beleid en van het personeelsbeleid.*
- 2. Het aantal Directeuren wordt bepaald door de Algemene Vergadering van Aandeelhouders. Indien slechts een Directeur is benoemd zal de Algemene Vergadering van Aandeelhouders, op voordracht van de Raad van Commissarissen, een Plaatsvervangend Directeur benoemen die bij belet en ontstentenis van de Directeur laatsgenoemde vervangt.*

We hereby advise you that, if indeed this is the current status of the Articles of Association of PJIAE N.V., the wording: "Ieder Directeur of Plaatsvervangend Directeur dient zich te gedragen naar de door de Algemene Vergadering van Aandeelhouders te geven aanwijzingen betreffende algemene lijnen van het te volgen financiële- sociale en economische beleid en van het personeelsbeleid." is not in line with the Corporate Governance Code and should be considered as soon as possible for amendment. Good Corporate Governance requires management to do their job in the interest of all stakeholders, which includes the shareholder. As the shareholder is Country Sint Maarten

this wording may suggest the possibility of undesirable political influence in the management of the company. Therefore an amendment is required to address this. In fact we are of the opinion that the Articles of Association are antiquated and require a complete overhaul to be up-dated to current legislative framework.

Recommendation: To amend the Articles of Association to delete any reference of shareholder "guidance". Guidance we recommend should be given by an adequate Board of Supervisory Directors. We advise you to compare this article with Article 7 through 10 of the Articles of Association of the Sint Maarten Harbour Cruise Facilities N.V. which reflect a more up-dated approach.

Request: Please advise if it is the intention that Mrs. Labega will be appointed as sole managing director.

Recommendation: If it is indeed intended we recommend that she will have an adequate level of support with respect to financial matters such as but not limited to financial reporting, and operations and logistics. In our view PJIAE N.V. is a company with a greater financial and human resource substance than she seems to have been used to in the past. We understand that the previous managing director was on his own, but would recommend that with the substance of PJIAE N.V. a more conventional composition of a board consisting of CEO, CFO and COO would be more adequate than a sole managing director.

To the extent it is intended that she will be the sole managing director (which we recommend should not be the case), a "Plaatsvervangend Directeur" is to be appointed in line with Article 7.2.

Article 8 of the Articles of Association deals with the appointment of management. To the extent relevant Article 8 states:

- 1. Directeuren worden benoemd door de algemene vergadering van aandeelhouders op voordracht van tenminste vier leden*

van de raad van commissarissen, met uitzondering van de eerste directeuren die rechtstreeks bij de akte van oprichting worden benoemd. Bij gebreke van een voordracht binnen twee maanden na het ontstaan van de vacature wordt een directeur rechtstreeks benoemd door de algemene vergadering van aandeelhouders.

6. *De salarissen en verdere arbeidsvoorwaarden van de directeuren worden vastgesteld door de algemene vergadering van aandeelhouders en neergelegd in een schriftelijke overeenkomst met de vennootschap, die terzake wordt vertegenwoordigd door een door de algemene vergadering van aandeelhouders aangewezen person.*

We have already indicated above that the Articles of Association of PJIAE N.V. are antiquated and not in line with the Corporate Governance Code.

We refer to our letters of May 4, 2011 nr. 38 and nr. 39 which are of relevance as well as they contain grave concerns regarding the administrative organisation and internal controls.

Recommendation: To amend the Articles of Association to avoid the perception of undesirable political influence. We advise you to compare this article with Article 7 through 10 of the Articles of Association of the Sint Maarten Harbour Cruise Facilities N.V.

Request: Please advise what the role is of the Board of Supervisory Directors in the recruitment, selection and nomination for appointment of Mrs. Labega.

Please advise how the remuneration package for this position has been determined, how this relates to the current market in Sint Maarten, and how it relates to the remuneration package of the previous director.

With respect to the intended appointee please advise how the remuneration package relates to her current package.

Questions based on the documentation provided:

1. Why is the application letter addressed to the Shareholder Representative and not to the Corporation? The direct involvement of a member of the Cabinet (even in his capacity as shareholder representative) may be perceived as undesirable political influence in a government owned company.
2. How many candidates have applied for the job and have they all gone through the same recruitment and selection process including an objective assessment without discrimination or favoritism?
3. Can the candidate objectively be considered as the "best woman for the job"? We would like this to be reflected in your motivated submission.
4. We notice that the procedure seems to have been conducted very swiftly (with the application of Mrs. Labega dated January 14, 2011 and the PWC assessment carried out on February 8, 2011). It was long known that the previous managing director would be resigning in view of his appointment as governor of Sint Maarten. When was the application term opened and was there any deadline for filing the application letters?

Preliminary negative conclusion:

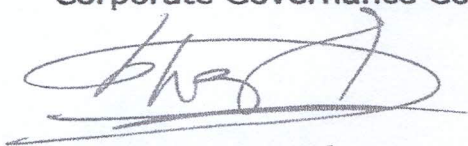
1. Based on the above we conclude that we have not received all elements on the basis of which we would be able to provide a positive advice as requested. We therefore request you to provide us with the information/documentation requested.
2. Although at this stage as indicated we will not consider your request due to lack of information, we are aware of the controversial aspects of Mrs. Labega's intended appointment. It is our opinion that the integrity of a candidate for such a prominent position should be beyond any doubt.

Whilst we appreciate that any person is innocent until proven guilty, should she be subject of a criminal investigation and should she have to defend herself in court this will not only have a negative reflection on the company, but will also potentially undermine her authority as managing director of the company. This will severely impact her ability to act as "change agent" at PJIAE.

In the event that a criminal investigation is pursued, which we understand from statements in the press by the prosecutor is highly likely, Mrs. Labega will have to be free to pay due attention to conducting her defense. She may not be fully available to run the company to the standard required for this vital company, which as we have indicated currently needs dedicated attention to ensure (amongst others) meeting requirements of good corporate governance and tightening of the administrative organization and internal controls, in particular in areas highlighted in this letter.

We would therefore recommend that whilst there remains a cloud hanging over her integrity, to protect the interests of this vital company you should not appoint Mrs. Labega at this time, but consider an alternative candidate or solution such as appointing an interim director.

Respectfully,
On behalf of the
Corporate Governance Council



Louis Duzanson
Chairman