

**GOVERNOR'S SYMPOSIUM 2015**  
**REPORT OF RECOMMENDATIONS**



**GOVERNOR'S  
SYMPOSIUM**

**GOVERNANCE:**

**THE VALUE OF CHECKS AND BALANCES**

Organizing committee Governor's Symposium 2015

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## ***Introduction***

On June 19<sup>th</sup> 2015, the Governor hosted the fourth annual symposium with the theme "Governance: the value of checks and balances". The organizing committee responsible for the event hereby presents a report of the highlights of the 2015 theme. Our report also contains recommendations as a result of the analysis of the information presented at the event.

## **Approach**

"Checks and balances" within a country relate to the institutions that are important for the attainment and maintenance of effective governance. The "players" in the system include parliament, oversight/advisory institutions (for example, council of advice, general audit chamber and ombudsman, but also integrity bureaus), the judicial system, and the media. The system of accountability also incorporates government, the private sector and citizens.

From the onset of preparations, the committee members were cognizant of the complexity of the theme chosen for the 2015 Governor's Symposium. Of critical importance was the ability to organize the symposium in such a way that the topic could be presented as comprehensively as possible. To this end, the committee developed a format to support a multi-sectoral exploration of this year's theme, "Governance: the value of checks and balances".

The format was supported by extensive use of modern multimedia applications (animation, presentations, video, art and music), thus allowing the review of the theme, particularly in terms of the "value of checks and balances", to be presented from a broad community perspective. In other words, the viewpoints of the private and public sectors, as well as civil society were emphasized.

## ***Contributions***

What follows is a summary of the main lines of reasoning as provided by the featured and keynote speakers, as well as highlights from the opening address of the Governor and the remarks of the Prime Minister. This report concludes by presenting recommendations derived from the ideas of the aforementioned speakers.

### **Governor's Opening Address**

As the host of the symposium, the Governor set the tone for the event by sharing his view that *governance must be about the wishes and interests of the people*. This is, in fact, a constitutional requirement.

Essential principles as established in the constitution are: democracy, the rule of law, separation of powers, transparency and accountability. These are important principles of "checks and balances" because they hold within them immeasurable societal value. They do so because they, among others, provide:

- a) for democratic freedoms;
- b) for the protection of our fundamental rights; *and*
- c) for the curtailing of concentration of decision-making powers.

Governance, as a practice, is meant to advance the wellbeing of the people of Sint Maarten and lies within the domain of the governor's activities. Furthermore, governance refers to the way in which the Sint Maarten society is managed and controlled by decision-makers and decision-brokers.

Governance is therefore anchored in a system of "checks and balances", and is an interactive partnership of trust and confidence between civil society, corporations and government.

To ensure that the system functions as intended, it is imperative that as a people, as a society, *everyone* plays his or her respective role.

The Governor thus set a holistic and constitutional (legal) context for the symposium.

### **Prime Minister's Remarks**

Prime Minister Gumbs confirmed the timeliness of the symposium's theme because, in his opinion, it reflected the focus and importance of Sint Maarten's system of government. Sint Maarten is a parliamentary democracy and a country based on the "rule of law". The division of authority and responsibilities within this system therefore relates directly to the existence of checks and balances. Furthermore, the Prime Minister acknowledged the debate regarding the establishment of an institution, the integrity chamber that is meant to augment the existing system of checks and balances. In the view of the Prime Minister, the symposium's theme provided an opportunity to expand that dialogue.

### **The value of checks and balances Corporate Governance (Miguel Alexander)**

To understand the value of checks and balances in the corporate realm, an understanding of scope of these checks and balances is necessary, according to featured speaker Miguel Alexander.

Mr. Alexander confined, for the purpose of the symposium, his remarks to the definition of corporate governance within legal entities. As such, corporate governance relates to the functioning of a legal entity in a correct and transparent

manner. Corporate Governance thus defined, also relates to responsibility, accountability and the interaction between management, supervisory board and shareholders.

On every level from that of the shareholder to the supervisory board and the level of management, there are rights and obligations. At each level, the requisite persons need to know and act within their role and respect each other's role to ensure the value of checks and balances.

For the symposium the focus was on state-owned and state-run entities, as these entities play an important role in the national economy. As such, the entities significantly impact the local community of Sint Maarten.

As an example, reference was made of the fact that most services currently provided by parastatal organizations were in the past provided by government departments (harbor, airport, telecommunication, public housing etc.).

From the moment the services were put within the purview of legal entities (government-owned NV's or government-run foundations) instead of government departments, the entities - from a legal point of view - were governed by private law and not public law. Mr. Alexander maintained that government, at that point, relinquished certain rights the public sector previously retained pertaining to those services.

This situation was not however without benefit. The advantage related to the ability of the entities to approach the financial markets in order to carry out necessary investments, particularly during a period where government itself was severely curtailed in its ability to borrow money.

It was emphasized that the fact that the entities are placed at so-called "arm's length" from government does not mean that government has lost all influence on the entities. As an example, Mr. Alexander pointed to the situation of serious conflict between the supervisory board and management. In such a situation the shareholder (council of ministers) could eventually have the "last word", but this must always occur in accordance with the relevant procedures established by the law of the land.

Fact is however, that the checks and balances that apply between government and its civil servants is completely different in nature than those checks and balances government exercises vis a vis the state-owned companies and state-run foundations.

While Corporate Governance relates to rights and obligations between the various levels (supervisory board, management, shareholder), the experience on the island has shown that there is a tendency to focus on rights (authority) and less on obligations.

It was noted that the right and obligation to manage a legal entity in accordance with the articles of incorporation and comply with the Corporate Governance Ordinance and Corporate Governance Code is critical.

Unfortunately, the structures "on paper" are very dependent on having the right people in the right place to guarantee proper functioning.

The rules of the Corporate Governance Ordinance are mandatory while the Corporate Governance Code is considered as a guideline that should be adhered to. In the event the Code is not followed, the reason should be explained. This system is referred to as "comply or explain".

The Code deals with specific issues such as:

- the tasks and responsibilities of the corporate bodies;
- the importance of independent supervisory directors;
- rules related to conflict of interest of supervisory directors and management directors;
- the need for independent auditing.

The Corporate Governance Ordinance introduces the need for receiving advice from the independent advisor, the Corporate Governance Council, in cases of major decisions regarding appointing or dismissing directors, both supervisory and managing directors.

Although only an advisory body, the Corporate Governance Council should be provided with substantiation when advices issued to government are not followed. When government deviates from the advice of the Corporate Governance Council, Government should explain why.

Mr. Alexander's concludes that the first Corporate Government Council for Sint Maarten was not given a fair chance to function properly.

The importance of the supervisory board was highlighted as well. The supervisory board advises management and also plays an intermediary role between management and shareholder.

Recommendations presented by Mr. Alexander include:

1. proper application of existing rules and regulations;
2. use of suitability and integrity tests for nominees for supervisory boards and managing directors;
3. training of supervisory directors regarding legal and financial aspects relating to the entity;
4. establishment of general policies by government regarding the entities (for example dividend policy);
5. make better use of the Corporate Governance Council;
6. collective decision making by council of ministers rather than all responsibility in the hand of individual ministers.

### **The value of checks and balances civil society (Jan Beaujon)**

Governance and checks and balances exist beyond the government and the corporate domain. With a perspective of the value of checks and balances within the broader society, Mr. Jan Beaujon presented the following observations.

Checks and balances are the creation and existence of structures and guidelines to make actions work and stay on the right course. Within context of civil society, in other words, people, groups of people creating communities, non-government organizations, and institutions that manifest the interest and the will of the citizens, checks and balances refer to the ability to express rights to define the public good, to determine the policies by which to seek that good and to reform or replace whatever is not serving the good.

By using the fundamental rights of free speech and association, organizations are able to express themselves and draw attention to causes and needs for the good of our society to stay on the right course.

By expressing their concerns directly or indirectly to government or to the public in general and informing every one of the work and actions they are taking, they contribute to the checks and balances system from within the society.

Examples of these groups within civil society include:

- Foundations and/or associations active in specific sectors of society, such as social care, healthcare, environmental protection, history, archeology, education, sports, the arts, (music, literature, theater), publishing, religious organizations, business associations, economic and financial institutions, senior citizens, neighborhoods and community groups, trade unions, animal protection etc.
- Political parties. A political party is a political organization but it is also an association with a board and members and they have a right express their opinion and to discuss the reactions on issues. The political party as an organization and supported by the members, should become more involved with discussions on topics such as ideology, policies, programs and codes of conducts.
- The media (written press, radio, television and social media). Media is a key component within civil society and contributes greatly to the process of forming an opinion to trigger actions of checks and balances.

All of these organizations at some point in time will be directly or indirectly dealing with the society in general to report serious issues and concerns which need attention and action. By expressing their concerns to government or to the public in general and informing the community of the work and actions they are taking, they are in fact adding value to the checks and balances system from within the society. In fact, many of these associations and foundations are being used to execute some of the government's tasks and as such, these organizations can have significant influence when called upon to provide their advice on the preparation and execution of government policies. When groups of associations and foundations all come together to jointly voice their concerns and formulate an action or policy plan, then that is a strong contribution is made to the system of checks and balances.

Items to be considered in terms of improving governance and the value of checks and balances within civil society include:

1. Education. Providing training opportunities to those interested in taking up critical functions so that these persons are equipped for the job they will hold or hope to hold. It is critical that persons are properly oriented as to their responsibilities. This includes political parties taking the responsibility to educate and train candidates.
2. Involvement. Political parties, as organizations within civil society, need to engage its members as well as its elected candidates in the process and development of party ideology, policies, programs and codes of conduct.
3. Communication. To improve transparency, persons representing private companies and persons functioning in the public sector should acquire skills to properly communicate with the traditional as well as social media. It is important that there is transparency. To dispel rumors it is important that the debate is based on truth. By providing facts, members of civil society can provide constructive input in a responsible manner. Communication policies for institutions are needed.
4. Preparation. The youth must be equipped to take on future governance roles. In a small society where many functions have to be filled from a relatively small pool of individuals, it is critical that the potential candidates are well versed in issues of good governance, transparency and the value of checks and balances.

## **Keynote address Governance: The value of checks and balances (Prof. Munroe)**

Professor Munroe provided an overall review of the theme within the context of the region and international perspective.

He stated that amongst the peoples of most countries there is a low level of trust and confidence in critical institutions of governance. The professor referenced the Global Corruption Barometer in 2013 as well as the Latin American Public Opinion Project 2014. To complete the picture, the Global Competitiveness Report 2014/2015 found that public trust in politicians in the Caribbean region was so low as only one of seven countries the professor examined fell in the top quarter of one hundred and forty four countries ranked on this criteria. Hence there can be absolutely no doubt that there is a considerable need for discussion of the challenges associated with these disturbing trends.

The choice to have the theme discussed along a broad spectrum was endorsed as appropriate because too often there is a misconception that governance refers only to government, or to public bodies. The symposium acknowledges that governance refers to government, but as well, to authority in all types of institutions.

The World Bank offers a succinct working definition "*governance consists of the traditions and institutions by which authority in a country is exercised*". That is, authority in state institutions; authority in private businesses; authority in sports associations; authority in non-governmental organizations. It is also important to also look at informal practice, at what actually happens, at the available resources (human and financial), at the traditions, values, and attitudes, which go into both how authority is exercised and, very importantly, how citizens relate to and exercise oversight over authority. Governance extends beyond government to embrace other centers of power.

The lack of transparency disguises whether or not checks and balances are working. In addition, the low level of trust and confidence in critical institutions is a global phenomenon.

The principle which separates, and at the same time, empowers the legislature, the executive, the judiciary and public bodies, and which underlies the constitution of Sint Maarten (all Caribbean states and indeed the majority of countries in the modern world which are classified as free or partly free), is the existence of a higher set of rules to which government must adhere.

In professor Munroe's view, the value of checks and balances is therefore self-evident: it is to reduce the likelihood of misconduct and of corruption, that is, the use or abuse of any position for illicit private gain, financial, political, social etc. contrary to the public interest, whether that public be private shareholders in a business, members of a sporting body or electors in a democratic state.

Having established that there can hardly be any dispute concerning the value of checks and balances, as the value lies at the heart of democratic governance, two critical questions were explored: does the system actually work to deliver its value? And secondly, if it does not, how can it be made to actually work?

Evidence was provided that most people in most countries say that the system of checks and balances is not working. Specifically focusing on the Latin American and



Caribbean region, the people perceive high levels of corruption even though they themselves are not significantly engaged in paying bribes.

Government is tasked with adequately providing "public goods", for example security and safety. On this, the record is not good. The Caribbean ranks as that region of the world, which by far has the most homicides, thirty per hundred thousand compared to a global average of five per hundred thousand. Looking at another "metric", i.e. human development, an index summing up health, education and income levels for the majority, measured by the United Nations Development Program, Cuba is the only Caribbean state in the top third of one hundred and eighty seven countries of global human development.

Solutions for improving the situation include paying more attention to reducing the lack of transparency in government policy-making and favoritism in decisions of government of officials.

Five areas require critical remedial action:

1. Awareness building amongst the public and within institutions of governance. Awareness building, first and foremost in relation to the cost of corruption, of how the malfunctioning of the system of checks and balances is not just discrediting governance but hurting the man in the street.
2. Institutional reform. Whilst in general the formal rules and statutes provide for separation of powers as well as checks and balances, there nevertheless remain significant gaps. One such in the region is the inadequacy of regulations governing political parties as public entities, still too often regarded as private bodies, and most of all, the inadequacy of law to regulate party funding and campaign financing.
3. More rational resource allocation. No system of checks and balances however well designed and however well written can function effectively if the necessary resources are not allocated in a timely fashion, particularly to the justice and law enforcement sectors as well as to the electoral and auditing institutions.
4. More effective law enforcement and equitable administration of justice.
5. Development and enforcement of codes of conduct.

### ***Committee's recommendations: Awareness and Action***

Knowledge is power. This often repeated adage runs like a red thread through the presentations of all speakers. It therefore stands to reason that for governance to improve, for the value of checks and balances to increase, the understanding and the knowledge regarding the subject matter must move in concert.

Simply stated, improved governance and a strengthened system of checks and balances require empowerment of people. Once persons are endowed with information and knowledge, the next logical step is action.

Therefore the recommendations are based on knowledge and the application thereof.

1. *Develop and encourage active follow up sessions to promote understanding and awareness of Governance and the Systems of Checks and Balances in Sint Maarten.*
  - ✓ A number of institutions that are tasked with elements of governance, particularly the "checks", should be encouraged to, where feasible, redirect resources to fund awareness campaigns. The campaigns can be joint initiatives whereby entities provide workshops, presentations, lectures etc. in which the system of governance of Sint Maarten is explained and the role of the individual institutions is outlined. More importantly and in keeping with the multi sectoral approach used for the symposium, the awareness campaigns should include information to allow citizens to become more actively involved in the process (encourage debate).
  - ✓ The High Councils of State and advisory institutions of Sint Maarten should organize information sessions for the general public (singly or jointly) with the goal of providing basic information about their role, task, authorities and obligations under the laws of the Country. In addition, each institution should embark on a campaign to engage the holders of political office (executive and legislative) in a similar fashion in order to ensure that political decision-makers are aware of the relationship of the institution in question vis a vis the political institution (executive and legislative).
  - ✓ Promoting awareness should not be a one-way communication via outreach from specific institutions. Civil society, particularly the media, should increase access for the provision of information for stimulating the dialogue related to "checks and balances".
2. *Institute within all levels of the public sector mandatory education programs to improve knowledge and application of relevant laws and regulations related to the system of checks and balances.*
  - ✓ The executive, legislative and judicial branch as well as the various institutions involved within the system of checks and balances, cannot be effective if the knowledge and experience required to function is not (sufficiently) available. Sint Maarten maintains a modern comprehensive system of legislation and "on paper" is sufficiently robust to allow for adequate governance. However, to comply or supervise compliance requires a depth of understanding of the complex system of laws. Hence, continuous training and education is required to remain competent in the system. Here again, the individual institutions can collaboratively seek to introduce training.

- ✓ For state owned companies and state run foundations: require mandatory training of supervisory and management directors in terms of corporate governance rules and policy. State owned companies and state run foundations should be required to adopt and publish codes of conduct for members of the boards (supervisory and management).
  - ✓ Political parties should institute a system of continuing education and training for candidates. The system of government, the constitution, integrity, national budget and parliamentary procedure should be required subject areas. Advanced training on specific topics such as public finance, policy based budgeting, fiscal policy, legislation and public policy development can be provided as electives. For those holding public office, training can be supported by a program for elected officials financed by government for term. In all cases, the information regarding the training (who is doing what, when and for how much) should be publicly available.
  - ✓ A system of mandatory skill development and enhancement related to the individual job function (including political support staff) should be incorporated in the performance management system. Career advancement should be directly linked to aforementioned training. The establishment of a formal government institute (*bestuursacademie*) to support education and training of public sector workers deserves serious investigation in the near-term.
3. *Develop and institute, as part of the regular curriculum, civic education from primary school through secondary levels.*
- ✓ Unfortunately, we have no evidence to prove that our young people have achieved the necessary level of understanding and acceptance of their rights and responsibilities needed for the maintenance and improvement of our constitutional democracy. As a society, we must develop ways and means to ensure that the next generation (the youth) is prepared for citizenship. They must be taught the proper way to take part in civic life. Civil education in a democracy is education in self-government. Democratic self-government means that citizens are actively involved in their own governance. The curriculum must therefore include the following components:
    - Civic knowledge (focus on rules, authority, justice and responsibility. Courses can include politics, government, foundations of the political system, roles of citizens in Sint Maarten's democracy, the practical application of constitutional values and principles)
    - Civic skills (critical thinking about political issues and themes, how to find information within the system of government, how to participate, interact and monitor politics and government)
    - Civic character (how to respect individual worth, human dignity, assuming personal, political and economic responsibilities of citizenship).
  - ✓ This element can be incorporated into a broader nation building initiative aimed at all residents of the country.
4. *Require continuous enforcement of existing legislation / rules related to the system of checks and balances.*
- ✓ Everyone (especially supervisory entities in the public or private sector) has to play their part. This means that entities have to function including report on their activities. One element that is critical is to ensure that the qualifications

and the criteria for appointment to different positions are followed. Important therefore is that these are widely known, not just to the applicants but to the public at large. As such, determining who gets which position will require application of the rules no matter who the person in question may be because it is a rule of law and of regulation.

5. *Develop/deploy a governance measurement system to continuously monitor and evaluate the effectiveness of governance and the system of checks and balances.*

- ✓ The system must be able to objectively measure the effectiveness of functioning. Furthermore, the measurements must be understandable to the average citizen and hence should be in relation to the cost of corruption and how the (mal) functioning of the system of checks and balances is affecting the man in the street. Indicators that can be monitored, measured and reported could include:
  - Civic participation (activities of civic organizations (unions, public advocacy groups etc.).
  - Number of freedom of information requests per year (LOB-*landsverordening openbaarheid van bestuur*)
  - Frequency of media reporting on issues related to corruption, integrity etc.
  - Number of reports from government entities, ministries, state owned/run entities containing results of activities (value for money).
  
- ✓ Periodic review from external objective third party to test Sint Maarten's performance in terms of governance, integrity, and accountability.

## **Conclusion**

The committee members hereby express their sincere appreciation to His Excellency, Governor Eugene Holiday for the opportunity given to them to contribute to our country and community by means of organizing this symposium. We accepted your challenge to "raise the bar" as coordinators of this annual event, and we thank you for the trust placed in us.

It is our sincere hope that our recommendations will go beyond simply being words on paper, and instead that they are transformed into concrete actions by decision-makers and legislators working in concert with the broader community.

Governance, to be effective, must be embraced by the entirety of society, though the representatives of the people play a most critical role as they are the ones who can apply power to stimulate action.

Our committee is encouraged by the positive feedback received from attendees and participants of the symposium. We hope that this interest and attention regarding *governance*, and in particular, *the value of checks and balances*, resonates throughout the broader community, leading, ultimately, to measurable progress in terms of the manner in which our country is governed in the general interest of all citizens.

On behalf of the  
Organizing Committee Governor Symposium 2015

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Ms. Cassandra Janssen, Chairlady

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Mr. Bastiaan Bolt, Secretary

**Appendices:**

- Opening Address - H.E. Governor Eugene Holiday
- Remarks on the Government's Perspective – Prime Minister, the Honorable Marcel Gumbs;
- The value of checks and balances from the corporate sector perspective - Mr. Miguel Alexander;
- The value of checks and balances form civic society perspective - Mr. Jan Beaujon
- Keynote address: the value of checks and balances - Professor Trevor Munroe
- Transcript of the Round table discussion

## Opening Address – H.E. Governor Eugene Holiday

### 'Checks and Balances, A Societal Imperative'

Ladies and Gentlemen,  
Good Morning,

It is with great pleasure that I welcome you to the fourth annual Governor's Symposium to deliberate on "*Governance: The Value of Checks and Balances*". In the next few minutes I shall develop this symposium's theme by drawing your attention to the societal imperative of checks and balances.

It is commonly said that ours is a government of the people, by the people and for the people. Some persons would say that, that is what it is supposed to be. Without taking sides I wish to draw your attention to the opening words of the preamble to our constitution and I quote:

" WE THE PEOPLE OF SINT MAARTEN ..... Declare that we wish to create a constitutional order based on an open and approachable government AND THEREFORE to record these objectives ....., the following provisions shall enjoy the force of law as the constitution of Sint Maarten". Unquote

I quoted the preamble to emphasize the principal and initiating role of THE PEOPLE in the creation of government. I do so to underscore that our constitution dictates that governance in Sint Maarten must be first and last all about the wishes and interest of the people of Sint Maarten. And to make that happen it is imperative that we as a people, as a society play our respective roles. [IT IS THEREFORE GOOD TO SEE SO MANY OF YOU HERE THIS MORNING]

As Governor, governance as a practice to advance the well-being of the people of Sint Maarten, is the domain of my activities, and it is therefore in keeping with my pledge to uphold our constitution, my aim to foster and encourage excellence in governance in all its facets. It is for this reason and considering the ongoing governance debate on our island that I have chosen the topic of this symposium.

Ladies and Gentlemen,

Governance in its core refers to the way in which our society is managed and controlled by decision-makers and decision-brokers based on formal arrangements as well as on traditions, customs and attitudes. Essential principles in that regard as established in our constitution are: democracy, the rule of law, separation of powers, transparency and accountability. These are important checks and balances principles because they hold within them immeasurable societal value. They do so because they, among others, provide:

- a. for the democratic freedoms you and I enjoy;
- b. for the protection of our fundamental rights; and
- c. for the curtailing of concentration of decision-making powers.

History has taught us that failure of governance through a breakdown of checks and balances invariably results in the weakening and collapse of businesses and countries. And that such situations always come with high costs to the people. It is therefore in our individual and collective interest as a society to guard against such situations. It is in other words a societal imperative to have effective controls i.e., checks and balances through among others functional accountability, transparency and enforcement mechanisms to ensure that decisions are made effectively, efficiently, fairly and with integrity. To further emphasize the need for and value of checks and balances I have paraphrased the words of Thomas Hobbes as follows; checks and balances is a societal imperative not because man is naturally bad, but because man is by nature more individualistic than social.

Checks and balances is as such a societal imperative because it is required to promote and frame decision making to benefit the public good or the interest of the people. It does so because it promotes decision making based on laws, regulations, policies, governing programs and business plans and in doing so it builds trust and confidence of the people in government and the managements of corporations. Such trust and confidence represents significant value to the community because it provides the order and stability required for planning, investments and sustainable development.

Ladies and gentlemen,

As a small young country with a one pillar tourism economy, Sint Maarten is susceptible to the impact of global events and developments over which we have no control. To chart a balanced and sustainable future for our people, it is imperative that we have effective national governance responses. Responses that are anchored in a comprehensive national development strategy that includes well-functioning checks and balances within our governance infrastructure. For at its best governance anchored in checks and balances, is an interactive partnership of trust and confidence between civil society, corporations and government.

Experience has taught us that that partnership is not automatic and that it requires work. And I sure you would agree that we have our fair share of challenges and work to do in that respect. To meet this challenge I invite you to inform yourself about the many forces and complex realities that influence checks and balances in governance.

It is with a view of this ongoing challenge and the societal imperative of checks and balances in mind that I – with the assistance of the Organizing Committee – organized this symposium.

At this symposium regional and national speakers will speak to you, on the value of checks and balances, each from their own perspective. I hope that these speakers will cause you to reexamine how decisions and actions by government, by civil society, by the private sector and by the media have shaped and continue to influence our society. It is my hope that they will inspire and help you to identify opportunities for you to play your role in enhancing checks and balances as a part of our governance infrastructure.

It is against that background and considering the many discussions about governance and checks and balances in newspapers, on radio, television, and social media that I wish to remind you to act on checks and balances as a societal imperative. I do so because I am convinced that it is our obligation to strengthen checks and balances as an essential public, corporate and civil governance pillar for the overall functioning of our society. And to reinforce that I wish to leave you with the following thought:

**Imagine**  
**there are no laws, policemen or judges,**  
**there are no shared values, churches or media, and**  
**that there is no government of, for and by the people**  
**Imagine**

Ladies and Gentlemen,

With that thought I hereby declare this symposium on "*Governance: The Value of Checks and Balances* OFFICIALLY OPEN and wish you an enjoyable and fruitful symposium.

Thank you

### **Remarks on the Government's Perspective – Prime Minister, the Honorable Marcel Gumbs**

Good morning.

Honorable Governor, Members of Parliament, colleague ministers, representatives of the High Councils of State, civil servants, invited guests, ladies and gentlemen.

I am most honored to address you today and provide the government's perspective on the 2015 Governor's Symposium. The theme this year is Governance: the value of checks and balances. On behalf of government, I am also delighted to welcome you to this event, because this symposium is so timely. The theme and topic reflect both the focus and importance of our system of government.

Sint Maarten is a democracy; it is a country that is based on the rule of law. Sint Maarten's constitution outlines the system of division of responsibilities and authorities. Other laws further detail how government relates to the various stakeholders within our community. Today, the goal is to inform and engage you. The topic of governance will be further examined in terms of the value of the system of checks and balances.



Since Sint Maarten became a country within the Kingdom, lots of energy, and gallons of ink have been expended debating the performance our new nation. Has Sint Maarten lived up to its potential of an autonomous country?

Let us acknowledge that there have been some bumps in the road. For example, there are questions about integrity, and in this regard, government understands that there is a need for change.

In fact, of late, the focus has been on the creation of a new institution that would add to the system of checks and balances. As a country, we face a collective challenge to improve our governance. To do so, we must be willing to expand our understanding of the limits and potential of our systems of governance.

This symposium is an excellent medium to start the dialogue. All segments of our community have a part to play. Sint Maarten cannot let this moment slip away. As a country, we have come too far and accomplished too much. Becoming a country, allows us to determine our future. We have a robust system to guide us on our way.

The first few years have not been without challenges. Some will say Sint Maarten is just not up to the task. But I believe that we have the drive and potential to work together.

Congratulations to the Governor for taking on this topic and as this symposium gets underway, prepare yourselves to be challenged, informed and inspired.

Thank you.

## **The value of checks and balances from the corporate sector perspective - Mr. Miguel Alexander**

Ladies and Gentlemen,

When dealing with the issue of corporate governance I will for the sake of ease focus on a business being carried out in the form of a legal entity. A legal entity can act like a natural person and has rights and obligations like a natural person.

In the 30 minutes that have been given to me I will try to give as much information as possible. I will try not to be too theoretical, but deal with the subject at hand from a practical viewpoint. Since I will not be able to discuss all relevant matters in 30 minutes, I welcome your questions and comments during the panel session.

Since corporate governance is a powerful tool to achieve checks and balances in the corporate sector I will focus on the corporate law and the corporate governance rules and regulations that are in place at the moment in Sint Maarten.

I will furthermore discuss with you:

1. What corporate governance entails.
2. Corporate governance with respect to different kinds of companies:
  - state-owned companies and state-run foundations;
  - banks, other financial institutions and insurance companies;
  - companies from the business sector.
3. Where we can find the rules and regulations regarding corporate governance, checks and balances and some of the matters regulated in these documents.
4. The importance of the Board of Supervisory Directors of legal entities.
5. And finally I will close with some conclusions and recommendations.

Taking into consideration the limited time that I have, I had to make a choice and I decided to deal with corporate governance in the state-owned company and state-run foundation. These state-owned companies and state-run foundations play an important role in the economy and therefore in the community of Sint Maarten.

Most services which are now being rendered by the state-owned companies and state-run foundations were formally rendered by Government. Think e.g. of the Harbour, Airport, Telecommunication, Public Housing and Tourist Bureau.

At a given moment Government decided to incorporate legal entities and have the abovementioned services carried out by these legal entities. And this is important from a legal point of view. From the moment Government decided to have these services carried out by legal entities, they are governed by private law and not anymore by public law. By doing so Government relinquishes certain rights it had pertaining these services.

One of the big advantages, on the other hand, was that these companies/foundations were free to borrow money on the financial market in order to carry out needed investments. At the time the Government of Sint Maarten was not allowed to borrow money. However having the aforementioned services carried out by these legal entities has as a consequence that Government had to keep an at arms length distance between Government and these companies and foundations, which proved in practice difficult for Government. Government sometimes has the tendency to treat these legal entities (companies and foundations) as if they still are governmental services and this can cause friction.

By the way, being at arms length does not mean that Government has nothing to say in these companies. If for instance there is a serious conflict between the supervisory board or management on one hand and the shareholder/Council of Ministers on the other hand regarding the way management or supervision is carried out, then the

shareholder/Council of Ministers will eventually have the last word. But always in accordance with the procedures established in the laws of the land. We can discuss this issue further in the panel session later on.

Fact is that the checks and balances between Government and its civil servants are of a completely different nature than the checks and balances between Government and its state-owned companies and state-run foundations.

#### Corporate Governance in general

There are many definitions of corporate governance and it is definitely not my intention to burden you with comparisons of the many definitions as far as corporate governance is concerned. However it is important to know what corporate governance is all about. Simply put corporate governance has to do with the functioning of a legal entity in a correct and transparent manner. It moreover has to do with responsibility and accountability. Responsibility of management, supervisory board and shareholders towards the company. Accountability of the management towards the supervisory board and ultimately accountability of management and supervisory board towards the shareholders. Corporate governance moreover also has to do with the interaction between management, supervisory board and shareholders. Each of these so-called corporate bodies should respect the rights of the other. Of course, each corporate body has not only rights but also obligations.

On our islands we have the tendency to focus on the rights and not so much on the obligations.

In general the management of a legal entity has the right but also the obligation to run the company in accordance with the articles of incorporation of such company and the business plan established by management and approved by the supervisory board, but also in accordance with the law and the relevant rules and regulations, and all this in a business like manner.

State-owned entities must also comply with the Corporate Governance Ordinance as well as the Corporate Governance Code. Banks, other financial institutions and insurance companies must comply with special laws and guidelines and are supervised by the Central Bank of Curaçao and Sint Maarten.

It is important that management should always be in the Driver's Seat of the company and the supervisory board and the shareholders should respect this right.

On the other hand, the supervisory board has the right but also the obligation to supervise and advise management in an adequate manner. The shareholder on the other hand has the right to hold management accountable for the way the company is being run or has been run and to hold the supervisory board accountable for the way in which the supervision of management of the company is being carried out or has been carried out.

Where do we stand in Sint Maarten as far as corporate governance/ checks and balances of state-owned companies and state-run foundations are concerned?

Financial institutions, being banks, finance companies and insurance companies are supervised by the Central Bank of Curaçao and Sint Maarten as mentioned before (e.g. the Windward Islands Bank, RBC Bank and Nagico). The companies belonging to the last mentioned group need a special license from the Central Bank in order to operate as such.

Moreover the managing directors and supervisory directors of such companies need to pass an integrity and suitability test in order to act as such. There are several ordinances regulating these companies. Moreover special corporate governance rules established by the Central Bank are laid down in a "Summary of Best Practice Guidelines" and in other Guidelines.

The other group in Sint Maarten for which corporate governance rules have been established is the group of state-owned companies and state-run foundations (the so-called "Overheids N.V.s en Overheidsstichtingen").

My focus today will be on this last-mentioned group (the state-owned companies and the state-run foundations). As stated before the state-owned companies and state-run foundations play an important role within the Sint Maarten community and economy. Just think of the Airport Group of Companies, the Harbour Group of Companies, the Telem/Telecommunication Group of Companies, Gebe, the Sint Maarten Housing Foundation and the Sint Maarten Tourist Authority. Each of these companies and aforementioned foundations play an important role and has an impact on the inhabitants of this island in one way or the other. It is therefore important that checks and balances with respect to these legal entities are not only in place but are also adhered to by the relevant players. The players in the state-owned companies are the management, the supervisory board and the shareholder (council of ministers), while the players in the state-run foundations are also the management, supervisory board and council of ministers, with this exception that the foundation does not have any shareholders. It is very important that the rights of the council of ministers vis-a-vis management and supervisory board are well worded in the articles of incorporation and if needed in By-laws of the state-run foundations, since a foundation does not have any shareholders and very little is regulated in the law. (E.g. accountability of management and supervisory board, manner of appointment of management and supervisory board, etc.).

I will now give an explanation as to how the corporate governance concept is supposed to work for the state-owned companies and the state-run foundations, and I say suppose to work, because as we say in Dutch "papier is geduldig", meaning in practice, that we can create all kind of wonderful structures on paper, but if at the end of the day we do not put the right people in the right place, such structures will not function properly.

Corporate governance with respect to aforementioned companies and foundations is applied via a law/an ordinance and a code. I am referring to the Eilandsverordening Corporate Governance (the Ordinance Corporate Governance) and het Eilandsbesluit Corporate Governance Code (the Corporate Governance Code). The Code is to be compared with guidelines, while the Eilandsverordening (the Ordinance) is a law. There is a significant difference between the two. The rules in the Corporate Governance Ordinance are mandatory, while the Corporate Governance Code starts from the premise that the guidelines laid down in the Code should be followed/adhered to and if they are not followed, you should explain, why they have not been followed. (Comply or explain rule).

Let me begin with the Code. According to the Code, it is applicable to all corporations, which have their statutory seat in Sint Maarten and of which shares or depositary receipts in evidence of shareholding (in Dutch "certificaten van aandelen"), are held in whole or in part directly or indirectly by country Sint Maarten.

The scope of this definition is in my view too broad. The way the definition is worded, implies that if the country Sint Maarten holds let's say one percent (1%) of the issued shares in a company, which is established in Sint Maarten, this fact alone will label the company as a company to which the Code and the Ordinance will apply. This does not make sense. A more logical definition would have been that e.g. the majority of the issued shares with voting rights should be held by country Sint Maarten.

The Corporate Governance Code is also applicable to foundations of which the Government of Sint Maarten has the right to appoint or dismiss one or more managing directors or supervisory directors or of which the Government of Sint Maarten has the right to amend the articles of incorporation.

Also this definition is in my opinion too broad. This definition entails e.g. that if the board of a foundation consists of 7 members of which one is appointed by the Government of Sint Maarten, the Code and the Corporate Governance Ordinance will apply to such foundation.

The following can also be said of the contents of the Code as is stated in the Code itself.

The Corporate Governance Code embodies principles as well as substantial provisions, which the persons and parties involved with the corporation, have to observe towards one another. These principles may be interpreted as the general views regarding good corporate governance. The principles have been further elaborated in substantial provisions, which create certain standards for the conduct of managing directors, supervisory directors, shareholders and the external certified public accountant. These provisions may be considered as a further formalization of the general principles of good corporate governance. The corporations and foundations may deviate from the provisions of the Code. Deviations from the provisions are possible all after they can be justified. Being able to apply all of the provisions of the Corporate Governance Code, depends namely on the actual circumstances of each corporation or foundation. (Comply or explain rule).

The Corporate Governance Code furthermore takes as its point of departure that the state-owned company and the state-run foundation entail a long term co-operative relationship of various parties involved with these legal entities. These parties are the groups and the individual interested parties, who either directly or indirectly have an impact on the achievement of the objectives of such legal entities. The managing board and the supervisory board have an integral responsibility for balancing these interests, usually oriented to the continuity of the legal entity. In so doing, the legal entity strives to create an added value for all stakeholders in the long run. The managing board and the supervisory board must take into account the interests of all

the parties involved with the legal entity. Confidence of the stakeholders that their interests will be looked after will in the long run benefit the legal entity.

The Code also expands on proper entrepreneurship and state that proper entrepreneurship, including the conduct of business with integrity and transparency by the managing board, as well as adequate supervision thereon, are essential conditions for creating trust in the management of the managing board and trust in the supervision by the supervisory board. Application of the Corporate Governance Code and observance of same guarantees these points of departure for good corporate governance.

In the Corporate Governance Code the structure of a separate supervisory board, apart from a managing board for state-owned companies and state-owned foundations, is taken as point of departure (no one tier board). The managing board and the supervisory board are responsible for the corporate governance structure of the legal entity, as well as the observance of the provisions of the Corporate Governance Code. The managing board and the supervisory board of the state-owned companies are answerable to the General Shareholders' Meeting (Council of Ministers). The managing board of state-owned companies and state-run foundations is accountable for the policy conducted and the execution of the principles and provisions embodied in the Corporate Governance Code. The supervisory board must render a report from the viewpoint of its supervision whether and to what extent the principles and provisions laid down by the Corporate Governance Code have been observed. The shareholders/Council of Ministers should carefully take note of these findings and should profoundly assess the reasoning given by the corporation for deviations from the principles and provisions laid down in the Corporate Governance Code.

And finally the Corporate Governance Code states that the principal rules of the corporate governance structure of the corporation should be annually dealt with in the annual report in a separate chapter, also based on the principles and provisions of the Corporate Governance Code. In such a chapter the corporation or foundation explicitly points out to what extent it adhered to the principles and provisions of the Corporate Governance Code, and if not, why and to what extent it deviated from same (comply or explain). Each substantial change in the corporate governance structure of the corporation and of the observance of the principles and provisions of the Corporate Governance Code shall be submitted to the General Shareholders' Meeting as a separate point on the agenda.

The Code furthermore extensively spells out what is expected of the managing directors, the supervisory directors and the shareholders, the so-called corporate bodies. Some of the issues dealt with in the Code are:

- The tasks and responsibilities of the corporate bodies;
- The importance of supervisory directors being independent and critical;
- Rules in case of a conflict of interest of supervisory directors and managing directors vis-a-vis the company/foundation;
- The fact that persons holding official positions within Government ("politieke gezagsdragers") may not act as supervisory director or managing director;
- The agenda points that must be dealt with at the annual general meeting of shareholders;

- The fact that each year the report of management and supervisory board regarding observance of the provisions of the Code must be audited by an independent accounting firm.

And now some remarks about the Corporate Governance Ordinance:

On January 22nd, 2008, Holland, Curaçao and Sint Maarten entered into an agreement at the Belair Community Center that Curaçao and Sint Maarten would develop rules (the agreement spoke of "regelgeving") pertaining to corporate governance and that in any case rules must be put in place by Curaçao and Sint Maarten regarding:

- a. the procedure pertaining to the alienation (sale) of shares and of the acquisition of shares;
- b. guidelines for a dividend policy;
- c. procedures pertaining to the appointment and dismissal of managing directors and supervisory directors of state-owned companies and state-run foundations.

Sint Maarten already had a draft of its Corporate Governance Code at the time and decided to:

1. leave the draft Code intact as much as possible;
2. regulate the points with respect to which consensus was reached in a separate document. This last-mentioned document became the Corporate Governance Ordinance.

The point of departure in the Ordinance is that before the Government of Sint Maarten can take decisions with respect to the actions mentioned above (such as appointing and dismissing of managing directors and supervisory directors), advice of an independent body/adviser must be requested and obtained. That independent adviser is the Corporate Governance Council.

Let's take a closer look at the way the Ordinance is intended to work by using an example. Let's say country Sint Maarten acting as shareholder of one of its companies would like to appoint a managing director or dismiss a supervisory director. The procedure would be as follows:

The shareholder (the Council of Ministers or the shareholder representative appointed by the Council of Ministers) must inform the Corporate Governance Council, the independent adviser, of its intention. The Corporate Governance Council must send a written advice within one month to the shareholder and must indicate if - in the opinion of the Corporate Governance Council - the intention of the shareholder is in accordance with the articles of incorporation of the company and the other applicable rules, such as the procedure rules and the profile of the managing director in the case of the appointment. In the case of the dismissal of the supervisory director, the Corporate Governance Council must assess and motivate if in its opinion the dismissal grounds given by the shareholder could lead to a dismissal in all reasonableness. In its advice, the Corporate Governance Council must also motivate if it has substantial objection against the appointment or dismissal or not. If the shareholder deviates from the advice of the Corporate Governance Council, and the shareholder may deviate, then the shareholder must immediately inform the Corporate Governance Council of its decision in writing, while said decision of the shareholder must be motivated. In accordance with the Corporate Governance Ordinance the advice of the Corporate Governance Council should be sent to Parliament within one week after the advice has been rendered to the Council of Ministers.

This is theory and is beautiful on paper but does it work in practice? The Corporate Governance Council was set up in such a way that it would be a trusted adviser of the shareholder (Council of Ministers). In practice the first Corporate Governance Council of country Sint Maarten was in my opinion not taken seriously by Government, and that is a pity. One gets the impression that Government – instead of seeing the Corporate Governance Council as a trusted adviser- viewed this council as an adversary meddling with its (governments) business.

The Corporate Governance Council is an advisory body, nothing less and nothing more. It advises Government but at the end of the day Government decides. What is expected of Government however by virtue of the Corporate Governance Ordinance is that if Government deviates from the advice of the Council, then Government must substantiate its decision. Nothing less and nothing more. Is this asking too much of Government? In all fairness I do not think so. The intention – when setting up the Corporate Governance Council – was that it would play an important role regarding the checks and balances with respect to the functioning of state-owned companies and state-run foundations. My conclusion is that the first Corporate Governance Council never got a fair chance from past Governments to function properly.

#### The importance of the Supervisory Board

The supervisory board plays a vital role with respect to the functioning of legal entities. Here is what our Central Bank says about the importance of the supervisory board, in its "Guidance Notes for the Supervisory Board of supervised Financial Institutions".

#### *Quote*

*An institution's Supervisory Board is ultimately responsible for the conduct of the institution's affairs. The Supervisory Board controls the institution's direction and, hence, its overall policy. By doing this, the Supervisory Board determines how the institution will conduct its business on the long term. In general, the Supervisory Board establishes or approves and monitors the policies by which Management will operate. The financial stability and continuity of an institution is very much dependent on the strength and quality of the Supervisory Board, its independence from management and its degree of involvement in the institution's affairs. In favorable times the Supervisory Board contributes by setting the tone and direction, its oversight and supports Management's efforts by testing and probing their recommendations before approving them. The Supervisory Board also makes sure that adequate systems and controls are in place to identify and address problems before they become a threat. In adverse times an active and involved Supervisory Board can help an institution survive by taking the necessary corrective actions and, when needed, keep the institution on track until effective management can be re-established.*

#### *Unquote.*

So the supervisory board not only advises management but also supervises management and moreover it also plays an intermediary role between the management and the shareholder. It is important that the right persons, being persons with the right qualifications and who are willing to and can act independently are appointed as members of the supervisory board. The members of the supervisory board should be appointed based on pre-established objective criteria, established by



the Meeting of Shareholders, after the advice of the Corporate Governance Council has been sought and received.

When carrying out his/her task as supervisory director it is important that the interest of the company must first and foremost be taken into account. It goes without saying that the interest of the other stakeholders must also be taken into account as much as possible. Moreover when carrying out their task supervisory directors should always keep in mind that the managing director is in the Drivers Seat and that they are there to advise and supervise. It is recommended to use a "performance target agreement" as a tool with respect to the supervision of the managing director. Based on the business plan management and supervisory board agree in writing at the beginning of the year what part of the business plan (including investments) should be completed that year and by which date. By doing so, the supervisory board can supervise management in an objective and structural manner and not in an ad hoc and subjective manner. By doing so the supervisory board also has a tool to evaluate management.

The supervisory board should function without mandate or instruction of the shareholder (Council of Ministers). However as I said before, at the end of the day the supervisory directors are accountable to the shareholder. The way accountability should work is that the shareholder should have written general policies pertaining to the different fields in which its companies and foundations are active. Based on these general policies management of the companies and foundations should draw up business plans and multi annual plans. The supervisory board should advise with respect to these plans and they should also be approved by the supervisory board. And of course the supervisory board should then monitor the execution of these plans by management.

Personally I am in favor - as far as it pertains to state-owned companies- to insert a clause in the articles of incorporation of said companies to the effect that the supervisory board should discuss the multi annual plan with the shareholder before approving same. By doing so, the shareholder will be kept abreast of future (major) investments, which the relevant company of foundation intends to carry out.

Another important policy which should be established by the shareholder (Council of Ministers) is the dividend policy for the relevant (group) of companies. Once such an objective dividend policy has been established, then the shareholder has an objective tool by which it can control and hold management and the supervisory board accountable with respect to dividends. Both the shareholder, the supervisory board and management then know where they stand.

In connection with the above I am also in favor of inserting a clause in the Articles of Incorporation of state-owned companies to the effect that management, with the approval of the supervisory board, may not without prior approval of the shareholder enter into finance agreements stating that dividends may not be declared and or paid out to the shareholder without the approval of the Lender.

### Conclusions and recommendations

In concluding I would like to leave you with the following thoughts:

1. The checks and balances are generally speaking in place with respect to state-owned companies and state-run foundations in Sint Maarten.

The problem in practice is that the rules are not always (properly) applied and that not always the right persons are appointed in the right positions.

2. Taking into account the important position and responsibility of managing directors and supervisory directors of state-owned companies and state-run foundations, it is important that persons to be appointed to these posts not only undergo a suitability but also an integrity test.
3. It should be considered to have newly appointed supervisory directors follow a crash course regarding, among others, the legal aspects of the function and the functioning of a supervisory director. During such a crash course supervisory directors should also be enlightened of financial aspects of the legal entities as laid down in the financial statements.
4. Government should establish as soon as possible general policies (including a general dividend policy) for all of its (groups of) companies.
5. Government should make better use of the Corporate Governance Council by soliciting its advice also with respect to other matters than those mentioned in the Corporate Governance Ordinance, said Council being the trusted adviser of Government with respect to its legal entities.
6. Individual ministers (members of the Council of Ministers) should not be given too much power with respect to state-owned companies and state-run foundations. Important decisions of the shareholder with respect to matters of the state-owned companies should be taken by the Council of Ministers and not by an individual minister. Neither should the Council of Ministers delegate important decisions regarding state-run foundations to individual ministers.

## **The value of checks and balances from civic society perspective - Mr. Jan Beaujon**

I am not here today to talk about checks and balances on bank accounts but moreover about the checks and balances in the Civil Society. If someone would ask me what does checks and balances mean then I would simply say: it's the creation and existence of structures and guidelines to make our actions work and stay on the right course. Now what do we mean by the word Civil Society?

The word Civil refers to citizens, it is about people, groups of people creating communities, organizations, all working, living and coming together to form what we call – Civil Society.

There are also definitions that provided me guidance for our discussion today and for this I chose the definition of the 21 st Century Lexicon defining Civil Society as being – the aggregate of non-governmental organizations and institutions that manifest the interest and the will of the citizens. The accent here lies on individuals being part of organizations which are independent of Government.

There are two fundamental rights that allow us to become non politically involved in what is ongoing in our society and those rights are the Freedom of Speech and the Freedom of Association.

Non political organizations and institutions are vital to a good democracy, these non political organizations and institutions are the ones creating social capital which is the multitude of social contacts and minds that can stimulate actions of individuals and groups in organizations.

Checks and balances are created when these individuals, these groups, these organizations and Institutions all express their rights to define the public GOOD, to determine the policies by which they wish to seek that GOOD and to reform or replace whatever is not serving the GOOD. It means that we have people and organizations as well as institutions that can work together for the common goal being THE GOOD that we want for our communities and the society as a whole.

Each citizen and each organization or institution should be guided by an ideology as well as objectives or targets to be achieved for the general good of our society. By using their fundamental rights of free speech and association they are able to express themselves and draw attention to issues, causes and needs for the good of our society to stay on the right course.

Identifying issues, organizing structures and then motivating people to get involved to deal with issues through organizations, is already an action of checks and balances and when these individuals and organizations are recognized by the authorities and by the Society that is another positive result for the continuation of checks and balances.

Who are these individuals, who are these organizations and or Institutions that are actors in creating checks and balances ?

We have non -political individuals, these are persons expressing themselves in many ways in public through the media or during private meetings or discussions on topics, incidents, policies, decisions etc.. These can be also be actors or singers comedians, authors, poets, song writers, free lance journalists bringing situations and issues in their special way to the attention of our society.

We also have non political organizations that take part in formulating policies and opinions.( No no don't worry I am not going to mention names.)

These organizations are the many Foundations and Associations we have in St.Maarten being active in specific sectors of our society, such as social care, health care, medical professions, environmental protection, history, archeology, monuments, Schools and Education, Sports activities, Cultural activities, Arts, music, literature , theater, publishing , Poverty, Churches or religious organizations, business associations, economic and financial institutions, youth care, Senior citizens, neighborhoods and community groups, trade unions, School Boards, student organizations, animal protection, etc etc I say etc. as there are so many types of organizations doing good work in our country.

All of these organizations at some point in time will be directly or indirectly dealing with the society in general to report serious issues and concerns which needed attention and actions. By expressing their concerns to government or to the public in general and informing us of the work and actions they are taking, they are in fact adding value to the checks and balances system from within the society. In fact many of these associations and foundations are being used to execute some of the government's tasks and needless to mention the influence these organizations can have when being called upon to provide their advice on the preparation and execution of government policies. So often we hear about a foundation or association or individual reacting strongly against a measure, or event. Some people may then say " Aha here he or she or they come again " but by repeating the issue and the related concerns they will eventually get the attention of a greater audience and this can have some good effects on restoring the balance for the good to prevail. When groups of associations and foundations all come together to jointly voice their concerns and formulate an action or policy plan, then THAT is a strong contribution to checks and balances.

The society would want to know that an organization can be trusted and for that reason all organizations such as associations and foundations must make sure to comply with the principles of corporate governance , have a good Secretariat and communication policy, establish a code of good conduct to provide guidance to the Board of directors, the members and the volunteers.

A political party is a political organization but it is also an association with a board and members and they have a right express their opinion and to discuss the reactions on issues. I believe that those elected to represent a party in parliament or in government should not be the only ones to be dealing and deciding on programs and policies. The political party as an organization and supported by the members, should become more involved with discussions on topics such as ideology, policies, programs and codes of conducts.

We are very fortunate to have in our society, other types of organizations and individuals who together with modern technology are now forming a great institution and producer of checks and balances in our society and we often refer to it as being the MEDIA. The Media is comprised of all organizations and individuals being journalists and media workers who assisted by modern technology and systems, conduct interviews, investigations, receive news from press releases or by attending press conferences and prepare their own research. They then publish or broadcast comments and background information on issues, on people and organizations as well as on special events incidents or actions. In fact the media is and becomes involved with almost everything in the civil society.

This production and spreading of information, comments and opinions on issues or events is very important to keep the civil society not only informed but this also stimulates reactions again contributing value to checks and balances.

The internet and telephone technology has made the gathering and distribution of news so much easier and faster. All you need is one person with a phone which is the camera,

the recorder, the word processor and this connected to the internet gets the news out in seconds.

The broadcast or spreading of opinions and news is done by four major partners of the Media.: via the written press which are the daily newspapers, magazines, news letter and handouts, then the Radio, followed by Television and then the Social media.

Our island has 2 Morning papers, being locally edited and printed 6 days in the week to provide news and pictorials on what is ongoing in our society, throughout the region and the rest of the world.

How do newspapers contribute to the checks and balances? They report on the matters that harm the Good in the Society but also mention the good and happy things occurring around us. Through the Daily Editorials they voice their opinion on reactions, on incidents, on decisions and policies of Government, Business activity and on moral or ethical standards. Newspapers also publish Letters to the Editor, reactions of people, comments from individuals and organizations. All this contributes to the process of forming an opinion to trigger actions as an added value to checks and balances. The newspapers are very popular in St.Maarten, lots of attention to social activities, outs and about, events and interviews about people and organizations active in our communities. They provide information on public notices, public procurements, auctions, advertisements on job offers, and advertisement for the services and businesses.

News and opinions are also broadcasted and spread by the Radio, with their news programs providing the background information and sometimes comments. They inform us of breaking news, incidents and events. The talk shows and call-in programs of several producers cover a variety of topics or ongoing hot issues allowing people and organizations to call in and voice their views and concerns. Radio also has specific programs in foreign language for foreign residents to get these persons and organizations also involved. Lets not forget the music programs they provide night and day which also has its own way of providing a balance.

The television is another great contributor to the checks and balances by the Civil Society not only for providing the local news but also for the talk-shows produced by several hosts. TV also provides a network of International news and events occurring in many foreign countries with comments and background information on issues that are or can become related to our Civil Society.

The local Talk and call-in shows on the radio and on TV stations remain important for the voicing of opinions on many topics with the hosts bringing in individuals or members of organizations to provide background information or answers to the questions asked. The tone of expressing opinions may be loud at times but they are useful to separate the good from the wrong and so contribute to the checks and balances.

Finally, the latest partner of the Media which is called the uncontrollable Social Media now being used to mobilize groups, opinions, comments, gatherings you name it. Through the fine technology of the internet, apps, face time, twitter, video conferences, Google, websites, Face book and Blogs, we can now obtain all types of news and opinions on topics originating from different sources sent out in a rapid successive and uncontrolled manner through the society.

Many news items gathered cannot be fully published without obtaining some confirmation from the person, the organization or the institution and without the confirmation this news starts to lead its own life. All political as well as non political organizations and businesses should have in place a communication policy that allows them to quickly respond by gathering and presenting the right facts and information to the media. There is a lot of hearsay going around and it is important to separate facts from fiction in order

to have our Civil Society reacting in a constructive and responsible manner thereby enhancing our image abroad.

In closing I want to remind you that the theme of this symposium is the value of checks and balances and I consider this value to be all the results obtained from the expression of opinions, of actions taken by the people and organizations to improve the policy making, the transparency decisions, thereby improving good governance and the quality of life in country St. Maarten.

Checks and balances must be forthcoming from our inner self, knowing how to separate the good from the wrong and always remember that it is all about the citizens, the organizations, with people, for the people and that means for all of us.

Thank you for your attention and look forward to questions or comments during the panel discussion.

## **Keynote address: the value of checks and balances - Professor Trevor Munroe**

May I first of all express appreciation for the kind invitation to address this symposium and specially congratulate Governor Eugene Holiday on taking the initiative to organize this annual event. I am not aware of any other Caribbean country in which the head of government has inaugurated an occasion of this nature, bringing together distinguished leaders from all sectors, every year on an annual basis to discuss matters of countrywide significance. It is a practice that other leaders in the region may do well to emulate as too often each sector remains within its particular silo, too rarely are there multi-sectoral gatherings to look at national issues. This multi-sectoral approach is especially important in the examination of matters relating to governance, matters that need urgent attention of all of us in this region, and I dare say across the global community.

The fact is that amongst the peoples of most countries there is a low level of trust and confidence in critical institutions of governance. The **Global Corruption Barometer in 2013** which compiled the results of interviews of one hundred and fourteen thousand (114) people in one hundred and seven (107) countries found that political parties and the police, obviously key components of governance, were regarded as the most corrupt of 12 institutions surveyed. In respect of the former, that is, political parties, they scored the highest on perceived levels of corruption among the set of major institutions among the citizens of mature democracies like the United States, United Kingdom, Canada as well as among the people in developing states like Mexico, Nigeria and Jamaica. In our hemisphere the **Latin American Public Opinion Project 2014 (LAPOP)** launched just last week on June 10 found a declining trust in institutions among the 28 countries surveyed, despite continuing support for democratic governance. To complete the picture the **Global Competitiveness Report 2014/2015** found that public trust in politicians in our Caribbean region was so low as only one of seven countries I have examined fell in the top quarter of one hundred and forty four countries ranked on this criteria. **Hence there can be absolutely no doubt that there is a considerable need for discussion of the challenges associated with these disturbing trends; and that that discussion would best take place in symposiums of the sort that we are engaged in today.** So once again congratulations on this initiative.

You, Governor, have asked me to address you on **Governance: the Value of Checks and Balances, with particular reference to the public sector. Not so much looking at St Marteen about which I am here more to learn than to lecture. Rather looking at the broader picture, drawing on general trends, challenges and where possible, examples of best practise from our region.**

In that regard, I am happy to observe that the programme embraces the corporate sector and civil society and does not confine itself to the public sector because too often there is a misconception that governance refers only to government, that is to public bodies. Happily, the approach of this Symposium is to acknowledge that governance refers to government, but as well, to authority in all types of institutions. In fact the World Bank offers succinct working definition "**governance consists of the traditions and institutions by which authority in a country is exercised**". That is, authority in state institutions; authority in private businesses; authority in sports associations; authority in non-governmental organisations. And when we look at governance, we must of course look at formal rules, how those in top positions are selected, how they are monitored and replaced; we must look at the capacity of governance institutions to formulate and implement sound policies. But we must also look at informal practice, at what actually happens, at the available resources (human and financial), at the traditions, values, and attitudes which go into both how authority is exercised and, very importantly, how citizens relate to and exercise oversight over authority. That is governance; I repeat it includes but extends beyond government to embrace other centres of power and perhaps, as we shall see, one of the major challenges of contemporary governance is that very often centres of power, other than government,

are really who, often behind the scenes determine what gets done and who gets what and when.

In fact there can now be little doubt that it was more a breakdown in corporate governance than governance in the public sector that constituted the main cause of the 2008 global financial and economic crisis, the after effects of which we in the Caribbean, like the majority of peoples everywhere, continue to suffer. And only a few months ago six of the main international banks guilty of governance breaches were fined over 4 billion dollars by the regulators for their unacceptable conduct

What about checks and balances? The late American comedian, Steve Allen, once said, referring to his own country the United States, the classical home, one could even say, the birth-place of checks and balances: "**ours is a government of checks and balances...crooked businessmen make out checks, and the politicians and other compromised officials improve their bank balances**". Allen was of course making a joke but on reflection a joke about a serious aspect of modern governance!

- Each year the World Bank estimates that over US\$ 1 Trillion is paid in bribes worldwide.
- Investment in a relatively corrupt country compared to an uncorrupt one can be as much as twenty percent (20%) more costly because of irregular payments.
- Global tax evasion runs at US \$3 trillion dollars per year, depriving governments of needed revenue to provide health and education services urgently needed by the poor..

The checks and balances about which we are speaking, however, is different.

In fact our checks and balances are designed, in principle, to prevent Steve Allen's 'crooked businessmen' from making out those checks and to prevent 'compromised officials' from improving their 'bank balances'. **Checks and balances refers to the principle of government and of governance under which separate branches are empowered to prevent (or check) actions by other branches and are induced to share power not only amongst the different branches, but with the people themselves, whether as shareholders in a corporation, as members of a sports association or as electors in a democratic country.**

The assumption underlying this principle is of course reflected in the famous words of the British Historian Lord Acton "power tends to corrupt and absolute power tends to corrupt absolutely". Nelson Mandela put the same idea somewhat differently. In a democracy "the government, whomever that government may be, will be bound by a higher set of rules, embodied in a constitution, **and will not be able to govern the country as it pleases**". This is the principle which separates and at the same time empowers the legislature, the executive, the judiciary and public bodies, ( like the Office of the Auditor General, the Ombudsman or the Integrity Commission) which underlies the constitution of Sint Maarten, all Caribbean states and indeed the majority of countries in the modern world which are classified as free or partly free.

**The value of checks and balances is therefore self-evident: it is to reduce the likelihood of misconduct and of corruption, that is, the use or abuse of any position for illicit private gain, financial, political, social etc. contrary to the public interest, whether that public be private shareholders in a business, members of a sporting body or electors in a democratic state.** To put it crudely, in democratic governance, a Minister is "checked" from getting kickbacks from a contract awarded to cronies by police investigators or public servants in the procurement agency or by officers in the auditing department. Money from unlawful sources, from money laundering or the proceeds of crime, is "checked" from buying political parties or candidates by virtue of laws governing campaign disclosure and the enforcement of such legislation. Civil servants are "checked" from becoming instruments of political favouritism and from carrying out illicit instructions by rules and codes of conduct



guaranteeing their independence and impartiality, as well as limiting political interference in civil service appointments or in the discharge of administrative duties.

There can hardly be any dispute concerning the value of checks and balances, in fact this value lies at the heart of democratic governance. Two critical questions then arise: does the system actually work to deliver its value? And secondly, if it does not how do we get it to actually work?

In regard to the first issue, do checks and balances actually work to make government serve the public interest, to give substance to the principles of good governance, the simple answer is that most people in most countries say that **the system of checks and balances is not working**.

Let me be specific. In the **Global Corruption Barometer 2013** (to which we have earlier referred) the following question was asked of a representative sample of citizens in one hundred and seven countries **"to what extent is this country's government run by a few big interests looking out for themselves?"** In Norway, the best of the OECD Countries, 5% of citizens said that they think the government is run by a few big interests. At the other extreme and interestingly, in the light of the current crisis, 83% of Greek responders ( before the election which led to the turn to a left wing government) believed that the government was run to benefit a few. In the US it was 64%, in the UK 60%, in the Americas as a whole 54% and in Jamaica 53%.

Yet these are all governance systems in which checks and balances are supposed to operate!!.

Latin America and the Caribbean are not very different. By and large these are democratic countries. However, the people perceive high levels of corruption even though they themselves are not significantly engaged in paying bribes. For example on a scale of zero (0), where zero is the lowest perception of corruption and one hundred (100) the highest, the people of Jamaica and Guyana scored their respective countries at seventy eight (78) and Belize at seventy five (75) in the just recently released **LAPOP 2014** report. In relation to the rule of law, one of the main expected outcomes from the operation of checks and balances, the World Bank Institute's **Worldwide Governance Indicators** (2013) gave Jamaica, Trinidad and Tobago, the Dominican Republic, Suriname, Guyana, Haiti all negative scores.

Overall it is quite obvious that the governance arrangements are not working adequately to deliver critical "public goods". For example: **security and safety**. The Caribbean ranks as that region of the world which by far has the most homicides, thirty per hundred thousand compared to a global average of five per hundred thousand. In terms of **human development**, an index summing up health, education and income levels for the majority, measured by the United Nations Development Programme, Cuba is the only Caribbean state in the top third of one hundred and eighty seven countries of global human development. In that context we might add that income inequality is now at its highest globally and within most countries and constitutes what the World Economic Forum describes as one of the most likely risks to peace, security and national governance.

What therefore is going wrong? What is it that needs to be corrected? Of many defects, undermining the operation of checks and balances, I would like to mention two: **lack of transparency in government policy making and favouritism in decisions of government of officials**. The man in the street in almost every Caribbean state and further afield can testify that too often he doesn't know what the government is doing and secondly, that only some people, the favourites, benefit from government policy. The **Global Competitiveness Report 2014/2015** corroborates the perception and

experience of the man in the street. In respect of **transparency of government policy making** of one hundred and forty four countries ranked globally, Caribbean states re among the least transparent\_ Haiti ranks one hundred and forty one (141), Suriname one hundred and twenty two (122), Jamaica one hundred and nine (109) . In respect of **favouritism in decisions of government officials** of one hundred and forty four (144) countries, Trinidad ranks one hundred and thirty seven (137), the Dominican Republic one hundred and thirty two (132), Suriname one hundred and twenty nine (129), Haiti one hundred and thirteen (113). Clearly lack of transparency disguises how far checks and balances are working or not working, favouritism is facilitated and lack of accountability encouraged. Put bluntly, officials are perceived to get away with wrongs, resulting in a steady loss of confidence across the hemisphere, including in my own country Jamaica, in governance and in the practical value of checks and balances.

What is to be done? I suggest five critical areas of urgent remedial action to meet these challenges.

**One: awareness building amongst the public and within institutions of governance.** Awareness building, first and foremost in relation to the cost of corruption, of how the malfunctioning of the system of checks and balances is not just discrediting governance but hurting the man in the street. This requires careful research and the development of creative products to engage and uplift the consciousness of the citizen. In Jamaica, I dare say, NIA has achieved some success with its two full length documentaries and many television as well as radio ads which may be viewed on our website. ( Two weeks ago we completed a new ad aimed at building public understanding and disapproval of vote-buying and vote-selling in preparation for forthcoming elections). This awareness building in large measure has contributed to 77% of our people expressing the wish to join an anti-corruption organisation where the global average is 53% and to a majority belief that ` corruption' is the main cause of the continuing economic hardship being experienced by the majority.

But the awareness building needs to be also targeted at the public servants, the police officers, the magistrates, the prosecutors, the legislators, the members of the executive who need to develop a deeper understanding of their respective roles within the system of governance. This latter requires, in our experience, regular sensitisation and training sessions contributing to capacity building and to a strong sense of professionalism. Awareness building also demands that the media play a critical role , utilising the relative freedom of the press which we enjoy in the Caribbean to engage in investigative journalism, in exposure of wrongs and in the promotion of appropriate conduct. Access to Information law needs to reinforce constitutional guarantees of `open government' and our main institutions\_ Parliament, the cabinet, the judiciary, the police, the ombudsman etc must have websites with up-to-date information to keep our citizens abreast of what is going on

**Two: institutional reform.** Whilst in general the formal rules and statutes provide for separation of powers as well as checks and balances, there nevertheless remain significant gaps. One such in our region is the inadequacy of regulations governing political parties as public entities, still too often regarded as private bodies, and most of all, the inadequacy of law to regulate party funding and campaign financing. In most Caribbean states law does not require any disclosure of who gives what or how much to a political party and therefore, who is in a position to exercise undue influence on the party and the party functionaries when they form the government. By and large as well there are no limits on how much money may be donated nor how much money may be spent in an election, thereby facilitating parties, candidates and voters being bought by either criminal or commercial interests. This institutional gap deprives the society and the electorate in particular of an important mechanism for checking and balancing the power of money with the power of an informed electorate.

**Third: More rational resource allocation.** No system of checks and balances however well designed and however well written can function effectively if the necessary resources are not allocated in a timely fashion, particularly to the justice and law enforcement sectors as well as to the electoral and auditing institutions. In Jamaica, the Ministry of Justice receives 1% of the national budget! Clearly this Ministry has got to be given higher resource allocation priority if the system is to provide an effective check and if the people are to get the justice they deserve and demand.

**Fourthly: More effective law enforcement and equitable administration of justice.** These are two key institutions in a regional and global context in which the powerful and the well-connected in political directorates, in the business community and in the criminal underworld enjoy too much impunity and are in effect very often above the law. Throughout the Caribbean region, media are replete with instances where the petty thief is promptly investigated, arrested, brought before the courts and sentenced expeditiously whilst those in high places either are never brought before the courts, have their cases indefinitely postponed or if convicted, receive relatively light sentences. In the most egregious and notorious cases the untouchables have to be extradited in order to face the justice system. No wonder a majority of our Caribbean citizens, according to a recent UNDP study (2012) feel that in our countries the politicaay- connected and powerful criminals go free!!

**Fifthly: the development and enforcement of codes of conduct.** Good governance and the operation of checks and balances demands that there be codes of conducts for legislators, for ministers, for civil servants, for judges, for police officers as well as for the corporate sector and civil society organisations. Where these codes do not exist the individuals concerned have no guidelines. Where they do exist and are not enforced they are of little significance and bring the institution into disrepute. These need to be reinforced by effective Whistle-blower legislation and protection

This menu of measures selective, as they have been, nevertheless constitute a formidable agenda for implementation. Such an agenda has to be initially driven from above, by informed, principled and courageous leadership which recognises the urgency and value of checks and balances in upholding the integrity of governance. Ultimately, however, the system has to be policed by the citizenry aware, motivated and active in upholding democratic governance. Formidable as these responsibilities are, important gains can be made. In this regard I wish to close with three examples of small but important steps demonstrating the possibility of change in our region.

- The case of St. Vincent: In 2014, the global corruption perception index identified three countries of 175 which recorded positive improvement in their score by +5, namely, Egypt, the Ivory Coast and St Vincent. In the case of St Vincent 2 practical steps were responsible- the effective application of the rule of law to a high-ranking official, the Registrar of the High Court, who was prosecuted, found guilty and punished by the courts. Secondly, an enhancement in transparency whereby, all contracts awarded above a certain sum begun to be published in the newspapers—who got the contract, for what sum, to carry out what projects and with what completion date. Transparency at work!
- The case of Turks and Caicos Islands: In December 2010, just a couple months after Sint Martin achieved its new constitutional status, I completed the National Integrity System study for TCI commissioned by Transparency International. TCI had their self-government constitution suspended because of extensive, documented cases of corruption, in which among other things, Ministers abused their power and the relevant public institutions failed to function to check this abuse. Out of this adversity however came opportunity. One of the strong recommendations in my report was for political parties to be brought under statutory regulation, to be registered and political funding strictly controlled.

Today, TCI has a state of the art system, arguably the best in the Caribbean, to check and balance the power of money by the power of law. Under Ordinance 22 of 2012, parties now have to be registered, strict accounting standards have to be met, donations have to be disclosed, a limit is set on maximum donations from any one source, donations from anonymous or criminally suspect sources are prohibited, maximum limits are set on campaign spending and there is public inspection of campaign expenditure returns. Most of all there is provision for significant penalties for violation of the law.

- Third. The case of Jamaica. Today, as we speak, after more than 5 years of debate, of hesitation by Parliamentarians and of advocacy by civil society organisations, including NIA, a Bill is now before the legislature to establish a single Integrity Commission which would have the responsibility to check the asset/liability reports of Parliamentarians and public servants, monitor the award of public contracts and possess the authority to investigate as well as prosecute cases of corruption. When this Bill becomes law, I believe it will mark an important step in building Jamaica's anti-corruption architecture and establish a model which may be emulated in other Caribbean countries.

May I conclude with this observation. Tomorrow, June 20, 2015, marks the 50<sup>th</sup> anniversary of the visit of that famous Nobel Prize Laureate and freedom fighter, Martin Luther King to Jamaica. During that visit, MLK said that 'here in Jamaica' and I add, by extension, the Caribbean, 'I feel most like a human being than anywhere else', because, King observed, here in the Caribbean a civilisation had emerged and was being created, where, despite shortcomings, more than anywhere else, people of different races, ethnicities, colours and creeds live side by side in relative harmony, more than anywhere else. In a similar vein and on a different plain, I believe it is within our power here in the Caribbean to so transform our systems of governance, to so enhance the operation of checks and balances within our system, to make their value so real that the Caribbean can become that region, more than anywhere else, in which democracy has its most outstanding manifestation. May I charge us all to take up this critical challenge !!

## **Transcript of the Round table discussion**

*Q- How do you actually uphold checks and balances in such a small dynamic community?*

A- First of all you need to ensure that the qualifications and the criteria for appointment to different positions are known, not just to the applicants but to the people. And that in determining who gets which position, that you apply the rules no matter who it may be because it is a rule of law and of regulation. It is challenging but it can be done and I think Barbados of all of the Caribbean territories has been demonstrating a level of good governance that ranks it very high on these particular criteria as well as on others. So the smaller the society, the more important it is to apply the rules and the more easy it is for the people to know what the rules are. That is one of the advantages of small societies, that you can make the transparency much more effective and spread it throughout the population.

*Q- In general the principals of checks and balances do exist, however the rules are not thoroughly being followed all the time but at the same time some people are not always put in the right position, can you please elaborate on that? Also within a small society how do you actually come to a solution to that problem?*

A- My starting point is that the rules are there but they need to be applied. If they aren't applied then you can just forget the whole system. The system and the rules are as good as the people we put to work within the system. The problem within any small community is that while the rules are in place, if we do not apply them, if we do not educate our people, in my view it begins with education. We must educate our people taking the board of Supervisory directors for instance and educate them not only pertaining to the function itself, but how you are to function. Of course this is difficult within a small community. I can imagine thinking of a solution regarding Supervisory Directors that you could at a given moment have a pool of Supervisory directors trained and that this pool, maybe 15 or 20 persons that these can sit within the board of for instance a holding company and from within that company they can supervise.

*Q- Even if you have that pool of 15 to 20 people in that holding to supervise, who are these people that you are going to put there because you have to appoint them at some point in time? Wouldn't you come to the same problem of appointing those 12 or 20 people you were referring to as the same situation we have of appointing 5 to 7 people in a particular Supervisory board?*

A- What my college said, you have to have the criteria based on which those persons must be appointed. That goes for the Supervisory board but also for the Corporate Governance Council. If you do not have persons which have been appointed based on objective criteria then you are beginning with problems. It is important that the criteria are fixed and based on those criteria and rules, then you will appoint.

The issue is training the others, training them for the future. We should offer the opportunities of trainings every four or five months for those who are interested.

*Q- Are you saying at this point in time that this doesn't exist? According to me in a few boards you have some members of the Supervisory board that go from time to time to certain trainings and certain courses. So I think in certain boards that do exist at this point in time, but what you are saying is that generally before even assuming this position that you should have that crash course. Is that what you are saying?*

A- In the Public Sector, generally speaking I don't know of many jurisdictions in our region where ministers are trained once elected where they are oriented into their responsibilities. I believe that training, orientation and refresher courses are extremely important in our context.

Its indeed good to know what the function entails and you should be trained and you should know make sure that you know what are in those laws that govern your function.

I think that is also a function of the political parties, when you accept becoming part of your party you want to make sure that you have a training institute for your own party, you have school, you have a training going on and you make sure that if they get elected that they are ready to go and do the job that they have to do.

*Q- I do understand that when you talked about the media, because you touched on the role of the media within the society and how imperative it is and I agree with you, but looking at it from the perspective of checks and balances which the ideology behind that is to avoid the abuse of power. But what we sometimes see in the media and also in the social media is that they abuse the power because of the fact that they are anonymous by blogging at times and they are all in a very small society, don't you think that that can be a little bit dangerous the role of the media sometimes in the entire society ?*

A- It isn't dangerous it all depends on how you accept it, the criticism you get from the media. It depends on how you cope with that, I think that is part of our training in dealing with people and dealing with situations. Not to become too emotionally involved and take emotional decisions. I think we should be able to come together and discuss issues in closed doors and closed sessions before we go put things in the press. You have to be transparent. If you come out and say something and say truly this is what is happening and this is why we took this decision then the people will know.

To us this is one of the important means of insuring that checks and balances work. The journalists themselves need to be educated as to which institutions are supposed to do what, but they need to be encouraged by the public to do more in exposing that which appears not to be right.

*Q- Transparency, who would actually be checking the checker, how do you see it in terms of having a control mechanism in order to safeguard the value of checks and balances in such a small society.*

A- I think in the first instance the institutions need to open themselves up to the people. Finding the means to be open in all our institutions and this of course applies to corporate institutions as well not just to Public Sector and to civil society.

Transparency is when we look at ourselves in this small community ,things are happening and are being said but little is being contested by the persons and by the authorities themselves. Then again in a small community how successful would you be as a journalist when you start digging into information which was not being made available to you but then you get it from other sources and there is where you have to still get that confirmation. Investigative journalism is very difficult in a small community like Sint Maarten but I reckon it is going to start. It may not come from people of Sint Maarten but they will probably bringing in people from elsewhere.

*Q- You have the advantage of being able to compare Sint Maarten and Curaçao as well, how do you look at that with Curacao which is bigger than Sint Maarten but yet in comparison with Jamaica it is still a small society?*

A- There would definitely not be any differences, Curaçao and Sint Maarten will be the same where that is concerned. I think what you do have is a situation whereby you have institutions at a given moment they see themselves as being untouchable as it were and not need to give any accountability. I agree that we need to open up, be it government, be it parliament, you have to get that information out there and make sure that people know what is going on and that way you can have a better controlling mechanism.

If we are not open to do it and to control ourselves the information we want to provide to the public, we will be facing, and it has already started in our community here, leaks. Certain news certain letters, certain issues just leak out of the meetings and conferences and nobody wants to contest it. Every organization should have a communication policy.

*Q- We talked about a few fish in the pond and because of that we are seeing the some players over and over because of the small community, how can we try and change that to see if we can create more fish in the pond.*

A- I think it's important to create more fish but I also think it's important for a small community like Sint Maarten not to shut yourself off from the outside world. In my view you should be more open to foreigners and where necessary have people come in and help you.

In that regard I think that the diaspora is very important and in most of these islands some of the best qualified are the most talented and those with the greatest initiatives. We need to find a way to encourage their reengagement either taking up positions or alternatively getting their views involved in the process of decision making and in the mechanism of governance. Our diaspora is a huge pool that can be used to expand that pond to which you refer.

We have the duty for our country to prepare the younger ones and those that we believe have possibilities and have a good chance to receive that instruction and that education.

## **Transcript Q & A - Audience**

*Q- What we have seen here in Sint Maarten is that when it comes to integrity and accountability we have put more institutions in place than many other countries who can better afford it, what advice does the panel have for us with regard to the affordability of putting these checks and balances in place?*

A- There must be a much greater responsibility to prioritize expenditures. Where the resources are constrained I would say the priorities need to be very carefully scrutinized. Let the people know what you are spending on money on early. They will cry out and say no you can't spend money on that because it is not priority given our current situation.

*Q- Instead of adding things by saying should we do more training, more criteria. Would it be a possibility and specially in these settings of Caribbean comparisons with best minister models, consensus models which we have in our democratic system. Would it be helpful to maybe take the Supervisory Boards out, strengthen transparency, as another option as well and how would that be beneficial maybe in the subject of today.*

A- There is so much that revolves around the Supervisory Board and if you make sure that you have the right persons on that board it is definitely an asset to the governance of the companies. Again we do not need those 40 persons of course if we are going to appoint the persons in each of these companies you are going to get a problem because of that small pond thing. But the supervisory board should definitely remain in place and make sure we have the right persons and you can have several persons again supervising several companies.

If you have a lot of companies you may want to look into if there is some kind of a similarity to certain companies and you are able to group them into one big entity and have one separate board for that entity.

*Q- In that limited pond that we have are we looking at all sections of the pond to get the skills that we need or are we looking only in a particular section of the pond and above that also at a particular color fish?*

A- You just fix the criteria with respect to the fish in the pond. Begin with the criteria and once you have that then it's going to go okay.

*Q- Firstly how can we combat corruption in a society that is already far gone and secondly can we consider ourselves a community or a network for organized favors?*

A- I give you a concrete example. Jamaica had a bribery victimization rate in 2006 was 36%, that is pretty far gone I think you would admit. Now in 2014 shows that that rate has gone down 12%. What has contributed to that is firstly a fairly robust law enforcement, secondly efficiencies have been increased so many of the public entities provide the services without red tape, without delay and without bureaucracy thereby

providing a disincentive for you to have to pay money to get the service quickly and thirdly I think the atmosphere of tolerance for even small types of bribery has been made far more difficult because of the awareness building that is so necessary. So when you put those 3 together I believe it is possible to pull back from the brink even societies that are far gone. The big missing link of course in our case is that the big fish seem to be missing from the small pond.

*Q- If the arms-length principal may not add to corruption because this principal provides government with the opportunity to say it's not me.*

A- If the system works correctly the government can say it's not me because it's the management and the supervisor in first instance it is the managing directors. That would mean the managing director being in the driver's seat should make sure that he/she carries out his function in a correct and objective way. And in that case government who cannot give any instruction to a managing director cannot promise or take things from persons to render any favor because you do not have any grip where that is concerned on the company, so I do not see it as a problem. With respect to the accountability of the public of course you have in first instance that it is government which is accountable to the public and not managing director of the company, but through the rules and regulations government would have to make sure that government gets the correct information coming up from the managing director to the shareholder in order to come up with its accountability. If the rules are applied then it should work

*Q- Are there legislations that govern the rights of the shareholder and how far things can be done within the NV's?*

A- This can be found in the corporate law as well as in the corporate governance code.

*Q- How can we promote the whistleblower chamber based on a small society and on the Kingdom level how can we promote the whistleblower chamber whereby also the society is protected because on the confidence level almost no one will dare report a whistleblower chamber here on Sint Maarten because we will feel the same reprisal or the possibility. So how can we take it to that next level both on the Dutch Caribbean level into the kingdom and how can we even have it go the United Nation level where people can report these kinds of things and have it that we have the checks and balances applied throughout. So both supervising the Kingdom and overlooking the island on that level and still getting the protection and see to it that these things are being investigated and looked into?*

A- Becoming transparent it's the will that has to be expressed by the people who are forming that institution. If the government owns a company they should enforce the companies to apply those rules and if they do apply those rules and the government acts upon it transparency shouldn't be a problem.