



OMBUDSMAN

SINT MAARTEN

Letter of Concern
(*Zorgbrief*)

Ministry of Tourism, Economic Affairs, Traffic and Telecommunication
The Honorabel Minister Irania Arrindell
Government Administration Building
Clem Labega Square
Philipsburg
Sint Maarten

Philipsburg, 8 August 2016

Our Ref # OM-OBM 308/2016

Re: National Ordinance for the issuance of economic permits; hereinafter “the Permit Ordinance” (AB 2013, GT no. 126)

Dear Ms. Arrindell,

Considering:

- that the Ombudsman recently issued important recommendations to the Ministry of Tourism, Economic Affairs, Traffic and Telecommunication in two cases;
- that the Ministry failed to provide a status report as requested by the Ombudsman in both cases, and more than three (3) months have passed to provide a status report in the pertinent cases;
- your letter dated 20 July 2016 to the Complainant in Complaint no. 2015/00193;
- the importance of the timeshare industry for Sint Maarten and the efforts of Parliament often discussed in the media, to provide additional protection for the rights of timeshare owners;
- that the articles of the National Ordinance for the issuance of economic permits, hereinafter “the Permit Ordinance” (AB 2013, GT no. 126), mentioned below are vital in supervising and monitoring the timeshare industry on Sint Maarten;
- that queries by the Ombudsman at the Court of First Instance on Sint Maarten regarding the registration of timeshare regulations pursuant to the Permit Ordinance did not yield any results;

I hereby request your **urgent** attention for the following.

Note that pursuant to article 23 of the National Ordinance Ombudsman the concerns discussed below are brought to the attention of Parliament by means of a copy of this letter.



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- **National Ordinance for the issuance of economic permits**

Artikel 44a lid 1: De houder van een hotelvergunning, die tevens een timeshare-resort exploiteert, stelt een tussen hem en de genot hebbende van een onroerende zaak binnen het timeshare-resort geldend reglement op, bevattende de voor de vergunninghouder geldende algemene voorwaarden waaronder hij zijn beroep of bedrijf uitoefent, dat in ieder geval de in de bijlage bij deze landsverordening opgenomen bepalingen bevat.

Lid 2: Het reglement, bedoeld in het eerste lid, wordt door de vergunninghouder, bedoeld in het eerste lid, ter goedkeuring overgelegd aan de minister. Na goedkeuring wordt het reglement door de vergunninghouder gedeponeerd bij de griffie in het Gerecht in Eerste Aanleg.

Lid 3: de in het eerste lid bedoelde vergunninghouder leeft het reglement voortdurend na.

Lid 4: Wijzigingen in het reglement worden vooraf aan de minister voorgelegd.

Artikel 44d lid:1 De in artikel 44a, eerste lid, bedoelde vergunninghouder respecteert de geldende timeshare-rechten van zijn voorganger, indien hij een timeshare-resort overneemt.

Lid 2 De in artikel 44a, eerste lid, bedoelde vergunninghouder draagt er zorg voor dat de timeshare rechten, waarvoor hij zich heeft verbonden, overgaan op degene, die het timeshare-resort overneemt.

- Final Report dated March 11, 2016 issued in Complaint no. 201500019

Recommendation(s):

- Draft an action plan for immediate compliance with the law, and the monitoring of the timeshare industry pursuant to article 44a and following of the National Ordinance Permits, and inform the Ombudsman accordingly.

The Ombudsman requests a status report on the recommendation within three (3) months from the date of this report.

- Final report dated May 24, 2016 issued in Complaint no. 2015/00193

Recommendation(s):

- Provide the Ombudsman within four (4) weeks of the date of this Report a comprehensive outline of compliance by the Ministry with its supervisory role pursuant to article 44a et al of the Permit Ordinance; more specifically provide the answers to question 9 of the NOC, which reads as follows:



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Pursuant to art. 44 a. of the "*Vergunningenlandsverordening*" the company in possession of a hotel license, including the operation of timeshare-resort, is bound to draft a regulation ("*reglement*") approved by the Minister, and deposit same at the Courthouse for public access. Changes to the regulations should be submitted to the Minister. Pursuant to art. 44 d. of abovementioned Ordinance ("*Vergunningenlandsverordening*") the successor of a timeshare-resort should respect the rights established by its predecessor, while last mentioned should provide for the transfer of same.

- a. Explain how the above mentioned legal provisions are in general enforced and controlled by the Minister?
- b. Outline the procedures followed in providing the operational license to Alegria Real Estate B.V. as it relates to the relevant laws and the grievances presented by the complainant.
- c. Provide the Ombudsman a copy of the regulation of the timeshare-resort operated on the premises commonly known as Caravanserai, approved by the Minister pursuant to above stated Ordinance.

Considering the importance of this investigation for a large sector of the Sint Maarten economy, the Minister is specifically reminded of article 16 section 6 and article 19 of the National Ordinance Ombudsman. Failure to observe the pertinent legal provisions may result in the Ombudsman applying article 23 of the National Ordinance Ombudsman to inform Parliament regarding compliance by Government with the pertinent legislation.

The Ombudsman requests a follow up status report on the recommendation(s) within three (3) months from the date of this Report.

The Ombudsman regrets the non-response to these very important recommendations, and requests your urgent attention to provide the Ombudsman the pertinent status reports.

I look forward to a prompt response accordingly.

Sincerely,

Dr. R.L.A. Arduin
Ombudsman
Sint Maarten

Cc: The Honorable Prime Minister William Marlin
The Honorable President of Parliament Sarah Wescot-Williams
Complainants (Complaints no. 2015/00193 and 2015/00019)