



# Audit on Governance Bureau Telecommunication and Post



**General Audit Chamber**

**Algemene Rekenkamer**

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## PREAMBLE

The General Audit Chamber (hereafter: Audit Chamber) concluded on the basis of the country's financial statements of 2012 and 2013 that the financial transfers from the Bureau Telecommunication & Post (hereafter: BTP) are lagging behind expectations. As a result, the Audit Chamber decided to conduct a comprehensive performance audit. The governance of BTP was a constant issue throughout the audit and became the focal point of the investigation. The discoveries support the conduct of a governance investigation at BTP. A number of results described in this report are notable, some are even shocking. The Audit Chamber is of the opinion that in terms of external governance, significant action is required from the Minister of Tourism, Economic Affairs, Transportation and Telecommunication (hereafter: TEATT), the Director of BTP as well as Parliament. Particularly there responsibility must be taken and legal requirements must be complied with. Moreover, much is required to improve internal governance as well.

We find it *incomprehensible* that in the year 2015, basic aspects of governance, and many legal requirements, are still absent. Given the delicate financial situation of the Country, the Audit Chamber questions when the attitude "the Country is still engaged in a buildup phase", will come to an end and when taking responsibility will start.

**Ronald C. Halman, MBA**  
Chairman

**Joane Dovale-Meit, MA**  
Secretary-General

## SUMMARY

### *Background*

After Sint Maarten's transition to Country within the Kingdom, BTP became responsible for, among others, the development of policy frameworks, the performance of activities and advising the Minister of TEATT regarding telecommunication and postal issues. The National Ordinance on Bureau Telecommunication and Post is leading in this regard.

### *Objective of the audit*

The purpose of the audit is to provide insight into the organization and the functioning of the governance at BTP, and to examine the causes for the arrears in payments to Government, as well as the uncertainties related to these transfers. The report of the Audit Chamber regarding the establishment of governance at the Bureau of Telecommunication and Post includes findings, conclusions and recommendations related to internal governance, external governance as well as the effectiveness (performance) of BTP. Governance relates to management, control, monitoring and accountability.

### *The role of the Minister of TEATT*

The Minister has an external role in which he:

1. provides BTP with a vision;
2. approves legally required documents such as the budget and regulations as stipulated by the National Ordinance BTP;
3. completes a performance contract with the Director; and
4. exercises oversight.

As is evident from the audit results, insufficient exercise of the aforementioned role is a primary cause for why transfers from BTP to Government fail to meet expectations.

Due to the lack of a performance contract, the Director is given "carte blanche" inasmuch as he has little to no accountability. Take for example the stipulation of the National Ordinance BTP that foresees in automatic approval of the submitted budget in the event the Minister fails to approve the budget within a period of six months<sup>1</sup>.

### *The role of the policy department of TEATT*

In the course of the investigation, the Audit Chamber found that the involvement of the policy department for Economics, Transportation and Telecommunication at the Ministry of TEATT is limited. This is a remarkable finding given that the department is responsible for policy development, including in the area of telecommunication. Involvement of the policy department can produce significant cost savings by carrying out work internally instead of subcontracting. In addition, said department can also contribute in terms of monitoring the continuity of policy in the event of a succession of ministers.

### *External procurement (outsourcing)*

The organizational structure used, consisting of a Director and C-level management, and the concomitant financial cost, presumes a certain level of knowledge and experience. One can question why the majority of projects are outsourced. In that regard, the Audit Chamber questions why the COO is not responsible for the management of the numbering plan and why the Manager HR/PR/CA (human resources/public relations/consumer affairs) cannot implement the project "Implementation/Updating HR-Tools at BTP SXM". In terms of the CFO, one can question why an external accounting firm is needed to review the accounting documents of the CFO and her department, as well as to draft the annual accounts. Normally, C-level managers should be capable of executing such tasks.

### *Costly Dollar administration*

The analysis of the budgets and annual accounts provide insight into the fact that while the budgets are drafted using U.S. Dollars, the annual accounts are stated in Antillean Guilders. Maintaining a Dollar denominated financial administration results in increased bank costs. The CFO confirmed that the bank costs are significant, though the Audit Chamber was not provided with a plausible argument for the choice of Dollar denominated budgeting.

### *The Supervisory Board*

BTP has a supervisory board. The Supervisory Board has both an external and an internal role. Because of the absence of the legally required procedural regulations, regulations for management, employment regulations and the performance contract for the Director, the Council is not sufficiently equipped to effectively exercise supervision. It is notable that the Audit Chamber has not been able to confirm whether the Supervisory Board was legally appointed after 10-10-10. The Supervisory Board has issued

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<sup>1</sup> Article 18, seventh paragraph of the National Ordinance BTP

so-called resolutions intended to, partly, limit the freedom of action of the Director. Reason for this action was the Board's desire to introduce mechanisms upon which to base their review and supervision. It should be noted that the National Ordinance BTP provides no legal foundation to support the aforementioned authority. Hence, the previously mentioned resolutions have no legitimacy and one can question the extent to which the resolutions are binding.

#### *Noteworthy findings*

Based on an analysis of documentation provided to us, it seems that in September 2012, an employment contract was established between the Chairperson of the Supervisory Board and the Director, in which (among others) specific employment conditions such as salary, a fixed bonus, a thirteenth month, monthly representation allowances including a credit card and a phone allowance, are stipulated. Moreover, the responsibilities of the Director are described in general terms in the contract. In accordance with article 3, fourth paragraph, of the National Ordinance BTP, employment conditions related to the Director must be set forth in an employment regulation. This regulation is required to be formalized by the Minister after receiving input from the Supervisory Board. The Audit Chamber has been unable to confirm the legitimacy of the aforementioned employment contract in terms of if it relates to legal requirements as required in the National Ordinance.

In the event the contract is not legal and thus void, the Minister has the option to deviate from the employment conditions, which in respect to remuneration, are greater than those of a minister<sup>2</sup>. It is puzzling to the Audit Chamber, in the context of effectiveness, that such employment conditions were established in view of the minimal level of responsibility the Director carries in relation to the Minister who, in almost all cases, remains responsible (ministerial responsibility). The Audit Chamber recommends that, for reasons of efficiency, Government applies the salary structure used by the public sector to BTP given that the bureau is part of the collective sector.

#### *Independent public entity or not?*

Based on interviews conducted in the course of the audit, it has become evident that within BTP, there is consensus that the bureau is, in fact, an independent public entity (*zelfstandig bestuursorgaan: zbo*). However, the National Ordinance BTP stipulates that the bureau is a public legal entity. The law, interestingly, does not explicitly state that BTP is an independent public entity. Compare this with, for example, the National Ordinance Implementing agency Social and Health Insurance (National Ordinance USZV), where the status is unambiguously stated in article 2 (i.e. zbo). If Government intends BTP to unequivocally operate as an independent public entity (zbo), there is no impediment to amending the law accordingly. This has, to date, not taken place.

#### *Follow-up*

We deem it appropriate to have critically analyze a number of contracts at BTP as part of a future audit. During our performance audit, we found that in a number of cases there are insufficient guarantees in place, and that the perception of possible conflicts of interest is present. In addition, in the cases in question, no public procurement rules were applied. The Audit Chamber is of the opinion that an investigation carried out by, for example, the Minister of Finance based on article 43, seventh paragraph of the National Financial Accounting Ordinance, can be useful in clarifying the situation. Such investigations are outside the scope of this performance audit.

#### *Conclusion*

The governance within BTP, or better stated, the lack thereof, impacts the effective functioning of BTP and is partly to blame for the lower than projected financial transfers to government. The Minister of TEATT plays a fundamental role in this regard, along with the Director of BTP and his *key-officers* (COO-chief operating officer and CFO-chief financial officer).

The lack of an up-to-date vision, policy and policy objectives, a legally required annual performance contract, periodic assessment thereof, familiarity with the division of powers, structured dialogue, a (written) review of documentation provided by BTP, as well as the late delivery of documents such as the budget, leads to uncertainties, ambiguities and raises questions. In an organization with significant financial interests, and in which fundamental management principles are absent, the aforementioned situation is undesirable to say the least. The Director of BTP was given "carte blanche" due to insufficient guidance, management and supervision by the Minister. The Audit Chamber concludes that the most important, elementary forms of external and internal governance, are absent. Moreover, the National Ordinance BTP is, for the most part, not complied with and important documents such as the legally required performance contract, the employment regulation and the regulation governing the operations of the Supervisory Board, are still not viewed as priorities.

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<sup>2</sup> National Ordinance Remuneration of persons holding political authorities

## RECOMMENDATIONS

To effectively achieve policy in the area of telecommunication and postal services, and in order to efficiently implement the tasks stipulated by the National Ordinance, as well as insure that BTP transfers the funds government expects, it is essential that the external and internal governance improves. Because governance relates to the relationship between aspects of management, control, supervision and accountability, improvement measures are required for all four aspects in order to achieve a higher level of efficient and effective functioning at BTP.

Specific recommendations have been included in chapters 2 through 5 that can contribute to improvements in governance. The following are the *most important* recommendations per stakeholder.

### *Recommendations to the Minister of Tourism, Economic Affairs, Transportation and Telecommunication:*

- Determine a direction for the telecommunications and postal sector. Give priority to the formulation of a vision, policy and policy objectives as these serve as input for updating the multi-annual plan and the drafting of an annual plan for BTP.
- Approve the annual budget plans in a timely and an efficient manner in order to allow plans to be implemented in an equally timely and efficient fashion. This will guarantee that there is appropriate insight into the feasibility of policy.
- Ensure that all parties are always aware of the individual responsibilities and authorities (who is responsible for what). Uncertainties regarding decision-making exercised by those who are not thusly authorized can have serious consequences for the Country.
- Involve the policy department for economy, transport and telecommunications within the Ministry of TEATT. This is currently not being done which is remarkable because this Department is responsible for developing policy, including in the field of telecommunications. Involvement of the policy department can result in significant cost savings, and can also contribute to a monitoring policy in the event of a succession of ministers.
- Establish the annual performance contract for the Director in accordance with the National Ordinance BTP. In so doing, the "carte blanche" of the Director of BTP will cease and the functioning of the Supervisory Board will be simplified.
- Establish the employment regulation in accordance with the National Ordinance in which the employment conditions for the Director are stipulated.
- Conduct structural dialogue with the Director of BTP in order to stay abreast of all national and international developments, and to be able to evaluate documents produced by BTP in order to provide guidance and measure the activities of the Director.
- Terminate the previous temporary agreement regarding transfers to Government and take the decision requiring BTP to immediately act in compliance with article 21 of the National Ordinance BTP. In addition, the arrears to Government must be verified so that these can be transferred.
- Establish whether BTP is an independent public entity or a public legal entity with specific independent authorities.

### *Recommendations to the Director*

- Establish a procedural regulation for management in which rules regarding the internal and external policy are stipulated for authority in the event of absence and deputation.
- Choose a management model that fits the organization. Ensure that, at the very least, a "Plan, Do, Check, Act" cycle will be maintained. Draft plans and related budgets, implement them, monitor the execution and provide guidance where required. Also ensure that there is control of the organization by establishing guidelines, processes and procedures and put these in practice. This can be the basis for the evaluation and guidance of key officers within the organization and in turn, the officers can use them to manage, control and guide their own work.
- Determine where the bottlenecks are in terms of the composition and administration of the annual accounting statements for the years 2013 and 2014, and take specific action to solve any problems. Carry out *tight control* (make specific agreements and monitor these) to ensure that the financial statements of 2015 are presented within the required time period stipulated in the National Ordinance BTP, and present the financial statements to Supervisory Board and the Minister TEATT. A timely presentation of the financial accounting documents has a positive effect inasmuch as these documents can also be presented to the Minister of Finance, thus guaranteeing that there is more certainty regarding the accuracy and comprehensiveness of the transfers from BTP to Government.

*Recommendations to the Supervisory Board*

- Draft a procedural regulation governing the operation of the Board and present it to the Minister for approval. Ensure that the regulation clearly describes the responsibilities and authorities of the Supervisory Board<sup>3</sup>.
- Draft the annual report of activities prior to July 1 of each year and present it to the Minister.

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<sup>3</sup> The Regulation rules of procedure also includes, in the interest of clarity, the definition of what the Board means by “review of draft budgets including a proposal of the performance contract for the Director”, pursuant to article 18, paragraph 2, of the National Ordinance BTP.



### 1.1 BASIS FOR THE AUDIT

Various documents indicate that the transfers from BTP to Government are lagging behind, and that the Bureau's income is uncertain.

As such, the Minister of Finance noted in both the 2012 and 2013 financial statements, as well as the draft budget 2013 and the multi-annual budget 2014-2016, that the contributions from public entities to Government have been below expectations.

The SOAB, the internal auditor of Government's financial statements, did not issue a positive auditor's opinion about the 2012 and 2013 financial statements. One of the reasons was the uncertainty regarding the proceeds from BTP. There is no clarity regarding the positive balance of BTP at the end of December 2013, and what portion thereof belongs to Government.

The Audit Chamber has made mention of the uncertainties related to the accuracy and comprehensiveness of, among others, income in its reports regarding the financial statements of the Country for the years 2012 and 2013. The reports state that the positive balance of BTP is uncertain because of a lack of clarity regarding the division of assets. The 2012 report of the Audit Chamber states "*because the annual accounts of BTP since October 10, 2010 have not yet been audited by an external accountant, Sint Maarten's contribution cannot be calculated. Sint Maarten has however been paid advances*". SOAB issued their audit report<sup>4</sup> on the 2012 annual accounts of BTP in March 2015.

The Council for Financial Supervision (*het College Financieel Toezicht; CFT*) has stated in a number of letters and reports that collection of concession fees is lagging. In terms of BTP, CFT states that transfers are seriously in arrears as compared to the budget<sup>5</sup> and, there are collection problems related to concessions<sup>6</sup>.

Given that the transfers are in arrears as well as the existence of uncertainties regarding the income at BTP, the Audit Chamber questions whether BTP is sufficiently well managed, and whether finances are collected and used effectively and efficiently to allow BTP to carry out its tasks. Moreover, we have questions related to the relationship between BTP and the Ministry TEATT given that BTP executes policy in the area of telecommunication and post on behalf of the ministry. As such, the Audit Chamber carried out a performance audit regarding governance at BTP. The relationship between the Minister of TEATT and BTP was also studied.

#### *Content*

The summary, conclusions and recommendations have already been presented in this report. In the next chapters, the following will be discussed: explanation of the audit in Chapter 1, external governance in Chapter 2, internal governance in Chapter 3, performance in Chapter 4, causes for the arrears in transfers from BTP to Government in Chapter 5, and the Epilogue in Chapter 6. The report also includes two appendices: a listing of persons interviewed for the audit and a bibliography of documents reviewed.

<sup>4</sup> 15/0295C/KK, Findings of the audit of the 2012 financial statements of Bureau Telecommunications and Post Sint Maarten

<sup>5</sup> Cft 201400187, CFT Advice on the draft budget 2015 dated October 21, 2014

<sup>6</sup> Cft 201400230, Reaction to the third implementation report 2014, December 17, 2014



## 1.2 OBJECTIVE OF THE AUDIT AND AUDIT QUESTIONS

The objective of this audit is to provide insight into the organization and operation of the governance at BTP, and also to determine the reason(s) for the arrears in transfers to Government and the uncertainties related to income at BTP. In addition, we provide recommendations to the Director of BTP and the Minister of TEATT with the aim of improving governance at BTP and the relationship with the ministries involved. During the conduct of the audit, the role of the Postal services was minimally addressed. As such, the Audit Chamber has chosen to exclude a review of this specific area.

The main audit question is as follows:

*"Is the governance<sup>7</sup> of BTP, internal to the organization as well as external (in relation to the Ministry TEATT), organized in such a manner so as to provide sufficient guarantees to allow telecommunication policy, as stipulated by the National Ordinance, to be realized effectively and efficiently and to meet Government's expectations regarding the transfers from BTP to Government? "*

To achieve the audit objective as well as to answer the main audit question, the following inquiries (not comprehensive) had to be addressed in the area of external governance, management, control, supervision and accountability.

### External governance

- Which objectives does the Minister wish to achieve with BTP?
- In terms of BTP, what are the responsibilities of the Minister?
- How does the Minister give account as related to his responsibilities and what does that accountability entail?
- What conditions does the Minister place on the primary process and the administrative organization of BTP?

### Internal governance

#### *Management and control*

- What is the vision for BTP? Which objectives does BTP wish to achieve? How do these objectives relate to the policy objectives of TEATT?
- What are the tasks, responsibilities and authorities of key officers?
- Which management instruments are used?
- What measures are in place to guarantee that the execution of processes are in accordance with the plans, procedures etc. thus allowing, where necessary, changes to achieve objectives?
- What are the reasons for the arrears in transfers? How are the arrears specifically managed and which measures are taken to solve the arrears?

#### *Supervision*

- In which way does the Supervisory Board establish and organize their supervisory role?
- What are the activities, responsibilities and authorities of the Board?
- Which area is the focus of the supervision?

#### *Accountability*

- Which documents related to accountability are produced by BTP?
- What information is included in addition to the annual accounts?
- Do these documents related to accountability provide sufficient insight to the Ministers of TEATT and Finance as well as Parliament? To what extent is insight provided in terms of the achievement of objectives, the management of critical risks, decision making and actions related to important activities etc.?

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<sup>7</sup> From paragraph 1.4 there is an explanation on governance.

### 1.3 AUDIT METHODOLOGY, PROCEDURE AND PROCESS

#### *Audit Methodology & procedure*

The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing. An introductory meeting was held at BTP. During this meeting the planning and timeframe, the audit objective and the conduct thereof, were discussed. The audit methodology includes analysis of documentation as well as the conducting of interviews. Interviews were conducted at BTP as well as at the ministries of TEATT and Finance. Draft minutes of interviews were provided to interviewees for input and approval.

Comments and approvals were received from all interviewees, with the exception of four persons, despite numerous requests. In the appendix to this report we have included a complete listing of all interviews, the interviewees, as well as a bibliography of documents reviewed. The draft memorandum of findings was presented as part of the consultation and hearing phase to BTP as well as the Minister of TEATT. Once the memorandum was made final, it was provided to BTP and the Minister.

Based on the final version of the memorandum of findings, we prepared a draft final report. This report was also presented to the Director of BTP, the Supervisory Board of BTP and the Minister of TEATT for comment. The final report will be presented to them as well as Parliament.

#### *Audit process*

Receipt of information and documentation did not proceed smoothly at the start of the audit. Arranging interviews also proved cumbersome. In addition, we experienced reluctance from persons who initially displayed a lack of willingness to participate in interviews and/or to provide documentation. The result was an interruption of the audit process, particularly at the start of the audit. In the end, however, all planned interviews were completed.

### 1.4 AUDIT FRAMEWORK

#### *General*

The performance audit of BTP was carried out by the General Audit Chamber in accordance with article 74, second paragraph of the Constitution as well as article 1, article 30 and article 42, second paragraph of the National Ordinance of the General Audit Chamber. In accordance with the aforementioned articles, the Audit Chamber is tasked with investigating the performance (efficiency and effectiveness) and legal compliance related to the income and expenditures of the Country. The arrears in projected revenue to the Country, in combination with problems with governance as the possible cause, is the focus of this audit. The Audit Chamber examines the efficiency of management of monies and goods, the organization and the functioning of institutions and legal entities that are directly or indirectly related to the Country. These organizations are required to provide information and documentation to the Audit Chamber.

#### *Frame of reference*

The frame of reference for this audit is the National Ordinance BTP<sup>8</sup> as well as relevant aspects from the *government governance*<sup>9</sup> model. There is no single definition for the term governance. What governance is can be derived from multiple sources. An often used description states:

*"Governance is guaranteeing the consistency of the individual elements of management, control and supervision of organizations focused on achieving efficient and effective realization of policy objectives and clearly communicating and giving account about this in the benefit of all stakeholders"*<sup>10</sup>.

#### *Explanation of the elements of governance*

##### Management

Management refers to providing direction towards achievement of organizational objectives by, for example, setting up of the organization and shaping processes. Management is illustrated through among others:

- A formulated vision, policy and policy objectives;
- A multi-annual plan / multi-annual budget;
- A plan and control cycle;
- Performance agreements with management;
- Tasks, responsibilities and authorities for all stakeholders; and

<sup>8</sup> AB 2013, GT no. 466, National Ordinance regarding the status, tasks and authorities of the Bureau Telecommunication and Post, effective 10-10-2010.

<sup>9</sup> Manual Government Governance- an instrument for testing the governance of the National Government, Ministry of Finance, January 2000.

<sup>10</sup> Governance model of Bossert, 2004

- Frameworks for organization, operations, etc.

Control

Control is introducing a system of measures and procedures to be able to determine whether the organization continues to move in the right direction, in other words, that the organization achieves the established (policy) objectives. Examples related to control are:

- Progress reports;
- Annual plans and annual budgets;
- Written record of processes, procedures and internal controls;
- Periodic evaluations by a Board and management;
- Evaluation consultations, structured meetings etc.

Supervision

Supervision is the collection of information to determine that (policy) objectives are being achieved in the benefit of all stakeholders. Stakeholders can include, for example: a minister, parliament, a member of staff, a shareholder and a citizen. Supervision can be performed though, among others:

- A Supervisory Board;
- A Workers Council; or
- An inspection body.

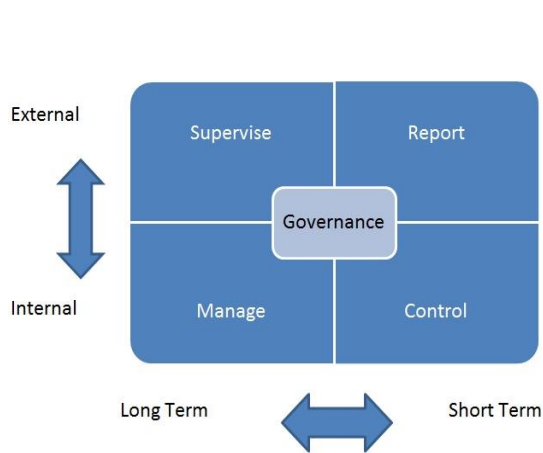
The following is needed for the aforementioned:

- Law and regulations, (collective) labor agreements;
- Annual Reports, progress reports etc.

Accountability (report)

Accountability is the provision of information regarding all assigned tasks and authorities, and all activities carried out towards achieving established objectives. Accountability is the capstone that provides stakeholders with sufficient information so that they can evaluate if objectives are being achieved and whether the manner in which the organization is managed and controlled is sufficient to achieve future objectives. Examples of accountability include:

- An annual account (financial statement);
- An annual report;
- Accountant’s audit;
- Monthly, quarterly, and annual reports from management.



These four elements of governance can be divided along two axes: internal or external organization and short or long term. From an organizational perspective, these axes result in four quadrants.

Only one of the four elements can be placed in a quadrant:

- Supervision → orientation is mostly external and long term;
- Accountability → orientation is mostly external but - short term;
- Management → orientation is more internal and long term;
- Control → orientation is mostly internal over a short term.

Figure 1: Governance

*Differentiation of external and internal governance*

**External governance** is the relationship between Government and an external organization. Government uses external organizations to achieve its policy objectives. In this case, Government provides guidance –in varying proportions– to the external organization. In so doing, conditions can be set regarding the primary processes, the management setup, the accountability and/or supervision including the legitimate use of funds. Government wishes to guarantee that the external organization achieves its objectives.

**Internal governance** refers to the management, control, accountability and supervising relationships within an organization.

External and internal governance mutually influence each other.

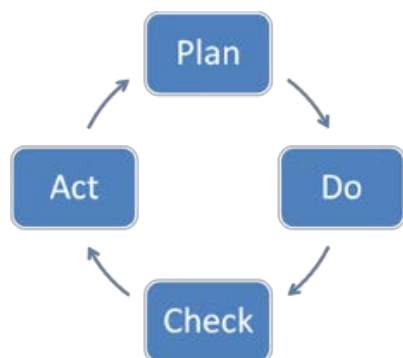
## National Ordinance BTP

There are a number of stipulations in the National Ordinance BTP that describe how governance should be organized at BTP.

- Management and control are described in articles 2, third paragraph, article 3, sixth paragraph, article 5, article 16, second paragraph, article 17 and articles 20 and 21.
- Supervision is dealt with in Chapter 3. Specifically, article 8 describes the composition of the Supervisory Board and articles 14 and 15 deal with the task and manner of work.
- Accountability is described in article 16, first paragraph, as well as articles 18 and 19.

### Instruments for management and control

Specific instruments can be used for management and control. As part of our preparatory work, we found that there were no specific instruments used at BTP. As such, we chose to use the PDCA cycle because this model contains the essential steps for management.



PDCA is an abbreviation of:

**Plan** (drafting a plan including the desired results and the manner of achieving them).

**Do** (implementation of the plan, achieving and recording the output).

**Check** (control: making a comparison of the results with what was planned).

**Act** (in the event of deviation, taking measures or making adjustments to achieve the desired results).

Figure 2: PDCA cycle

There are a few terms used in the report that require additional explanation:

- Design of the governance system: the goal is to examine how governance was set up.
- Functioning of governance: the objective is to determine whether the system used is functioning adequately.
- Efficiency: to what extent is the goal being achieved as compared to a specified standard? Efficient relates to expediency in this regard. Something is efficient or expedient if the goal can be achieved in less time or with fewer organizational resources than the specified standard.
- Effective: this determines how the realized goal appears as compared to the norm. Effectiveness relates to successfulness in this regard as it provides a statement about the result of the process.
- Checks & Balances: an organization can only operate well if the control mechanisms (checks) are functioning optimally, and if a proper balance exists in terms of the distribution of powers and the interests of the authorities (balances).

## 1.5 BACKGROUND INFORMATION ON BTP

BTP is the regulatory authority for the telecommunication and postal sector of Sint Maarten. As such, BTP is responsible for the development of policy frameworks for the telecom and postal sector, the implementation and deployment of the policy frameworks established by the Minister of TEATT, the preparation of national law and regulation, and advising the Minister of TEATT as well as members of Parliament in the area of telecommunication and post.

BTP carries out its tasks through consultation with participants/industries in the telecommunications and postal sector and other stakeholders, with the aim of achieving quality and affordable communication for everyone. BTP strives to create an environment that supports continuous growth and development within the sector. To realize this, BTP keeps an eye on international and regional developments in the telecommunications and postal sectors, and maintains contacts with the region. Given the geographical location and the demographics of Sint Maarten, the country wishes to, over time, develop itself into a leading telecommunications hub in the region.

BTP is part of the so-called collective sector (*collectieve sector*)<sup>11</sup> of Sint Maarten. This fact is derived from a letter signed by the Minister of Interior and Kingdom Relations<sup>12</sup> as well as appendix 2 of the National Ordinance related to the National Budget<sup>13</sup>. As such, BTP is required to comply with all regulations related to the collective sector.

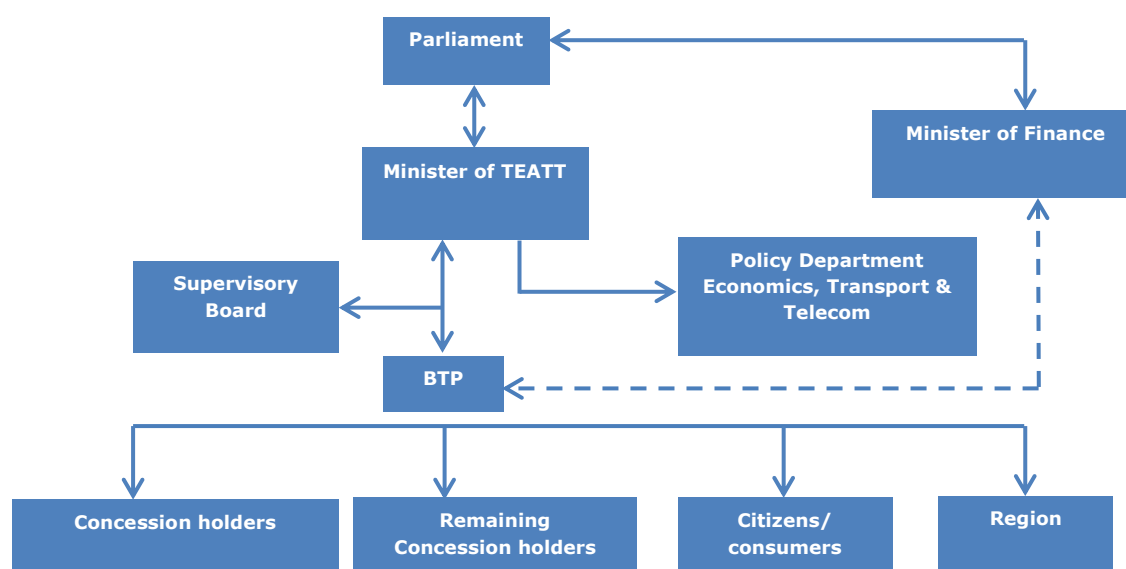
BTP has a direct relationship with the Minister of TEATT and an indirect relationship with the Minister of Finance<sup>14</sup>. The Director of BTP and the Supervisory Board are accountable to the Minister of TEATT. The Supervisory Board is authorized to issue advice to the Minister of TEATT and to the Director. Most of the responsibilities of BTP rest with the Minister. The Minister is supported by his Cabinet and is responsible for the handling of politically sensitive matters and providing political advice.

In addition, the Minister also has at his disposal a Department charged with developing and formulating policy for the Ministry. For the sectors telecommunications and post, it is the Department of Economics, Transport and Telecommunications. The relationship with the Minister of Finance is considered to be an indirect one because the Director of BTP is not accountable to this Minister. The relationship with Finance is related to the deposits or transfers of payments to the national coffers.

Nevertheless, the Minister of Finance can play a role in terms of the submission of documentation and initiating investigations, as BTP forms part of the collective sector<sup>15</sup>.

The following graphic illustrate the aforementioned relationships related to BTP.

**Figure 3: Relationships of BTP**



Prior to October 10, 2010, the regulatory authority for telecommunications and post was the Bureau Telecommunications and Postal services Netherlands Antilles. The headquarters was located in Curaçao with branch offices in St. Maarten and Bonaire. On October 10, 2010, BTP Sint Maarten started operations.

The Bureau is charged with the following tasks:

- Developing policy frameworks related to telecommunications and postal services;
- Implementing and deploying the policy frameworks related to telecommunication and postal services as established (approved) by the Minister of TEATT;
- Preparation of national laws and regulations regarding telecommunications and postal services;

<sup>11</sup>In article 1, section g, of the National Financial Accounting Ordinance, the collective sector is defined as: the Country (government) and other legal entities pursuant to the definition of the System of National Accountants of the United Nations. Article 23 of the Kingdom Law Financial Supervision stipulates that the legal entities that are part of the collective sector will be determined every two years.

<sup>12</sup> Letter dated February 14, 2014, wherein the Minister of Interior and Kingdom Relations as well as the Minister of Finance settle on the collective sector in accordance with article 23 of the Kingdom Act on Financial Supervision

<sup>13</sup> Explanatory notes of the budget 2015: *appendix: check of the National Financial Accounting Ordinance*

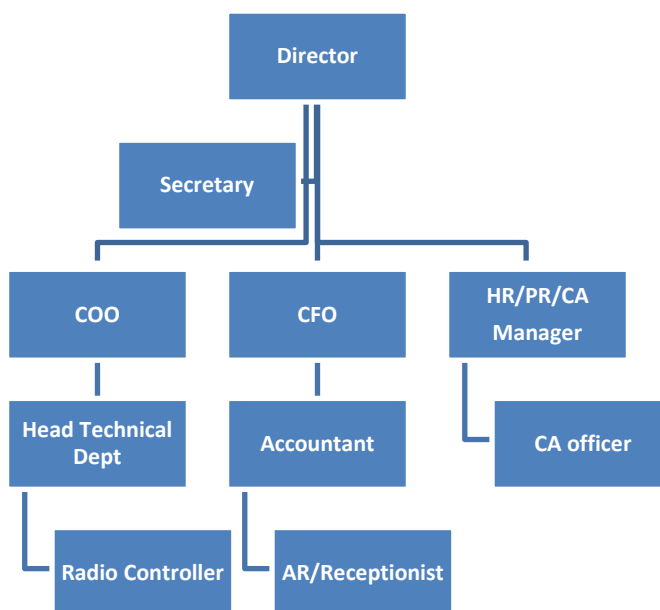
<sup>14</sup> In addition, the Bureau, on the basis of article 5, sub f of the National Ordinance BTP, can, on request of members of the Council of Minister, provide advice regarding telecommunication and post legislation and policy.

<sup>15</sup> Article 43, sixth and seventh paragraph, of the National Financial Accounting Ordinance.

- Executing, by or pursuant to the National Ordinance, activities in the field of telecommunications and postal services;
- Representing, to the extent instructed by the Council of Ministers, the interests of Sint Maarten in regards to telecommunications and postal services on Kingdom, regional and international levels;
- Advising the Minister, and on request the other members of the Council of Ministers, in regards to telecommunication and postal matters;
- Providing advice or carrying our services on request on behalf of public departments and third parties related to telecommunications and postal matters;
- Carrying out other activities as assigned by the Minister;
- Providing other activities by or pursuant to the National Ordinance.

BTP is managed by a Director. The management consists of a Chief Financial Officer (CFO), Chief Operational Officer (COO) and a Manager Human Resources/Public Relations/Consumer Affairs (Manager HR/PR/CA). These officers respectively lead the Finance Department, the Technical department and the Department HR/PR/CA. A total of ten (10) persons work at BTP. In essence, for this organization, four of ten employees hold a management position.

The following is the organizational chart of BTP.



**Figure 4: Organization Chart BTP**

2.1 INTRODUCTION

This chapter looks at the way in which the Minister of TEATT established (set up) the external governance in relation to BTP as well as the consequences thereof. Inasmuch as it was possible, we also describe the functioning of the system. Special attention is given to the reasons why external governance is established in the manner that it is. The setup of the external governance also influences the system of the internal governance. The systems affect each other which becomes evident in this and the subsequent chapter.

2.2 SETUP OF THE EXTERNAL GOVERNANCE SYSTEM

2.2.1 MANAGEMENT AND CONTROL

*Management provides direction to the achievement of organizational objectives by, for example, the setting up of the organization and shaping processes.*

*Control is introducing a system of measures and procedures to be able to determine whether the organization continues to move in the right direction, in other words, that the organization achieves the established (policy) objectives.*

*Vision, policy and policy objectives*

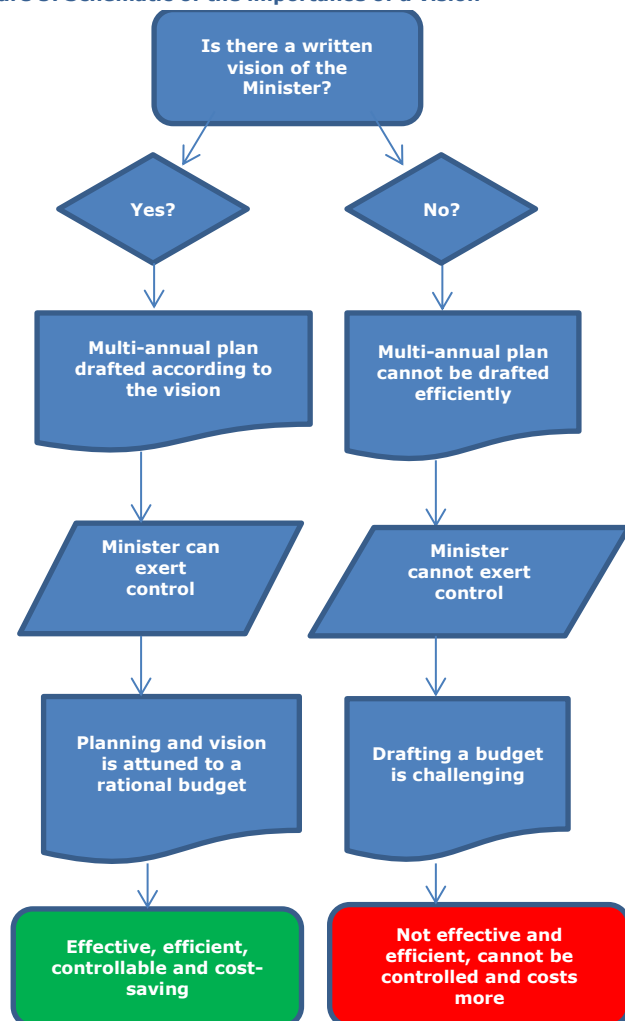
The "Explanatory remarks of the draft budget for 2015" contain the general vision, mission and points of attention of the Minister of TEATT for the fiscal year. The documents did not reveal whether the Minister TEATT developed a vision, policy and policy objectives in the field of telecommunication and postal services for the governing period. During the interview with the Audit Chamber, the Minister stated that he had only been in office for about six months and that he was still in an orientation phase. This, he explained, entailed meeting with the Director and Supervisory Board of BTP, which could, in future, lead to a concrete and up-to-date vision, policy and policy objectives being developed. It is not known when the orientation phase, and the drafting of a vision, policy and policy objectives was completed<sup>16</sup>.

*Consequences of the absence of a concrete and current vision, policy and policy objectives:*

Sint Maarten risks getting overtaken by other islands in the region because its telecommunications networks have fallen behind despite the desire to take the lead in the region's highly competitive telecommunication market. This situation was mentioned in a number of interviews conducted as part of the audit.

No framework exists with which the Director can orient himself and which the Minister can use to communicate. Converting policy and policy objectives into more specific goals, an annual plan and a budget etc., does not take place.

Figure 5: Schematic of the importance of a vision



<sup>16</sup> During the drafting of this report, a new Minister of TEATT was appointed (September 2015).



### *National Ordinance BTP*

The National Ordinance BTP has been applicable since the inception of BTP on October 10, 2010. This National Ordinance contains provisions that describe the manner in which governance should be interpreted. Moreover, the National Ordinance creates a framework for the relationship between Government and BTP. Our research indicates however, that, on a number of issues, there is insufficient or a complete lack of compliance with this National Ordinance. Because certain documents have not been drafted or have not been provided or presented late, the framework of 'checks and balances' is absent. We will further describe the reasons for this.

### *Performance Contract*

The National Ordinance BTP requires that the Minister of TEATT establish an annual performance contract for the Director<sup>17</sup>. This contract must contain quantitative and qualitative financial standards and objectives. The Audit Chamber determined that, from the start of employment in November 2012, to date, no such performance contract for the Director was established by the Minister (past or current). There was also no performance contract established for the Interim Director who served from October 2010 to November 2012. In the case of the interim director, there was no legal requirement because the employment was based on a consultancy contract that included a specific work plan related to the expected activities and deliverables. As a consultant, a formal appointment was not necessary.

The lack of a performance contract has consequences for the Director, the Supervisory Board as well as for the Minister:

- The Director does not specifically know what is expected of him. Due to the lack of specific agreements and standard objectives, the Director has, in essence, been given "carte blanche" by the Minister;
- The duties of the Supervisory Board are complicated due to the absence of one of the most important supervisory standards.
- By virtue of the absence of an annual performance contract, the Minister does not have the use of an instrument by which he can assess and adjust the performance of the Director.

### *Budget*

BTP drafts an annual budget. The National Ordinance BTP requires that an annual budget is submitted to the Minister for approval by September 1, of the year preceding the year to which it relates. For his part, the Minister is required to approve or reject the budget prior to October 1. If the Minister fails to approve the budget within six months after it is presented by the Director, the budget is considered to have been approved<sup>18</sup>.

As a management and control instrument, the budget process is not optimal. This is evident, for example, by means of the following:

- As it stands currently, the annual budget has not been presented in a timely fashion to the Minister of TEATT by the Director of BTP, and in practice, the budget has not been formally approved (on time) by the Minister;
- Budget 2014 was not formally approved by the then presiding Minister. The Audit Chamber was unable to determine the reason for this. In addition, the budget 2015 was, at the time of this audit, not yet formally approved by the Minister.

As a result of not presenting budgets in a timely manner, the Minister is not provided with appropriate insight whether the planned policy is financially viable and whether other options are required. The time formally allowed to the Minister to make changes is limited. A budget that is not formally approved by the Minister results in the absence of formal approval for the plans and policy the Director intends to carry out for the financial year in question. In addition, by not establishing a performance contract, the Minister can be faulted for allowing the Director the opportunity to spend public funds as the Director sees fit. The result is a higher risk of uncertainty regarding expenditures, particularly given that the annual accounts (financial statements) of BTP are behind schedule. Moreover, a formal instrument to allow for adjustments of activities and for evaluating the performance of the Director is missing.

### *Consultation (meetings)*

On the basis of interviews as well as through the use of documentation provided to the Audit Chamber, we could not find evidence to prove that there is structured system of consultation (meetings) between the Minister TEATT and the Director of BTP. This was also the case with previous Ministers of TEATT, i.e. no structured form of consultation. It was established, that when consultation did occur, it was not documented for the most part, and when documentation (reporting) is available, it is not usually preserved (archived).

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<sup>17</sup> Article 17, first paragraph, National Ordinance BTP

<sup>18</sup> Article 18 of the National Ordinance BTP

The lack of structured consultation can mean that information exchange regarding important events and developments is inconsistent, however, such is necessary for decision making and adjustment. As a result, the Minister is either not, or insufficiently aware of what is happening in the sector. This creates a risk for the Minister that his policy and policy objectives in the field of telecommunication are not reviewed or reinforced in a timely fashion. As a result of a lack of structured consultation, another risk is created inasmuch as a Director has the sole discretion to change objectives and plans.

#### *Responsibilities and authorities*

The National Ordinance BTP stipulates the responsibilities and authorities of the Minister of TEATT with respect to BTP. This National Ordinance grants no responsibilities or authorities to other ministers. From documentation submitted to us, we found that the Prime Minister and several Ministers of Finance directly requested information from BTP. Based on correspondence submitted to us, we found that the authority of the Minister of Finance, in terms of requesting information from BTP, was subject to debate. The Audit Chamber considers this finding noteworthy, given that pursuant to article 43, sixth and seventh paragraphs of the National Financial Accounting Ordinance, the Minister of Finance has the right to demand all documents, and possibly conduct investigations.

### 2.2.2 SUPERVISION

*Supervision is the collection of information to determine that (policy) objectives are being achieved in the benefit of all stakeholders.*

#### *Minister of TEATT*

The General Audit Chamber was not able to determine what a type of supervision is maintained by the Minister of TEATT, at least in terms of what should be evident through the presence of a form of structured dialogue, a written assessment of documents received from BTP, and/or a periodic evaluation or review of the implementation of a performance contract.

Based on documentation received<sup>19</sup> we were able to establish that critical questions were posed by the Minister of Finance starting in 2013, regarding the annual accounts 2011-2012 and the draft budget for 2015. From a report provided to us<sup>20</sup>, we noted that a meeting took place between members of the cabinet, management of BTP and members of the Supervisory Board. According to members of the Cabinet of the Minister of TEATT, the meeting was meant as an introduction to BTP. No minutes were made of later meetings between the Minister TEATT and management and Supervisory Board of BTP regarding a subsequent downward adjustment of the draft 2015 budget of BTP.

The consequences of a lack of structured dialogue and evaluation or assessment of the work carried out by the Director, have already described in paragraph 2.2.1. The lack of a written assessment of deliverables presented by BTP, suggests that no questions are asked in order to clarify the contents and, no correction nor adjustment takes place. The resulting risk is that the Director continues to have sole discretion regarding his actions. The Director is not assessed on his performance and faces no consequences.

#### *Supervisory Board*

The Audit Chamber did not receive the appointment decrees of the members of the Supervisory Board, nor were these made available for inspection, during the conduct of the audit. As such, we cannot unequivocally establish that the (members of) the Supervisory Board were actually appointed after Country status was attained. If these decrees for the period after October 10, 2010, are indeed absent, then the Supervisory Board was not formally established and all decisions or advices issued by (members of) the Supervisory Board, could be null and void. Quite recently, there was a similar case regarding the Rental Commission (*huurcommissie*). On April 13, 2015, the Court in First Instance held that the Rental Commission was not appointed by National Decree after 10-10-10, which is a legal requirement<sup>21</sup>. As a result, the Court ruled that the Commission, could in fact, not issue decisions. All decisions taken were therefore annulled. The Court did rule that it is possible, by means of a National Decree, to legitimize the appointment with retroactive effect. If the members of the Supervisory Board of BTP were not appointed in the correct manner after October 10, 2010, it is highly recommended that, in the interests of legal certainty, appointment is achieved as soon as possible with retroactive effect. After all, an appointment from before 10-10-10 is no longer valid.

The National Ordinance requires that the Supervisory Board draft a regulation of procedures for its operations and that this regulation is approved by the Minister TEATT. In addition, the Supervisory

<sup>19</sup> Letter from the Minister of Finance to the Minister of TEATT, April 28, 2015, reference 823A; Letter October 2, 2014; Memo from the Minister of Finance to all ministers, August 21, 2013.

<sup>20</sup> Minutes of the Council of Ministers meeting with third parties, Thursday, April 9, 2015, 09.30 a.m. BTP / MR-Third Parties no. 17/15

<sup>21</sup> <http://www.bzselaw.com/st-maarten-rent-committee-decisions-10-10-10-deemed-invalidvoidable>

Board is required to give account on an annual basis to the Minister regarding the Board's activities. The Minister is required to submit the report to the Parliament for their information. The regulation of procedures of operation and an annual report of activities has, to date, not been prepared by the Supervisory Board. The Audit Chamber was not able to confirm that a Minister of TEATT questioned or reminded the Supervisory Board regarding presentation of these documents. We also do not possess any documentation to prove that Parliament requested that the Minister provide the annual report of the Supervisory Board of BTP or that the Minister was reminded to submit the document.

In addressing the existence of a regulation of procedures for operations, the chairperson of the Board stated in her interview, that it was not drafted because of the hectic environment in which the Board found itself from the start. The transition from BTP Netherlands Antilles to BTP Sint Maarten was not conducted according to the protocol and as such, BTP Sint Maarten had to be built from the ground up. The Supervisory Board was intensively involved in that process. Moreover, a contributing factor was the fact that the Board first met in November 2010.

As a result of the lack of a regulation of procedures for operations, it remains unclear to stakeholders (the Minister, the Director and staff of BTP as well as Parliament) in what way the Supervisory Board accomplished its responsibilities and authorities. If this was known, the stakeholders involved, could have posed questions and if there were uncertainties, modification would have been possible. There is a chance that the Supervisory Board, based on their own discretion, shaped their function without input from the Minister.

The consequence of the absence of a yearly report of activities of the Board is that the Minister was denied a means by which to make adjustments, evaluate performance and take decisions. Additionally, such a report would have been a fitting instrument with which to provide critical written input to the Minister regarding the functioning of management of BTP.

### 2.2.3 ACCOUNTABILITY

*Accountability is the provision of information regarding all assigned tasks and authorities, and all activities carried out towards achieving established objectives. Accountability is the capstone that provides stakeholders with sufficient information so that they can evaluate if objectives are being achieved and whether the manner in which the organization is managed and controlled is sufficient to achieve future objectives.*

The national budgets drafted under responsibility of the Minister of Finance for the years 2011 up to and including 2015, contain information regarding 'concession income Bureau Telecommunications'. This information is provided via the Minister TEATT. The explanatory notes for the consecutive years, under the budget item 'income BTP', contains is a clarification. Among others, there are statements regarding the projected income, the failure to comply with financial and legal obligations as well as the shortfall in transfers to Government. The notes of the 2015 budget also report that Government has taken action and is in the process of pressing the organization to meet its legal obligations.

The financial statements of the Country for the period 2011 up to and including 2013<sup>22</sup>, drafted under the responsibility of the Minister of Finance, also included information regarding the income (concessions and fees) from BTP. The explanatory notes of the Financial Statements for 2013 make no specific mention of BTP. In their adverse opinion, the auditors provide an elucidation related to uncertainties related to the positive balance of BTP.

The General Audit Chamber was not able to determine whether during the Parliamentary debate related to the budget and that of the financial statements, questions were posed regarding BTP. In an interview, a member of the Cabinet of the Minister of TEATT was asked about this, but he could not answer this question. In keeping with good governance and checks & balances, it is desirable that members of Parliament are informed and can pose questions to the responsible Minister regarding an organization with an arrears in required contributions.

## 2.3 CAUSES EXTERNAL GOVERNANCE SYSTEM

The fact that the system of external governance at BTP is not yet adequate can possibly be ascribed to a number of causes. In a period of approximately five years, there have been as many Ministers at the Ministry of TEATT. Information from a various interviews and documents indicate the following:







<sup>22</sup>At the time of the drafting of this report, a final version of the financial statements 2014 for Sint Maarten was not available.

- The lack of transfer of information regarding BTP between successive ministers. Information cannot be found in the files at the Ministry;
- There is hardly any documentation on BTP preserved/archived at the Ministry. The BTP file provided to us was far from complete and not systematically documented;
- The Cabinet of the Minister of TEATT is involved in cases relating to BTP, such as preparing the position of the Minister in litigation. The policy Department of economics, transport and telecommunications of the Ministry of TEATT was not involved, as we were informed during interviews. That is remarkable because this Department is responsible for developing policy, including in the field of telecommunications.

## 2.4 CONSEQUENCES EXTERNAL GOVERNANCE SYSTEM

As described in section 2.2, the design of the external governance of the Ministry of TEATT in relation to BTP, as required by the National Ordinance BTP, is not compliant and/or is not compliant in a timely manner on the following:

No.	Article	Description	Compliant	Not Compliant	Undetermined
1	Article 3, Paragraph 3.	Appointment of the Director by Decree	✓		
2	Article 3, Paragraph 4.	The terms and conditions of employment of the Director shall be laid down in a regulation by the Minister, and shall be adopted after receiving input from the Board.		✗	
3	Article 3, Paragraph 5.	The Director designates, after receipt of input from the Board, one of the employees of the Bureau as his Deputy. Such a designation shall require the approval of the Minister.		✗	
4	Article 4, Paragraph 2.	The conditions of employment for the staff shall be laid down in an employment regulation by the Director, and adopted by the Minister after receipt of input from the Board.		✗	
5	Article 8, Paragraph 1.	There is a supervisory board.	✓		
6	Article 8, Paragraph 2.	The Board is comprised of at least three and not more than five members including a Chairperson.	✓		
7	Article 8, Paragraph 3.	The members of the Board shall be appointed, suspended and dismissed by National Decree.		✗	
8	Article 8, paragraph 7.	The Board shall establish a schedule of resignation for the members in such a way that each year one of the members resigns.		✗	
9	Article 9	The Board is composed in such a way such as to contain knowledge and experience in the field of telecommunications, postal services, economics, law and accountancy as well as familiarity with society of Sint Maarten.	✓		
10	Article 13	The remuneration of the members of the Board shall be established by National Decree.			?
11	Article 14, Paragraph 3.	The Board meets at least once every three months and, as often as the Chairperson or two members of the Board or the Minister considers necessary.			?
12	Article 14, Paragraph 5.	The Board is responsible to give account to the Minister for the execution of its task. Prior to July 1 of each year, the Board issues a report on activities conducted. The Minister will submit this report to Parliament for their information.		✗	
13	Article 15	The Board adopts a regulation of procedure regarding its operations. The regulation shall require the approval of the Minister.		✗	
14	Article 17, Paragraph 1.	The Minister establishes, on an annual basis, a performance contract with the Director containing quantitative, qualitative and financial standards and objectives.		✗	
15	Article 18, Paragraph 3.	The Director shall send the draft budget before September 1, of the year preceding the year to which it relates, to the Minister for approval. The Director will include the Board's comments on the budget with his submission. If the Board has not		✗	

No.	Article	Description	Compliant	Not Compliant	Undetermined
		given any input, the Director will inform the Minister thereof.			
16	Article 18, Paragraph 4.	The Minister shall establish, prior to October 1 of the year preceding the year to which the budget relates, whether he approves or withholds approval of the budget.			
17	Article 19, paragraph 2.	The Director shall annually prepare, no later than five months after the end of each financial year, a balance sheet and a profit & loss account as well as an annual report in which the internal policy and the activities of the Bureau are reported for the year in question.			
18	Article 19, Paragraph 3.	The Director shall annually transmit to the Minister, within six months following the end of each fiscal year, the approved balance sheet, the profit and loss account and annual report. These documents shall be accompanied by an auditor's statement, from SOAB or another Minister appointed expert as defined by article 121 of Book 2 of the Civil Code.			
19	Article 20, Paragraph 3.	The Bureau is authorized, with the prior approval of the Minister, to form a reserve fund intended to cover possible losses			
20	Article 20, Paragraph 4.	The Bureau is authorized, with the prior approval of the Minister, to form a special purpose fund.			
21	Article 20, Paragraph 5.	The size of the reserve fund and the special purpose fund is established by the Minister, and is included in the performance contract, as stipulated in article 17, paragraph 1.			
<b>Total</b>			<b>19%</b>	<b>71%</b>	<b>10%</b>

**Figure 6: Compliance with the National Ordinance BTP (external governance)**

## 2.5 CONCLUSION EXTERNAL GOVERNANCE SYSTEM

The system of external governance is inadequate. There are insufficient guarantees to ensure that policy in the field of telecommunications and postal services, as well as the tasks as required by the National Ordinance BTP, are effectively achieved and that the expected transfers from BTP to Government are made. On a number of items, the National Ordinance BTP is not complied with or not complied with in a timely fashion.

The lack of an up-to-date vision, policy and policy objectives, the legally required annual performance contract, a periodic evaluation thereof, structured consultation (dialogue), a (written) review of documents produced by BTP, as well as the delayed presentation of documents, such as the budget, leads to uncertainty, ambiguity and questions about an organization where significant financial interests are at stake, and in which fundamental principles of management are missing. The Director of BTP has received "carte blanche" by virtue of insufficient ministerial guidance, control and supervision. The situation also impacts the duties performed by the Supervisory Board, given that concrete agreements are absent and priorities are not set.

The Minister of TEATT is insufficiently aware of achievements, the occurrence of important events and national and international developments, which are essential for decision making and adjustments. In addition, the situation leads to misunderstandings about what Government (Minister of Finance) can/should expect from BTP. There is a lack of clarity regarding *who* has *what* responsibility relative to BTP. The insufficiency of the system of external governance at BTP influences internal governance. This relationship is described in Chapter 3.

## CHAPTER 3 INTERNAL GOVERNANCE

### 3.1 INTRODUCTION

In this chapter we describe the manner in which the internal governance is set up at BTP (the design) and the consequences thereof. The operation of the system of internal governance is also described as much as possible. Attention is also given to motives for the setup of the system.

The setup of the system of internal governance is also determined and influenced by the design of the system of external governance. The systems affect each other. This relationship will become evident in the current chapter.

### 3.2 SETUP OF THE INTERNAL GOVERNANCE

#### 3.2.1 MANAGEMENT AND CONTROL

*Management is providing direction for the achievement of organizational objectives by, for example, the setting up of the organization and shaping processes.*

*Control is introducing a system of measures and procedures to be able to determine whether the organization continues to move in the right direction, in other words, that the organization achieves the established (policy) objectives.*

#### *Strategic multi-annual plan*

BTP does not have an up-to-date multi-annual strategic plan and a related multi-annual plan. An outdated multi-annual strategic plan entitled 'Telecom Policy 2008-2012' exists. This plan was drawn up once the Island Territory of Sint Maarten expressed the desire to regulate telecommunications upon attainment of the country status. This plan describes the policy, objectives and tasks, as well as the role of Government and the establishment of the BTP organization. We were unable to confirm, based on documentation obtained during the audit, whether this multi-annual plan was ever formally adopted. Based on interviews and submitted documentation, it is evident that elements of the plan have been carried out in recent years or are still in progress. One example is the detailed policy proposal on *quality services* that was presented to the Minister at the beginning of this year for approval. We have subsequently learned from media reports, that this policy proposal was adopted. The Audit Chamber has not (yet) received formal written confirmation of the policy adoption.

The multi-annual plan 2008-2012 is no longer current and needs to be updated. In an interview, the Director indicated that he was aware of this, but, in order to determine the long term path of BTP, he first needs to receive the Minister's vision and policy objectives for telecommunications. He has made this opinion known to the previous Minister of TEATT, as well as his predecessors, but to date no priority has been given to his request.

The consequence of not having an up-to-date multi-annual plan and multi-annual budget is that there is no understanding of the impact of the draft policy. There is no insight whether BTP has resources in reserve or should instead engage in cost savings. As such, there is no control mechanism available that can contribute to a more effective use of resources. In one of the interviews, a statement was made regarding the need for Sint Maarten's telecommunications networks to 'catch up' and take a more leading role within the region's highly competitive market. The lack of an up-to-date multi-annual plan carries the risk that other islands in the region will overtake Sint Maarten.

#### *Vision, mission, general policy objectives and organizational structure*

According to the Director, BTP has a vision, mission and general policy objectives as well as an organizational structure. He, however, does not possess such a document.<sup>23</sup> Instead, he referred the Audit Chamber to BTP's website.

BTP's current organizational structure differs from the structure that was initially recommended by BTP Netherlands Antilles<sup>24</sup> and the internal structure that can be derived from the description in the multi-annual plan entitled 'Telecom Policy 2008-2012'. Chapter 4 provides a further description of this.

<sup>23</sup> Examples where this information can be included include an annual report, multi-annual plan and an annual plan.

<sup>24</sup> Letter from the Executive Council of the Island Territory of St. Maarten to the Council of Ministers of the Netherlands Antilles, dated April 16, 2010, no. 2330, 'request for transfer of tasks of BTP NA to Island Territory of Sint Maarten per 15-4-2010'

### *Annual Plan*

There is no documented annual plan available. An annual plan is a document in which the annual goals are converted into activities and work. The Director has not drafted such a plan as he has set other priorities. The Director does, however, maintain a list of all projects (ongoing and planned).

Who will do what, when, and for how much, is therefore not transparently clear to employees, the Supervisory Board and the Minister. The result of which is that resources may not be effectively deployed. Monitoring by the Supervisory Board and the assessment of the work carried out by the Director by the Minister of TEATT is also complicated due to the lack of an annual plan. Another consequence is that there is no translation of the plans per department. A tool for the Director to evaluate the work carried out by the key officers is, therefore, unavailable.

### *Performance Contract*

The performance contract is non-existent. The legally required performance contract for the Director by the Minister was not established from the start (see paragraph 2.2.1). The Director finds it unfortunate that quantitative, qualitative and financial standards and objectives were not established and agreed on as these could have been "converted" into an annual plan as well as other working arrangements for his key officers. He is unaware of what is expected of him. The lack of a performance contract also complicates the duties performed by the Supervisory Board because one important control mechanism is absent. As for the Minister, he is denied an instrument on the basis of which he can evaluate the work carried out and conduct an interim and ex-post assessment of the Director.

### *Regulation of Rules and Procedures for Management*

The National Ordinance BTP requires the Director to establish a Regulation of Rules and Procedure for Management (*directiereglement*) after receiving input from the Supervisory Board thereon. Rules are laid out in the Regulation relating to the internal and external policy to be followed by the Director's deputy in the event the Director is absent or unavailable. The Regulation was not drafted. It was also not explained to the Audit Chamber, whether the Director, after receipt of input from the Board, designated a staff member as his Deputy.<sup>25</sup>

Because of the lack of Regulation of Rules and Procedures for Management, rules regarding the policy to be followed are not clear. This complicates the functioning of a deputy as well as the Supervisory Board.

### *Tasks, responsibilities and authorities*

The National Ordinance BTP describes the tasks, responsibilities and authorities of the Director. The authorities that are carried on behalf of the Minister TEATT are delegated (mandated) and must be laid out in a Mandate Decree. During an interview, the Director confirmed that he currently still uses the Mandate Decree of 2005.<sup>26</sup> Though the Director is in possession of an updated mandate decree dated March 1, 2015, and signed on May 20, 2015 by the Minister, this decree was not made available to the Audit Chamber. The Director does not use the last mentioned decree because he is not certain that this version has formally entered into effect.

The duration of the delegation by mandate is not prescribed by law, though it is possible to establish a maximum interval. In the mandate to the Director of 2005, a maximum interval was not established. As a result, the mandate lasts as long as the delegating entity exists<sup>27</sup>. In this case, the delegating entity was the former Executive Council of St. Maarten, which ceased to exist after October 10, 2010. It is the Minister of TEATT who is currently responsible, and as such the delegation was terminated after October 10, 2010. One can question whether decisions taken, and the consequences thereof, on the basis of that mandate decree, were legitimate after the dismantling of the Netherlands Antilles. Amendment, where necessary, of the draft mandate decree, is recommended. In addition, the decree should thereafter be adopted with retroactive effect to avoid potential litigation from stakeholders in the immediate future.

The tasks, responsibilities and authorities of the key officers and the other employees were not formally established in the National Ordinance BTP. Currently, there is no document in which the aforementioned is established. A draft "Employee Handbook"<sup>28</sup> exists, but job descriptions are not included in that document. The tasks are described in individual employment contracts. Currently a project is underway entitled "*Implementation/Updating HR-Tools at BTP SXM*" under the auspices of the Linkels & Partners agency. This project is comprised of the following steps:

- Reviewing and updating of the organizational structure;
- Drafting job descriptions;
- Evaluating functions based on an evaluation system;
- Classification of functions and development of a salary structure;

<sup>25</sup> Article 3, paragraph 5, National Ordinance BTP

<sup>26</sup> Ministerial decision of December 16, 2005

<sup>27</sup> Mr. P. Hoedt, Creation and management of an enterprise (*Oprichting en bestuur van een onderneming*), from page 96, Apeldoorn 2005

<sup>28</sup> The Employee Handbook dates back to August 2012. It was never definitively formalized.



- Updating of the draft employee handbook.

If all goes according to the amended schedule, the project will be completed at the end of 2015. At the time we conducted our interviews, the draft job descriptions were pending approval of the Director. The draft job description for the Director had not yet been presented to the Minister of TEATT.

#### *Processes and procedures*

Processes and procedures are not yet documented with as consequence, the following:

- There is no/insufficient awareness in terms of "who does what", and what the relationships are between the various departments and processes. This awareness is necessary for example, to introduce a methodology for work, to make agreements, to clarify possible risks, to make adjustments and to take specific internal control measures.
- A tool is absent with which to guarantee the reliability of the provision of information.

The SOAB advised the Director in March 2015, that processes and procedures needed to be described. This advice was followed. At the time of our interviews, BTP was in the process of selecting an external party to execute the project.

#### *Management information*

The key officers, the CFO, the COO and the HR/PR/CA manager, provide management information to the Director; i.e. so-called *progress reports*. These reports form an integral part of the reporting to the Supervisory Board. Based on an analysis of the documentation, we determined that the management reports were being prepared from mid-2014. The Director did not provide any specific guidelines for the preparation of the content of the reports. We noted the following based on our analysis of these reports:

- The period of the main report does not fully coincide with the individual reports attached to the main report;
- Dates are missing and it is unclear who were the recipients of the report;
- Specifics are discussed regarding implementation of tasks for a specific period. But certain information is missing. For example, quantitative information would be expected from the Financial Department for a given period such as actual versus budget, a statement of differences, financial key figures to allow the financial situation of BTP to be evaluated (e.g. liquidity, solvency etc.).

In the second interview with the Director, we shared our analysis of the findings. His response was that every step was made to improve the reports. The Audit Chamber did not further examine this claim.

Specific guidelines can be used as an for management and control. If specific guidelines are missing then there is no control and management. Hence, the question arises whether the information provided is relevant to the Director and, does the Director use the information to manage and control. At present the key officers determine for themselves what information is provided to the Director.

As of 2013, the CFO provides additional monthly financial details to the Director. The information relates to EXCEL spreadsheets regarding accounts payable, invoices / accounts receivable as well as the status on the realization/utilization of the budget. The Director carries out an additional check on the information related to payables, invoices and receivables in addition to the extensive examinations carried out by the CFO.

Given that a CFO is normally responsible for managing financial risks and financial flows, the financial planning, as well as taking care of internal and external reporting of the financial situation of an organization and reporting thereon to the management, it is remarkable that an additional check is carried out by the Director. The efficiency of such a practice is worthy of review. In Chapter 4 we discuss this situation further.

#### *Budget*

A budget is drawn up annually. The National Ordinance BTP requires that the budget, including explanatory remarks, is presented to the Supervisory Board for input prior to August 1 of the year preceding the year to which the budget relates, and that prior to September 1, the budget is presented to the Minister TEATT for approval. In paragraph 2.2.1 we already discussed the consequences related to the failure of presenting a late budget as well as not approving the budget.

During interviews, we were informed that the annual budget is drafted on the basis of submissions and "wish lists" received from the various departments of BTP. The budget is therefore not based on an annual plan or other specific plans. There is no form of risk analysis conducted prior to the preparation of the budget. Feedback on the submissions and "wish lists" from the various departments is almost never provided by the Director. Key officers discover at a later stage whether their submission and wishes have been fully or partially fulfilled.

The fact that an annual budget can be established without an annual plan or other specific plans is remarkable. A budget is normally a financial translation of plans; a quantification of planned activities, as it were.

Based on our analysis of the budgets 2011-2015, we note the following:

- The explanatory notes included with the budgets contain few numerical details.
- The budgets differ in terms of format and presentation.
- The budgets are not dated with the exception of budget 2012.
- The budgets are Dollar denominated while the annual accounts are Guilder denominated.

In the Spring of 2015, the draft budget for 2015 was revised downwards during a session in which, besides the Director and CFO of BTP, members of the Supervisory Board and the Minister of TEATT were present. Based on a comparison with the initial version of the budget presented on January 19, 2015, the budget of April 2015 provided by the Minister TEATT to his colleagues (who posed questions), we note the following:

- Budgeted expenditure is reduced by 14.4%. The downward revision relates to the following items: advertising & promotion, membership fees, donation & charitable contribution, professional fees, repairs & maintenance, representation expense, training expense, travel expense and utilities. The focus is clearly on adjusting operational costs.
- The budget item (material) investments was apparently not considered. Given the scope of the total investment, we find that striking. On the other hand, it is understandable because the investments are updated and depreciated over a number years. The actual financial impact on a single year is limited.

There was no specific basis for the downward revision of the draft budget 2015 according to the Director; there simply was a discussion regarding which activities could be postponed or reduced in size.

#### *Consultations*

Structured consultations are not carried out by the Director with staff. Structured consultations with key officers do not take place either. Both the Director and key officers stated that they see no need for such consultation because BTP is a small organization and the lines of communication are short. Consultation, therefore, occurs on an *ad hoc* basis.

Structured consultation at work is, however, necessary, even in a relatively small organization, because it is a way to provide all employees with equal levels of information at any given time. In addition, it offers an opportunity to discuss important and current topics, critical point etc. Structured consultation is a supporting tool for organizations that want to improve.

### 3.2.2 SUPERVISION

*Supervision is the collection of information to determine that (policy) objectives are being achieved in the benefit of all stakeholders.*

#### *Introduction*

Although in most cases the duties, responsibilities and authorities of a supervisory board are described in an organization, in practice, ambiguity or even disagreement can exist. That is also what we determined in the case of BTP. This situation is caused, among others, due to the absence of the procedural regulation for the Supervisory Board as stipulated by article 15 of the National Ordinance BTP. This procedural regulation has, to date, not been established. There is therefore a risk that the Board can usurp management's role. The greater the interests involved, the greater the temptation becomes for the Board in this regard. It should be noted that the authorities and responsibilities of both management and Board are derived from the same National Ordinance.

#### *Performance of duties*

The Supervisory Board supervises the general affairs of the Bureau and oversees the management of the assets of the Bureau, as well as the funds entrusted to the Bureau<sup>29</sup>. The Board is authorized to provide advice regarding the Bureau to the Minister and to the Director<sup>30</sup>. On the other hand, the Director must answer to the Minister and is financially accountable to him. In addition, the Director is responsible for the management of financial resources and the assets of the Bureau. He is authorized to carry out acts of disposal<sup>31</sup>.

<sup>29</sup> Article 14, paragraph 1, National Ordinance BTP

<sup>30</sup> Article 14, paragraph 2, National Ordinance BTP

<sup>31</sup> Article 16 of the National Ordinance BTP

As such, the Supervisory Board, by virtue of the legislation, has been conferred an oversight function instead of decision making authority. Our research indicates that the Supervisory Board has been very involved and committed. In the past, the Board issued so-called resolutions aimed at restricting the operating scope of the Director. In so doing, the Board sought to establish mechanisms to solidify their control and supervision. For example, the Board amended the *per diem* issued for business travel<sup>32</sup>, and drafted rules regarding the signing authority of the Director, including a spending limit of maximum ANG 50,000. Expenditures above this level would require Board approval regardless of an approved budget.<sup>33</sup> In addition, the Board appointed the accounting firm BDO as external auditor<sup>34</sup>.

However, there is no basis for these authorities in the National Ordinance. Such resolutions therefore have no legal foundation, and one can question whether they are binding. The Audit Chamber possesses no evidence to suggest that the Supervisory Board received a mandate or any other decision-making authority. Moreover, the situation would probably be different if the Director also countersigned the resolutions for approval. In such a situation, one could argue that there is consensus whereby both parties agree, and that, ultimately, benefits the organization. The Director, however, has never signed a resolution. According to the Director of BTP, the resolutions are not binding, but rather serve as guidelines.

#### *How then does one effectively supervise?*

In the case of BTP, it is not easy to specify how exactly one can achieve effective supervision, without sitting on the Director's chair.<sup>35</sup> After all, the decision making authority is not provided by the National Ordinance BTP. It is our opinion, that legal tools are available by which to ensure that there is effective monitoring. We refer to the Regulation of rules of procedure of the Supervisory Board as well as:

- Their role in terms of adoption of the budget;
- The establishment of a Regulation for Management; and
- The responsibility to ensure that quantitative, qualitative and financial standards that are annually set for the Director are actually complied with.

By virtue of advising the Minister, the Board can also (albeit indirectly) exercise influence. It should be clear that the Minister is ultimately responsible to address these matters with the Director<sup>36</sup>. During the audit, we found that previously mentioned stipulations in the law requiring the establishment of procedural regulations, as well as a performance contract, were never a priority. As a result, uncertainties exist as to the authorities of the Board, the Minister and the Director.

A clear problem area therefore exists in terms of effective supervision. In general, a Supervisory Board traditionally has an essential role in terms of the operation of a legal entity. The Central Bank of Curaçao and Sint Maarten describes this role of a Supervisory Board as<sup>37</sup>:

*"The Supervisory Board controls the institution's direction and, hence, its overall policy. By doing this, the Board determines how the institution will conduct its business on the long term. 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 by taking the necessary corrective actions and, when, needed, keep the institution on track until effective management can be (re)established."*

It should be noted that the description provided by the Central Bank is applicable to "financial institutions", and not specifically to BTP. The legal role of the Supervisory Board of BTP also differs substantially from the aforementioned description. After all, on the basis of the National Ordinance BTP, the Supervisory Board acts as an advisory body to the Minister. Nevertheless, one can question to what extent, in terms of *good governance*, effectiveness and efficiency, the Board can exercise influence. We refer to the Board's ability to indirectly influence by means of advising the Minister in contrast to the absence of the legal basis and (necessary) checks and tools to support concrete supervision of the management of BTP.

The fact that four and a half years after BTP's establishment these additional regulations, have not been adopted, is, regardless of the reason, not justifiable in terms of *good governance*. Furthermore the situation complicates, to this day, the supervisory task of the Board.

#### *Employment conditions of the Director*

There is another area in which uncertainties exist regarding the authorities of the Supervisory Board. An analysis of documents provided to us indicates that in September 2012, an "employment agreement"<sup>38</sup>

<sup>32</sup> Resolution of the meeting of February 10, 2012

<sup>33</sup> Resolution of January 18, 2013

<sup>34</sup> Resolution of September 2, 2013

<sup>35</sup> Speech Mr. M. Alexander; *Governance: The value of Checks and Balances*, symposium of the Governor 2015

<sup>36</sup> Article 16, first paragraph, National Ordinance BTP

<sup>37</sup> Guidance Notes for the Supervisory Board of supervised Financial Institutions, Central Bank of Curaçao and St. Maarten

was entered into between the Chairperson of the Supervisory Board and the Director. This agreement contained employment conditions, for example, the salary, a fixed bonus, a thirteenth month, credit card (monthly) allowance, and a telephone allowance. In addition, the agreement described the responsibilities of the Director in general terms.

Article 3, paragraph 4, of the National Ordinance BTP, stipulates that the employment conditions of the Director must be described in an employment regulation drafted by the Minister, and should be adopted after receipt of input from the Supervisory Board. At present, employment conditions for the Director are used, and for which the Audit Chamber could not confirm the legitimacy, because:

- The employment conditions were signed off by the Chairperson of the Supervisory Board instead of the Minister of TEATT;
- The audit produced no information indicating that the Minister of TEATT delegated the authority to the Chairperson of the Board to sign off on the employment conditions;
- The document in which these conditions are regulated, was signed by the Chairperson independently instead of "on behalf of the Minister of TEATT";
- There is no evidence proving the Supervisory Board provided input, which is a legal requirement;
- At the time of the audit, BTP did not provide an indication that an employment regulation existed in which the conditions of employment for the Director were established.

Note that if the legal stipulations were not complied with, the employment conditions and the employment regulation still need to be adopted by the Minister of TEATT. The Minister can deviate from the conditions currently used, which in terms of salary, are much greater than that of a minister. The Audit Chamber recommends, in terms of effectiveness and efficiency, using the salary structure of Government, given that BTP is part of the collective sector. Salary arrangements of similar functions with the Caribbean part of the Kingdom, can also be used as a reference.

### 3.2.3 ACCOUNTABILITY

*Accountability is the provision of information regarding all assigned tasks and authorities, and all activities carried out towards achieving established objectives. Accountability is the capstone that provides stakeholders with sufficient information so that they can evaluate if objectives are being achieved and whether the manner in which the organization is managed and controlled is sufficient to achieve future objectives.*

In accordance with article 16, paragraph 1, of the National Ordinance BTP, the Director answers, and is financially accountable to, the Minister. Article 19 of the same ordinance stipulates that the Director, within five months after the end of the financial year,<sup>39</sup> must draft the balance sheet, the profit and loss account, as well as issue an annual report regarding the internal policy and activities carried out at BTP for that financial year. Furthermore, within six months after the end of each financial year, the Director will present the completed balance sheet, profit and loss account and annual report to the Minister. These documents must be accompanied by a statement of reliability from the SOAB or another expert appointed by the Minister, pursuant to article 121 Book 2 of the Civil Code of Sint Maarten. The documents are public unless the Minister determines otherwise.

As of the period of our investigation, we determined that the following documents related to accountability had been presented to the Minister TEATT:

- On September 17, 2014, the annual accounts 2011 including the evaluation report of the SOAB<sup>40</sup>.
- On March 26, 2015, the annual accounts and annual report 2012 including an audit report from SOAB<sup>41</sup>.

As the above data indicates, the accountability documents for 2011 and 2012 were not presented in a timely fashion to the Minister of TEATT. As far we have been able to determine, these documents have not yet been made public.

As of the time of the conduct of our audit, the accountability documents for the year 2013 had not yet been presented to the Minister. The audit of 2013 by SOAB was not concluded. For 2014, the accountability documents needed to be presented to the Minister no later than July 1, 2015. That did not happen; the SOAB audit had not yet started.

<sup>38</sup> "employment agreement" is placed between quotations given that during various interviews, interviewees used different legal terms to describe the document.

<sup>39</sup>The financial year corresponds with the calendar year.

<sup>40</sup> Review report of September 17, 2014

<sup>41</sup> 15/0295C/KK, Independent Auditor's Report: Findings of the audit of the 2012 financial statements of Bureau Telecommunications and Post Sint Maarten of March 26, 2015

By not presenting the accountability documents on time, the Director is not operating in compliance with the National Ordinance BTP. As a consequence, the Minister of TEATT is denied certainty in a specific year regarding the accuracy and comprehensiveness of BTP financial contributions to Government. This uncertainty subsequently impacts the financial statements of Sint Maarten (see also paragraph 2.2.3).

### 3.2.4 PART OF THE COLLECTIVE SECTOR

Article 1, section g, of the National Financial Accounting Ordinance defines the collective sector as follows: the country and other legal entities pursuant to the definition of the System of National Accounts of the United Nations. The Kingdom Law on financial supervision states in article 23 that every two years the legal entities that comprise the collective sector have to be determined. A letter signed by the Minister of Interior and Kingdom Relations<sup>42</sup>, as well as Appendix 2 of the National Budget Ordinance for 2015, indicates that BTP is part of the collective sector of Sint Maarten<sup>43</sup>. As such, BTP must comply with all regulations related to the collective sector. What does this entail?

First of all, it is important to note that the National Financial Accounting Ordinance requires that the budget, the multi-annual budget and the financial statements of the country, together with the explanatory notes, provide sufficient insight into both the financial position as well as the income and expenses of the public sector, so as to allow a responsible opinion to be formed thereof. In other words, to achieve proper accountability for the Country, the financial statements of BTP are required. If these are not presented on time or if they are not proper, an uncertainty is created for a part of the financial statements, which affects Government's ability to provide proper accountability of the financial position as required by article 2 of the National Financial Accounting Ordinance.

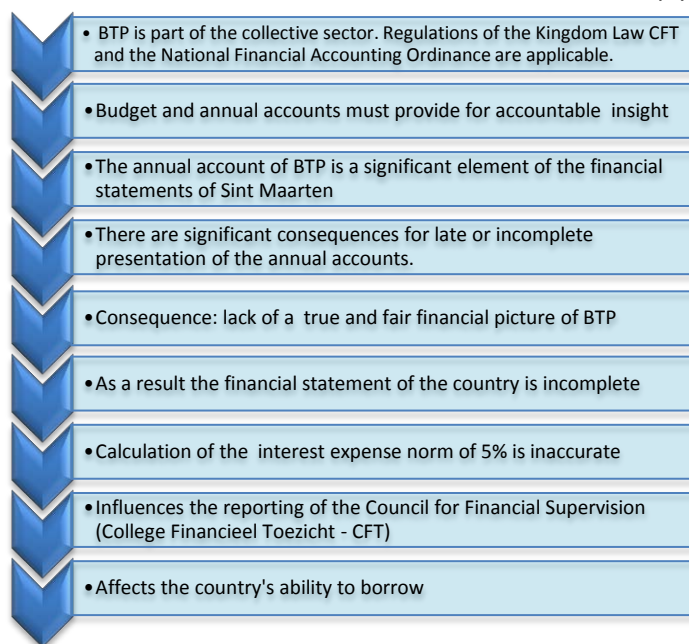


Figure 7: BTP as part of the collective sector

Secondly, one must take care not to exceed the interest expense norm, as stipulated in the Kingdom Act on financial supervision, as well as article 7, paragraph 3, of the National Financial Accounting Ordinance. The interest expense norm is equal to 5% of the average actual income of the combined collective sector over the past three years prior to the year for which the budget is presented. In this case too, BTP, as part of the collective sector, plays a role, specifically in terms of annual accounts and loans<sup>44</sup>. This should not be underestimated.

BTP is a legal entity tasked with the execution of the public task. Given that the Kingdom Act on financial supervision stipulates that the entirety of the collective sector is used to determine the interest expense norm, which in turn affects the size of the operational account, it is important that the financing of other entities (such as BTP) is monitored.<sup>45</sup>

As a third point that bears mentioning is that the Minister of Finance, as relates to BTP, is authorized to review documents such as the annual accounts etc. by virtue of article 43, sixth and seventh paragraphs of the National Financial Accounting Ordinance. He is granted this authority because BTP is considered part of the collective sector.

Should the previously mentioned records give rise to questions, the Minister is authorized to request additional information from BTP, or demand review of missing documents or information sources, and based on the administration of third parties involved, initiate an investigation.

<sup>42</sup> Letter dated February 14, 2014, wherein the Minister of Interior and Kingdom Relations as well as the Minister of Finance appoints the collective sector in accordance with article 23 of the Kingdom Act on Financial Supervision

<sup>43</sup> Reference also article 12, paragraph 1, section k, of the National Financial Accounting Ordinance, in which is stated that the budget must contain a listing of all entities other than the country, that are part of the collective sector.

<sup>44</sup> Refer to article 18, section i and j, National Financial Accounting Ordinance

<sup>45</sup> See the Explanatory Memorandum n on the National Financial Accounting Ordinance, special section, second paragraph.

### 3.2.5 BTP: INDEPENDENT PUBLIC ENTITY OR NOT?

Based on interviews, it is evident that persons within and outside BTP, considers the organization an independent public entity (*bestuursorgaan: zbo*). This is, however, not explicitly stated in the National Ordinance BTP. Article 98 of the Constitution stipulates that independent public entities (zbo's) must be established by National Ordinance. Article 2, paragraph 2, of the National Ordinance BTP defines BTP as a public legal entity. In the third paragraph of that article, it is stipulated that the Bureau is independent in terms of its internal organization, management of funds and representing its interests. Government faces no impediment in terms of presenting an amendment of the ordinance, if, Government's intent was to unambiguously establish BTP as an independent public entity. However, to date, this has not happened.

Compare, for example, the National Ordinance Implementing agency Social and Health Insurance (*Landsverordening uitvoeringsorgaan Sociale- en Ziektekosten Verzekeringen: Landsverordening USZV*), where in article 2 the status of independent public entity is explicitly included. The technical legal design of article 2 of the National Ordinance USZV, is almost identical to article 2 of the National Ordinance BTP. The difference lies in the fact that article 2 of the National Ordinance USZV explicitly mentions that SZV is an independent public entity (zbo). In contrast, article 2 of the National Ordinance BTP does not. All the more reason to assume that the legislator consciously chose not to establish BTP as an independent public entity.

In the past, BTP was a government department. Because of financial reasons, the choice was made to spin off BTP. The explanatory notes state that BTP became a self-governing entity. Proposition 98 of the Manual used for the legislation<sup>46</sup> (*Aanwijzingen voor de Regelgeving*) states that within a ministry, a self-governing unit cannot be considered an independent public entity (zbo).

#### **Public Tendering**

The Bureau, pursuant to article 47 of the National Financial Accounting Ordinance, must engage in public tendering when executing major works or for procurement of goods and services. To avoid the perception of conflict of interest, as well as (the perception of) violations of integrity, it is of importance to comply with the National Financial Accounting Ordinance. This is especially true with regard to public procurement because of the sensitivity to fraud.

Public tendering is in the interest of potential vendors. It concerns the use of public funds, and as such, the use must be fair and transparent. The same applies in the case of BTP. It should not be forgotten that it is the Minister who is ultimately responsible for the policies, also with regard to BTP.

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<sup>46</sup> It is important to mention that the 'proposition' for any regulatory legislation is only an internal policy, used within the entire public administration for the preparation of standardized legislation.

### 3.3 CAUSES INTERNAL GOVERNANCE SYSTEM

According to a number of interviewees, the fact that the system of internal governance is still inadequate is due to the following reasons.

BTP is still a young organization that is busily working on getting the organization up and running. The startup at BTP was difficult; there were no/insufficient financial resources and limited human capacity. BTP NA did not execute the protocol as agreed. As a result, BTP Sint Maarten had to be built from the ground up, and that required significant investments. The documentation reviewed indicates that the development of the organization in the first years (October 2010 to November 2012) occurred under the leadership of the Interim Director, and that her approach was more structured than the period under the current Director. The major difference is one of management style and control of the organization.

The interviewees indicated that the fact that certain documents were not drafted and accountability documents were not presented on time was mainly caused by a lack of capacity and knowledge, as well as management and the Minister failing to set priorities. Because BTP was still in a "building up" phase, not everything was "in place".

A number of the persons interviewed gave the successive ministers low marks in terms of fulfilling their role. As these ministers did not sufficient live up to their responsibilities and authorities with regard to BTP, governance at BTP, five years hence, is inadequate.

### 3.4 CONSEQUENCES INTERNAL GOVERNANCE SYSTEM

As evidenced from paragraph 3.2, the system of internal governance at BTP is, in a number of areas, not or insufficiently (not timely) in compliance with the National Ordinance BTP:

- Performance contracts for the Director by the Minister of TEATT were never established;
- The Director did not draft a Regulation of Rules and Procedures for management;
- The annual budget was not presented on time to the Minister of TEATT by the Director of BTP and the budget was not always formally approved by the Minister of TEATT;
- A Regulation for the operations of the Supervisory Board is absent;
- There is a lack of clarity regarding the authority of the Supervisory Board;
- Accountability documents (annual accounts and annual reports) are not presented by the Director to the Minister of TEATT in a timely fashion.

Moreover, it is evident that management and control instruments as well as supervision and accountability tools are absent, not up to date or ambiguous:

- BTP does not possess an up-to-date strategic multi-annual plan;
- There is no written annual plan;
- The Director takes decisions on the basis of an outdated Mandate Decree;
- Processes and procedures for the organization are not yet documented;
- Management information is drafted, though there are no specific guidelines from the Director in this regard;
- There is no structured consultation between the Director of BTP and his staff;
- Not all minutes of the Supervisory Board have been definitively approved and archived;
- Written provision of information to the Board is limited and mostly late.



### 3.5 CONCLUSION INTERNAL GOVERNANCE SYSTEM

The system of internal governance is inadequate. There are insufficient guarantees to ensure that policy in the field of telecommunication and postal services, and the tasks prescribed by the National Ordinance BTP are achieved in an effective and efficient manner and that expected transfers to Government from BTP take place. The National Ordinance BTP is not or insufficiently complied with on several points. Moreover, other management and control instruments and supervision and accountability tools are absent, not up-to-date or ambiguous.

In order to clarify the aforementioned, we present a list of items concerning the internal governance related to compliance with the National Ordinance BTP.

No.	Article	Description	Compliant	Not Compliant	Undetermined
1	Article 3, paragraph 5.	The Director designates, after hearing the Board, one of the employees of the Bureau as his Deputy. Such a designation requires the approval of the Minister.		✗	
2	Article 3, paragraph 6.	The Director shall, after hearing the Board, a Board establish a Regulation of rules of procedures.		✗	
3	Article 4, paragraph 1.	The Director is authorized to employ personnel by civil law employment agreement, and suspend and terminate said contract.	✓		
4	Article 4, paragraph 2.	The employment conditions for employees must be laid down in an employment regulation by the Director, after receipt of input from the Board; the Minister shall adopt the regulation.		✗	
5	Article 8, paragraph 1.	There is a Supervisory Board.	✓		
6	Article 8, paragraph 2.	The Board consists of at least three and at most five members including a chairperson.	✓		
7	Article 8, paragraph 4.	The members elect a Chairperson and Deputy Chairperson from their midst. This Minister shall be notified of the choices.			?
8	Article 8, paragraph 7.	The Board shall establish a schedule of resignation for the members which must allow one member to resign each year.		✗	
9	Article 9.	The Board is composed in such a way such as to contain knowledge and experience in the field of telecommunications, postal services, economics, law and accountancy as well as familiarity with society of Sint Maarten.	✓		
10	Article 14, paragraph 3.	The Board meets at least once every three months and, as often as the Chairperson or two members of the Board or the Minister considers necessary.			?
11	Article 18, paragraph 1.	The Bureau shall draw up the annual budget for the following calendar year in accordance with the principle of income and expenditure. The budget will be provided with an explanation.	✓		
12	Article 18, paragraph 2.	The Director shall, prior to August 1, submit to the Board for review, the draft budget together with a proposal for the performance contract, referred to in article 17, paragraph 1.		✗	
13	Article 20, paragraph 3.	The Bureau is authorized, with the prior approval of the Minister, to form a reserve fund to cover possible losses.		✗	
14	Article 20, paragraph 4.	The Bureau is authorized, with the prior approval of the Minister, to form a special purpose fund.		✗	
<b>Total</b>			<b>36%</b>	<b>50%</b>	<b>14%</b>

Figure 8: Compliance National Ordinance BTP (internal governance)

In Chapters 2 and 3 it was determined that both the external as well as the internal system of governance is inadequate. As a result, there are insufficient guarantees available to ensure that policy and the legally required tasks are effectively achieved.

### 4.1 FUNCTIONING OF BTP: EFFECTIVE?

In the conduct of the investigation, the Audit Chamber encountered findings that lead to questions about the effective functioning of BTP and the effective (efficient) use of both financial and human resources. Based on the interviews conducted and documentation analyzed, including budgets, actual budget results (where available), and a number of contracts, we noticed the following:

- The current organizational structure of BTP differs from that which was initially recommended by BTP NA<sup>47</sup> and that which can be derived from the internal structure as defined in the multi-annual plan entitled 'Telecom Policy 2008-2012'. Initially the intention was to build an organization whereby management would consist of a Director and a Head of Operations. Subordinate to the Head of Operations would be a head of the technical department, a head of financial administration and an office manager/personnel affairs. Using this structure, the focus of the Director would be more externally focused, while the Head of Operations would be internally focused.

During 2012, a choice was made to establish C-level management in addition to a Director. This means that management consists of a CFO (chief financial officer), COO (chief operations officer) and a Manager HR/PR/CA (human resources/public relations/consumer affairs). According to the Interim Director, the choice was, in part, motivated by the fact that a number of employees had to be placed in higher functional scales because of the remuneration from their previous employment.

The choice of organizational structure, including a Director at the top and C-level management assumes, for example, an organization in which a relatively large number of employees are managed, as well as sufficient know-how and experience in relation to the responsibilities and authorities of an organization where the majority of work is done in-house. Our research proves those expectations to be wrong.

- There are a total of 10 persons working at BTP, including the Director and management.
- Four of the ten employees are in management functions.
- Pursuant to the National Ordinance BTP, the bulk of the responsibility is placed with the Minister of TEATT. The Minister of TEATT delegates (mandates) authority to the Director of BTP. The Director thus has fewer responsibilities than the Minister, which is noteworthy, given that the employment conditions of the Minister are less favorable than those of the Director.
- BTP has outsourced many essential activities to external experts. According to the Director, the outsourcing to third party consultants is due to the lack of specific know-how and the scope of the activities.

Among the projects outsourced in the past, were the drafting of the multi-annual policy plan and the numbering plan. In addition, the management of the numbering plan, legal advisory services, the ongoing project "*Implementation/ updating HR-Tools at BTP SXM*", the "internal control function" and the project "description of processes and procedures", are outsourced. The Director intends to outsource the updating of the multi-annual plan to an external bureau. One can question whether outsourcing is always justified.

- The choice of organizational structure in which there is a Director and management on C-level, with the resultant financial cost, assumes a certain level of know-how and experience. One can question why the COO is not made responsible for the management of the numbering plan and why the Manager HR/PR/CA is implementing the project "*Implementation/ updating HR-Tools at BTP SXM*". In regards to the CFO, one can question why an external accounting firm is hired to review the accountability documents prepared by the CFO and her department as well as draft the annual accounts. C-level managers are normally expected to carry out the activities as outlined above.
- In addition, the Minister of TEATT has the benefit of a Cabinet as well as a policy Department for Economy, Transportation and Telecommunication at his Ministry, both of which have the requisite know-how. In an interview we were informed that this policy department is not currently involved with BTP issues. That is noteworthy given

<sup>47</sup> Letter from the Executive Council of the Island Territory of Sint Maarten to the Council of Ministers of the Netherlands Antilles, April, 16, 2010, no. 2330, 'Request for transfer of tasks of BTP NA to the Island Territory of Sint Maarten as of April 15, 2010 (*'Verzoek tot overdracht van taken van BTP NA naar eilandgebied Sint Maarten per 15-4-2010'*)'.

that said department is responsible for the development of policy in, among others, the field of telecommunications.

The planned expenditure for BTP in 2015 (exclusive of investment) totals **49.2%** of BTP's income<sup>48</sup>. Prior to the downward amendment of the budget (as discussed in 3.2.1 regarding the budget), the expenditure was **57,5%** of income. These expenditures relate to, among others:

- *payroll expenses;*
- *legal & professional expenses;*
- *general & administrative expenses such as membership fees, donation & charitable contribution,*
- *repairs & maintenance expenses;*
- *representation expenses;*
- *numbering plan expense;*
- *training expenses; and*
- *travel expenses.*

What is striking, is the lack of or limited documentation to support these costs, in the budget and annual accounts. An annual plan that can also serve justification is missing as well. This makes a thorough analysis on efficiency difficult, and also compromises the Supervisory Board in the conduct of its duties. This was evident in interviews with members of the Board.

- A critical analysis of a number of contracts shows that, in some cases, there are insufficient guarantees regarding legitimacy because there may be the perception of conflict of interest, and furthermore, it is not clear whether procurement rules or tendering procedures were used.
- In 2013, with the approval of the Minister of TEATT, BTP purchased the commercial property (with the exception of the ground floor) located at Cannegieterstreet No. 15 in Philipsburg. Activities related to the transaction started in February 2011. Initially, the intention was to purchase the two top floors because these were considered appropriate for BTP-activities (carrying out measurements). In the end, the entire building (with the exception of the ground floor) was acquired with the intention to lease space to Government. The Audit Chamber wonders if the acquisition of the building was cost efficient, and whether leasing of commercial space fits within the scope of operations at BTP. Based on the National Ordinance BTP, the acquisition and leasing of the building are extraneous business activities. Acting as lessor of real estate is a task that must be specifically assigned to BTP by the Minister pursuant to article 5, sub section h, of the National Ordinance BTP. The Audit Chamber was unable to establish if this occurred. Moreover, it is unclear to us whether a budget amendment, to make the purchase possible, was executed. Particularly in these kinds of transactions, it is critical that all relevant information is made available, given the influence thereof of as regards the collective sector and the expense norm.

BTP currently bears all costs for the building, given that the other floors have not yet been leased/rented. The receivable from Government for rental fees remains open, and there currently no future prospects for renting the space. Additionally, leasing and management of the building requires time and know-how. Do the current employees of BTP have the time and specific expertise that is necessary for this task?

- Analysis of the budgets and annual accounts indicate that budgets are U.S. Dollar denominated as compared to the Guilder denominated annual accounts. Comparative analysis is therefore complicated because the budget must first be restated in Guilders. We note that in terms of effectiveness and efficiency, a U.S. Dollar denominated financial administration carries high banking costs. The CFO confirmed that the banking costs are high, but the Audit Chamber did not receive a reasonable explanation for the choice of the U.S. Dollar.

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<sup>48</sup> This is based on BTP's draft budget 2015.

## 4.2 CONCLUSION EFFECTIVENESS

Due to the presence of inadequate systems of external and internal governance at BTP, insufficient guarantees exist to support effective (and efficient) operations. We encountered a number of findings, which, in our opinion, lead to questions. We note the following:

- There is a significant amount of outsourcing. This is not in keeping with the “heavy” C-level management functions found in the organization which are associated with significant personnel expenditures. The C-level management assumes that know-how and experience is in place at BTP. In addition, by virtue of the existence of a policy department at the Ministry of TEATT as well as a Cabinet of the Minister of TEATT, the possibilities of keeping work ‘in-house’ should be investigated, in order keep subcontracting and outsourcing costs to a minimum. This is equally true for the expenditure for legal advisory services given that the policy department employs multiple lawyers.
- The Director carries less responsibility than the Minister. This is noteworthy given that in comparison, the conditions of employment of the Director seem to be more favorable than those of the Minister.
- The acquisition of a commercial building does not coincide with the task assigned to BTP by the National Ordinance BTP.
- Expenditures take place without adequate and proper substantiation.

### 5.1 INTRODUCTION

BTP collects the following fees related to telecommunications:

- Concessions granted;
- Radio frequencies issued;
- Costs related to inspections radio-electrical, wired broadcasting and cable devices;
- The permission for use of peripherals as well as the inspection of internal networks;
- The monitoring of the compliance with the aforementioned inspections and permissions; and
- Handling complaints regarding handling disturbances and obstructions<sup>49</sup>.

The majority of the revenue BTP generates, about 94%, is derived from concessions and radio frequency (spectrum) fees. The fees for concessions are fixed. The fees for allocated radio frequencies and invoicing for costs incurred (inspections), are variable. From the interview with the CFO, we learned that most problems occur in the collection of the radio frequencies and recovering incurred costs.

*What and when* BTP has to transfer to Government is explicitly stipulated in article 21 of the National Ordinance BTP: "transfers are made to Government coffers on a quarterly basis. These are fees received by the Bureau from the telecommunications and postal sector after deductions are made for operational and infrastructure costs, the reserve fund and the special purpose fund."

As mentioned in section 1.1, it is clear from various documents that the payments to the Government are in arrears. In this chapter, we discuss the causes of the arrears.

### 5.2 CAUSES

A meeting took place on September 15, 2011, to discuss, among others:

- The active litigation and the consequences for Government; and
- How to attain sufficient income for Government.

During the discussion, a temporary arrangement was made to transfer all concession fees to Government and retain the spectrum fees at BTP to cover operational and infrastructural costs. Whatever income remained after coverage of expenditures would also be transferred to Government. The agreement was made because of the pending litigation, resulting partly from, the application of an 'incorrect' tariff structure by BTP Netherlands Antilles. The Minister of TEATT at that time, was, according to the Interim Director, in agreement with the arrangement by which the concession fees would be transferred in full to Government and spectrum fees would be used to cover BTP expenditures. The risk that legal cases regarding concession fees would be lost and fees would have to be reimbursed, was considered to be less than losses due to litigation related to spectrum fees. Government wanted to lower the risk related to reimbursement of fees.

This arrangement is explained in the document entitled "*History of Division of collected funds and payments to Government.*"<sup>50</sup> Further substantiation of the agreement can be found in a number of emails and other correspondence. However, there is no formal document signed between the relevant parties, nor is any confirmation available (email etc.) in which the arrangement is confirmed. We could not find an official report or minutes of the meeting in which the decision and subject matter of September 15, 2011, is recorded. In the meeting of September 15, 2011, BTP was instructed to amend the tariff structure. In that same year, the Interim Director presented a proposal for a new tariff structure. This *new* tariff structure would guarantee concession revenue of ANG 10 million for Government. The expectation was that the amount available after deduction of costs and reserves would be higher. The temporary arrangement would last until the tariff structure was amended, according to the Interim Director.

In the end, it took until May and September of 2013, respectively, before the new tariff structures were definitively adopted by National Decree<sup>51</sup>. The Decrees were published in the National Gazette of November 8, 2013<sup>52</sup>. As of that date, the National Decrees went into effect retroactively to January 1, 2012. After going into effect, the financial administration was changed and invoices were issued

<sup>49</sup> Article 31 of the National Ordinance on telecommunication facilities

<sup>50</sup> The document was drafted by the Interim Director; it is undated.

<sup>51</sup> LB-13/0719, LB-13/0720 and LB-13/0209

<sup>52</sup> National Gazette, 2013, number 23

retroactive to the date specified in the Decrees<sup>53</sup>. We could not confirm whether the fees actually collected, were transferred to Government by the end of 2013.

The Audit Chamber did not conduct a comprehensive audit regarding the accuracy and completeness of the transfers to Government. However, on the basis of our analysis, we note the following:

- A temporary arrangement was agreed to in 2011. To date, this arrangement is (unlawfully) followed. This arrangement is not in compliance with article 21 of the National Ordinance BTP.
- As of now, the Director of BTP has not made any proposals to the Minister of TEATT to establish a reserve fund or a special purpose fund<sup>54</sup>. The National Ordinance BTP allows for the formation of a reserve; it will however, lead to a lower transfer amount. Establishing a reserve fund is particularly relevant given that it is intended for coverage of possible losses at BTP.
- No further agreement was made as to the manner in which to (administratively) comply with article 21 of the National Ordinance BTP. Whether the point of departure for transfers is the total income and expenditure, or the transfer of first the concession fees and thereafter the remainder after expense deductions, the total should be identical.
- Transfers to Government are *too* low because the remaining amount after deduction of operational and infrastructural costs is not transferred to Government.

The Minister of Finance stated in both the budgets, as well as the financial statements of the Country, that payments from government entities, including BTP, lag behind projections. As a matter of fact, in August 2013, he sent an invoice for an advance payment of transfers for the period 2010-2013 of ANG 15 million to BTP. The Director of BTP countered with an objection because in his opinion, there was no *actual* basis for such a payment. We were unable to determine the reason for the differences in expectations based on the budgets 2011-2015 and the approved annual accounts from 2011 and 2012. However, the late presentation of budgets and accountability documents does lead to uncertainty and misunderstandings (refer to section 2.2.3).

CFT documentation also refer to agreements between Government and BTP made in 2014 related to clearing up arrears. We were not able to find the specifics of referenced agreements.

From the documents reviewed as well as interviews conducted, we noted that there was little attention given by the Minister of TEATT to transfers from BTP to Government. In Chapters 2 and 3, we stated that there is no structured consultation between the Minister of TEATT and the Director of BTP. We further noted that budgets and accountability documents are not presented in a timely fashion to the Minister. Formal written evaluations on the basis of such documentation does not take place.

After 2013, more attention was paid, by the Minister of Finance, to transfers from BTP to Government. However, we were not able to establish that the Minister of TEATT followed up on these matters. No corrective action was taken by BTP. No decisions were taken regarding when transfers were to take place pursuant to article 21 of the National Ordinance BTP. A determination of what "remaining income" (after deduction of expenditures) would be for previous years, in order to transfer to Government, was also not made.

### 5.3 CONCLUSION CAUSES FOR ARREARS IN BTP TRANSFERS

The causes for arrears in the transfer of income from BTP to Government can be found in the systems of external and internal governance. These systems provide insufficient guarantees to ensure that the expected transfers are made. Additionally, we were unable to establish that action was taken at BTP or whether decisions were made regarding when transfers would take place pursuant to article 21 of the National Ordinance BTP. Moreover, the Audit Chamber could not determine if arrangements were made regarding the "remaining income" (after deduction of expenditures) for previous years, and transfer of such to Government.

The temporary arrangement of 2011 is not a reason for the creation of arrears in transfers to Government because, a proper execution of that arrangement, despite the lack of legitimacy, should not have affected the transfers. These should have been identical.

<sup>53</sup> The amendment could have resulted in debit and credit billing.

<sup>54</sup> A special purpose reserve is meant for financing special projects of third parties within a segment that has the objectives of BTP.

In keeping with the methodology of the Audit Chamber, we present an epilogue following consultations. On September 3, 2015, the Audit Chamber presented a Memorandum of Findings to the Minister of TEATT, the Director of BTP as well as the Chairperson of the Supervisory Board of BTP. All recipients were given 10 (working) days in which to review and confirm the accuracy of the findings. Due to a change of Minister at the Ministry of TEATT, and the fact that no input was received from any recipient after the 10 days, we chose to extend the period with an additional five days. Even after this extension, with the exception of a short memo from the Minister, we did not receive input from the recipients of the Memorandum. The Audit Chamber therefore concluded that there was consensus regarding the facts, and confirmed this by letter of September 25, 2015.

In the same correspondence, we presented the draft final report and provided all recipients with five (working) days in which to react to our conclusions, opinions and recommendations. We have received no input on the draft final report. This second consultative phase allows stakeholders to make known any discrepancies or differences of opinion regarding the report. The Audit Chamber is disappointed that no use was made of the possibility to provide input and that there was little reaction to our draft reports. On the other hand, failure to act has been a recurring theme of the investigation. In an audit in which a number of troubling issues emerged, this latest failure to act, only increases the negative impact on governance.

The Audit Chamber trusts that the situation with regard to the governance at BTP will improve in the future. We therefore reserve the right to perform a review in due course.



### LIST OF PERSONS INTERVIEWED

- Mr. A. Carty, Director BTP (twice)
- Ms. J. Hoeve, CFO BTP (twice)
- Mr. G. King, COO BTP
- Mr. R. Wijngaarde, HR/PR & CA Manager BTP
- Mr. C. Connor, Minister of TEATT (until September 2015)
- Mr. J. James, Cabinet Minister Connor
- Mr. L. Engel, Cabinet Minister Connor
- Mr. M. Hassink, Minister of Finance
- Ms. B. Brooks, Chairperson Supervisory Board (twice)
- Mr. V. Haakmat, Member of Board
- Mr. H. Lynch, Member of Board
- Ms. P. Brandon, former Interim-Director BTP

Despite repeated requests, comments, and approval of interviews were not received from:

- Minister Connor;
- Ms. Brooks (second interview minutes) (Chairperson Supervisory Board);
- Mr. Haakmat (Supervisory Board); and
- Mr. Lynch (Supervisory Board).

### REFERENCED DOCUMENTS

- National Ordinance Bureau Telecommunication and Postal Services
- National Ordinance on Telecommunication facilities
- National Gazette no. 23, November 8, 2013
- Telecom Policy Summary (2008-2012)
- CFT, correspondence, reports
- Two file folders containing documents regarding BTP from the Minister of Finance, received on May 13, 2015
- Annual Report Sint Maarten 2013
- National Ordinance Country Budget 2015
- Explanatory Notes on the draft budget of fiscal year 2015
- National Ordinance Country Budget 2013
- Financial Statements Sint Maarten 2011
- SOAB Report Review Bureau Telecommunications & Post Investment and Operating Expenses 2011-2013, April 11, 2014
- Annual Accounts BTP 2011
- Annual Accounts BTP 2012
- (Draft) Minutes of meeting of the Supervisory Board
- Resolutions of the Supervisory Board
- Budgets of BTP 2011 - 2015
- Various email correspondence received from the Interim Director BTP
- Various (draft) contracts relating to sponsorship, maintenance agreements
- History of Division of collected funds and payment to Government
- Protocol regarding the transfer of tasks from BTP Netherlands Antilles to the Island Territory of Sint Maarten
- Budget proposal 2015 Public Relations
- Information from the BTP 'Revenue Summary 2013-2014 spectrum and concession', received on May 12, 2015
- Minutes of the meeting of the Council of Ministers with third parties from April 9, 2015
- Letter of concern, Minister of TEATT to Chairlady Board of BTP, September 11, 2013
- Status report from January- May 2015
- Status report 2013/2014
- Proposal Implementation/Updating HR-Tools at BTP, Linkels & Partners, December 8, 2014
- Draft job descriptions
- Draft Employee Handbook, August 2012
- Letter regarding extension of Contract from ACTIS to BTP, January 28, 2015
- Letter from DBH Attorneys at law to BTP, regarding contract extension as Interim Director, July 8, 2013
- Draft letter from Minister of TEATT to Minister of Finance, June 4, 2015 →sent?
- Agreement ACTIS, decision of the Minister of TEATT to contract ACTIS
- Ready to work for you, Governing Program 2014-2018
- Speech of Mr. Miguel L. Alexander, Governor's Symposium 2015

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**General Audit Chamber**

**Algemene Rekenkamer**