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## There are limits to power of ministers

FRIDAY, 15 FEBRUARY 2013 12:50

WILLEMSTAD--The power of a minister over government foundations is not unlimited, according to an advice from Curaçao's Advisory Council to government. The latter can give instructions, but the institutions are not obligated to follow these if in conflict with their best interest.

The advice dates from November 20, 2012 and was requested by the former Schotte-cabinet following the impasse between then chairman of Parliament Ivar Asjes (PS) and prime minister Gerrit Schotte (MFK) on the question if the legislature could summon the managements of government-owned companies and the boards of government foundations to meetings.

As reported earlier, the Advisory Council wrote that these entities cannot be forced to give information to Parliament. However, the advice went even further and stated that the power of ministers over government foundations is bound by certain rules.

"A foundation is a legal body that is to realise an objective as described in its articles of association with the help of an assigned capital. Such an institution does not have any members or shareholders.

"A government foundation is an institution in which government decides on appointing or dismissing one or more administrators, on changing the articles of association or approving certain decisions. Government usually founds these institutions to promote certain interests that are relevant to the government directly or indirectly."

According to the Advisory Council, the articles of association of government foundations usually include that the board is to give account to government and that government can issue general instructions. However, these instructions are to consider the autonomy of the board and observe the rules of good corporate governance.

It is up to the board to choose a course that does not conflict with the interest of the foundation.

"This means that the board needn't follow the instruction issued if it conflicts with the objectives of the institution, if it is unlawful, leads to improper governance or is not reasonable regarding article 7, Book 2 of the Civil Code. The general principles of good government also play a role with the reasonableness of article 7, Book 2 of the Civil Code."

The question on the extent of the ministerial responsibility in this matter in principle is simple, according to the Advisory Council.

"That responsibility and with that the parliamentary monitoring, goes as far as the authorities of the minister. Parliament can address the minister if he/she has the power to exercise direct influence, but government is to refrain from giving the boards specific instructions because these would undermine their autonomy too much.

"When government establishes such a foundation, it must accept that the latter has an own position with an own organisation and an own division of authorities. The aforementioned shows that while government has influencing possibilities regarding the foundations, these are limited."

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