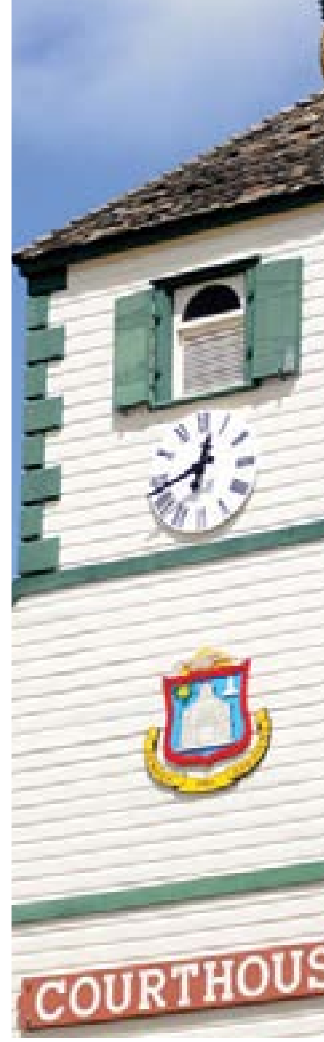
Annual Report

Sociaal Economische Raad

Social Economic Council



2014

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Mission and Vision of the Sociaal Economic Council

At the meeting of Thursday, October 23rd, 2014, the Board defined the following mission and vision for the advisory body.

Mission:

To objectively advise government towards sustainable development for St. Maarten.
To provide strategic advice with content that will change the dynamic of policy discussions.
To educate the Social Economic Council (SER) board members and staff in order to improve the functioning of the SER.

Vision:

To promote sustainable development, with the aim of achieving an improved quality of life for the people of St. Maarten.

Preface

The annual report 2014 covers the period from January 1st to December 31st, 2014.
This annual report is presented in both the Dutch and English language and gives you an overview of a young organization that can look back on a productive 2014.

The year 2014 was marked by change for Sint Maarten. Change in all aspects, including the SER.

In 2014, the term of the first Council of the SER came to an end. The first Council was appointed for a period of three years. The main task of the first Council, was the setting up and hiring of personnel of the advisory body. As of May 28th, 2014 a new Council was appointed. A few members of the previous Council were reappointed for a second term. In the 2014 -2017 Strategic plan the Council has set out the further development of the advisory body.

During the course of the year, the SER submitted two solicited advices to the government. The first advice concerned the draft Ordinance on the proposed amendments to the Civil Code in respect to the National Ordinance on Labor contracts. The second advice concerned the draft Ordinance remittances of taxes. The SER also submitted two unsolicited advices, Flexicurity (an advice that deals with the flexible dismissal and a pro-active job market policy for Sint Maarten) and an advice on a mandatory pension scheme for Sint Maarten.

In 2014, the SER organized its second symposium. The theme was: “Inclusive development”; for a better Sint Maarten, in this context signifying the challenge of reconciling our rapid tourism driven economic development on the one hand and on the other hand the ensuing social challenges related to admitting and integrating immigrant workers, all the while safeguarding and further developing the national identity of our young country.

Involving the citizens of Sint Maarten in its development means to be open to the signals from society. That’s always been the foundation of the SER. The SER provides various organizations with the opportunity to contribute their specific expertise. Research institutions and policy makers home and abroad are frequent partners of the SER, mainly for the exchanging of information. The SER maintains regular contact with the various ministries and Parliament. This re-characterizes the process of the SER for the year 2014.

Deliberations are inherent to the advisory function of the SER, wherein employers and employees organizations, and independent experts have the opportunity to work together. By giving advice, consultation and negotiations, they give direction to economic and social policy. The future of the economy is mainly linked to the ability to achieve consensus on social and economic policy, under the constant changing circumstances of: a stronger market force, globalization of the economy and policy, individualization and the emancipation of citizens, decentralization of public administration and of economic and social relations . The SER is extremely important in the deliberations as the advisory body brings together knowledge and interest in policy-oriented advice.

Mrs. Oldine V. Bryson-Pantophlet
Chairperson of the Social Economic Council of Sint Maarten

Change of Chairperson

In accordance with article 10 of the National ordinance Social Economic Council, the Chairman and his substitute are appointed and dismissed by national decree from amongst its members on the recommendation of the Council.

On May 28th, 2014 Oldine V. Bryson-Pantophlet was officially installed as Chairperson of the Social Economic Council. She was chosen from among the members, and is the first female Chairperson of the SER.
Mr. Dwight Williams was re-elected on the same day as Vice Chairman of the Council. During the first term of the SER from 2011 to 2014, Mr. Williams also served in the capacity of Vice Chairman.

Mrs. Oldine V. Bryson-Pantophlet succeeds Mr. Arthur Bute, who stepped down on April 30, 2014 due to the conclusion of his term in office.

From left to right: former Chairman Arthur Bute hands over the gavel to new SER Chairperson Oldine V. Bryson-Pantophlet.

Chapter 1

Organisation of the Social Economic Council

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Chapter 1. Organization of the Social Economic Council

1.1 Organization.

In the Constitution of the country Sint Maarten, article 79 stipulates, the legal basis for the permanent advisory councils. The SER is an independent advisory body established on the basis of the National ordinance Social Economic Council GT no.19.

The SER is an independent advisory body and is not part (department) of the Ministry of General Affairs. The Ministry of General Affairs is defined in the National ordinance on organization and country government organizations in (Dutch)Landsverordening inrichting en organisatie landsoverheid (LIOL) and further established in the organization decision of the Ministry of General Affairs. The SER is not Included in the LIOL. However, the political responsibility of the SER lies with the Minister of General Affairs.

1.2 Consultative process.

In accordance with article 13 through 19 of the National ordinance Social Economic Council, the consultative process is elucidated.

The Chairperson shall convene the Council whenever he/she deems it necessary or appropriate, stating the matters to be discussed. As of 2012 the Council meets twice a month, on the second and fourth Thursday of the month. The Council meetings are held in the conference room of the SER office, located in the Harbor View Complex in Philipsburg.

The members receive the agenda and accompanying documents one week prior to the scheduled meeting date. A meeting is convened when at least two members of the Council, have requested this in writing and motivated their reasons to the Chairperson. The Chairperson, convenes a meeting with the Council within fourteen days of the date of the request, under the notification of the reasons mentioned by the members. The most important part of the Council meetings is the adoption and voting on the advice. These are prepared by the secretariat and the working committees.

The SER is authorized to invite none members to meetings and allow the latter to participate in the deliberations with an advisory vote. Any minister can request the SER to admit one or more civil servants to the Council meetings as an observer, if matters regarding this ministry are being dealt with in said meetings. If the SER consents to the request, said civil servant shall only dispose of an advisory vote in the meeting.

The members and when appropriate their substitute members, partake in the deliberations and voting of the Council without charge.

Chapter 2

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Role of the Social Economic Council

Chapter 2. Role of the Social Economic Council

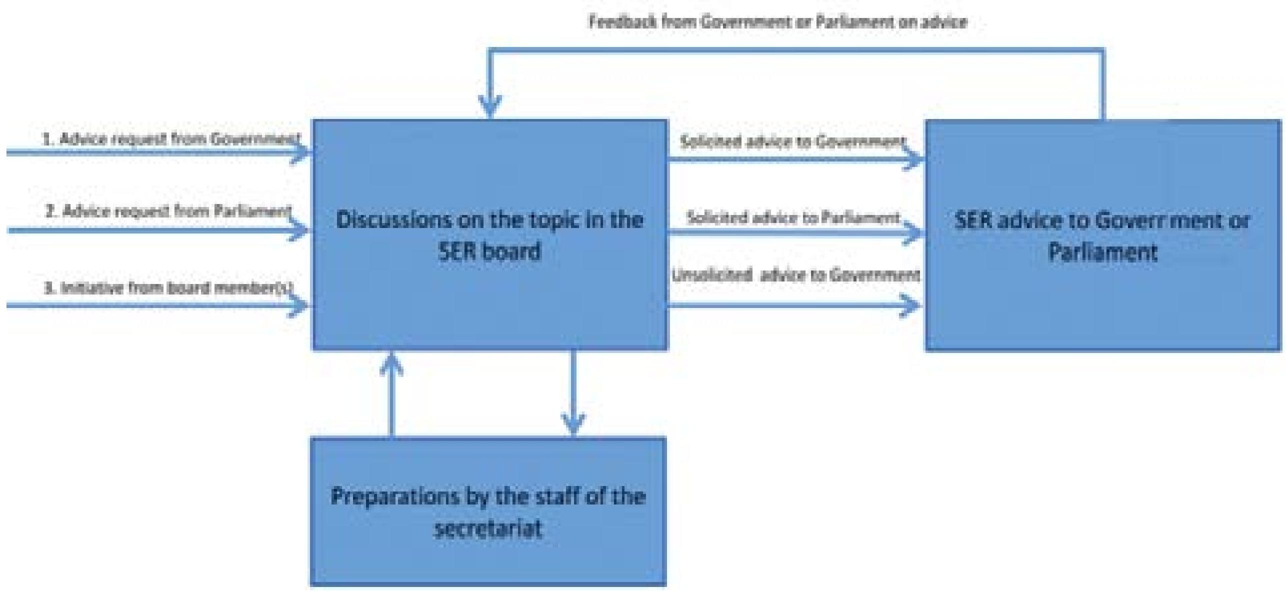
2.1 Role.

The SER is a tripartite advisory body that, in the process of bringing about its advice, works conscientiously in order to render a realistic account of its viewpoints on the situations in question in our society, viewpoints that have significant implications. The implications/consequences on legal, financial and social-economic scope are directives in this framework.

Moreover, within the scope of its advisory function, the SER employs a broadly-based concept of welfare. Broad based support for the social-economic policy is essential for a stable and enduring development of a country. During the SER board meetings, the aim is to reach a consensus regarding social-economic issues that, otherwise in separate setting, would be conducive to divergent opinions and potential disputes that could have a negative effect on the implementation of policy drafts or statutory regulations.

As advisory and consultative body to employers, employees and independent professionals, the SER wants to contribute to the societal welfare by arriving at mutual consensus regarding issues in the social-economic sphere. In the process, the SER strives for quality and broad support: a high degree of expertise combined with broadly accepted agreement and social support.

Figure 1.



Chapter 3

The Council

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Chapter 3. The Council

3.1 Composition

The National ordinance Social Economic Council, article 3 paragraphs 1 through 5 provide that the Council consists of nine members, including three representatives of employers 'organizations, three representatives of employees' organizations and three independent members (independent experts). The members are nominated by the Minister of General Affairs and appointed by national decree.

The nine members each have a substitute. On May 28th 2014, a new Council was appointed by national decree for a term of three years.

As of December 31st, 2014 the composition of the Social Economic Council was as follows.

Chairman	: Mrs. Oldine Bryson-Pantophlet	Independent expert
Vice Chairman	: Mr. Dwight Williams	Independent expert
Expert	: Mrs. Elaine Gumbs-Vlaun	Independent expert

Not pictured: members S.Gregoria-Pantophlet, A. Baly, D. Richardson, L. Richardson

Members	: Mr. Stanley Lint	Chamber of Commerce & Industry (COCI)
	: Mr. Eustaquio Richardson	Chamber of Commerce & Industry (COCI)
	: Mr. William Reed	Winward Islands Civil Servants Union Private Sector Union (WICSU/PSU)
	: Mrs. Eveline Henriquez-Dijkhoffz	Sint Maarten Hospitality and Trade Association (SHTA)
	: Mr. Bienvenido Richardson	United Federation of Windward Antilles (UFA)
	: Mr. Theophilus Thompson	Winward Islands Federation of Labour (WIFOL)

Substitute Members	: Mrs. drs. Shirley Gregoria-Pantophlet	WIFOL
	: Mr. Aurillio Baly	WISCU/PSU
	: Mr. Alberto Bute	UFA union
	: Mr. Ajay Rawtani	COCI
	: Mr. Robbie Ferron	SHTA
	: Mr. Peter van Dort LL.M.	SHTA
	: Mr. ir. Damien Richardson	Independent expert
	: Mrs. Mandy Daal-Offringa MSc	Independent expert
	: Mrs. drs. Linda Richardson	Independent expert

3.2 Remuneration.

In accordance with article 22 of the National ordinance Social Economic Council, the members are entitled to a monetary compensation. Their stipend is further explained in the National Decree containing general measures, from February 1st , 2012 concerning the financial provisions of the members, their substitutes and the Secretary-General of the Social and Economic Council.

3.3 Remuneration realization.

Budget post	Budget 2014	Actual expenditure	Balance
Remuneration	ANG 296.000,-	ANG 296.000,-	0.

The buildup phase of the Social Economic Council ended on April 30, 2013, after which it is justified to bring the monetary provision of the Chairperson to the level that suits a part time position.

In addition, use is made of the possibility of the financial provision for the Vice chairman, to bring the other members and substitute members to a level similar with the remuneration for comparable functions similar organizations on the neighboring islands.

In August 2013 the Social Economic Council submitted a proposal to the government to amend the National Decree containing general measures, relating to the monetary provisions of the members, their substitutes and the secretary-general of the Social Economic Council. To date, the draft National Decree containing general measures relating to the monetary provisions of the members and secretary- general has not been adjusted.

3.4 Council meetings.

In the year under review, the Council has met a total of 18 times. From those meetings, 2 were plenary sessions and 2 were extraordinary sessions. The average attendance rate for all meetings in 2014 was 80%. For the plenary meetings separately, this average was even higher, at 100%.

From left to right: substitute member P. van Dort (SHTA), substitute member R. Ferron (SHTA), Member Henriquez-Dijkhoffz (SHTA), former member W. Reed (WICSU/PSU union), member S. Lint (COIC) Back row: substitute member A. Rawtani, (COIC) member T. Thompson (WIFOL union), Substitute member Alberto Bute (UFA union).

Chapter 4

The Secretariat

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Chapter 4. The secretariat

4.1 Personnel.

In accordance with article 11 of the National Ordinance Social Economic Council, the secretariat is headed by the Secretary-General. Mr. G.M.C. Richardson is the Secretary-General of the Social Economic Council and has served in this capacity since January 2012. In accordance with article 11 paragraph 3 of the National Ordinance Social Economic Council, the staff of the secretariat is suspended or dismissed by way of national decree upon the Council's recommendation.

The National Decree containing general measures, of May 4, 2012 regulating the establishment and organization of the secretariat of the Social Economic Council authorizes a formation of six.

The formation of the Secretariat of the Economic and Social Council from 2012 was as follows:

No.	FTE	Function[1]
1	1	Secretary-General
2	1	Legal advisor
3	1	Policy advisor
4	1	Policy worker secretariat
5	1	All around worker
6	1	Administrative worker B

Now that the Social Economic Council has been functioning for three years, it has become evident that the secretariat formation as allotted does not suffice. The current formation of the secretariat comprises of the functions listed above. This totals 6 functions of which 5 are currently filled full time.

Practical experience has shown that there is a need for yet another policy advisor to aid in supporting the Council in its advisory role. The current number of advices (solicited as well as unsolicited) and the anticipated increase of said requests in the future warrants expansion.

It has also become clear that the secretariat of the SER, due to the nature of its activities is in need of a general staff member, who supports the Secretariat and the Council in its administrative work, instead of two administrative positions.

The adjusted formation of 2014 will look like this:

No.	FTE	Function
1	1	Secretary-General
2	1	Legal advisor
3	1	Policy advisor
4	1	Policy worker secretariat
5	1	Administrative worker

1 This is an English translation of the Dutch source text. In the event of any discrepancy between the Dutch language version and the translation. The Dutch version prevails.

4.2 Activities.

The secretariat supports the Council in the process of its advices and consultation activities:

1. Preparation and recording of Council meetings.
2. Ensuring the implementation of decisions made by the Council, including conducting preliminary research, collecting data for the meetings, providing members with information, preparing minutes and taking care of the final editing of the advices.
3. Maintaining a working relationship with, among others, government, the various departments within government and Parliament, the Social Economic Councils of the Kingdom which includes; Curaçao, Aruba and the National Social Economic Council in the Netherlands.
4. Preparation of (draft) advices.

4.3 Performance management.

With regard to the performance management; the SER functions similar to the government. Performance management is a concept, whereby the performance and competencies of staff is guided. The end result of performance management is to let personal achievements and developments fall in line with the mission, vision and strategy of the advisory body.

In the year under review, the staff was evaluated during three phases. A planning phase, interim evaluation phase and a final end evaluation. In the planning phase agreements were made on the deliverables and activities to be undertaken. The interim evaluation phase, serves to evaluate the current state of affairs and if necessary, adjust agreements. During the final end evaluation phase the Secretary-General assesses the results. The end result is discussed with the Council.

The functioning of the Secretary-General is evaluated on the basis of article 8 of the Rules of order of the Social Economic Council. The evaluation is done by the Council. During the discussion, the Secretary-General can be requested to leave the meeting.

4.4 Training sessions and courses.

In order to better assist the Council in its advise and consultation activities and for the further development of the staff of the secretariat, in 2014 the SER continued with its training program. The Council, also received the opportunity to increase their knowledge and attended a workshop. During the course of the year, the SER worked closely with a number of organizations.

4.4.1 Government Accountant Bureau office Sint Maarten.

In 2014 the SER made use of the training offered by the Government Accountant Bureau (in Dutch SOAB). The Legal Advisor participated in the training entitled; budget and policy cycle. The training is specifically geared to non-financial participants who wish to broaden their knowledge with a better understanding of public finances. The training gives the participant insight into public finances during the training with questions like; What is a budget? Why a budget? and what requirements must be met for a budget. The course is important for the SER, given the different legislation, in particular legislation of financial and economic nature.

4.4.2 Course by the Council of Advice.

In 2014 the Council of Advice of Sint Maarten commissioned the Academy of Legislation (in dutch Academie voor Wetgeving) to develop a course, designed for the lawyers of its staff members, and Council members. SER staff and civil servants were also invited to participate in the course. The Legal Advisor and Policy advisor of the SER were provided with the opportunity to participate and gain more in depth knowledge on Constitutional Law and administrative law.

4.4.3 The University of St Martin and the training: advance policy writing.

The SER in collaboration with the University of St. Martin (USM) developed a training "Advanced Policywriting" for its staff. From experience it's learned that writing a good advice is not always easy. The staff of the SER, on a regular basis compiles advices on complex topics. The staff must take into account the knowledge of the Council, civil servants and the largest audience, the people of Sint Maarten. The purpose of the training was to teach the staff, to clearly translate advices in a manner that is immediately understandable. During the training the lecturers of USM also made use of the opportunity to sharpen the skills of the staff in the areas of effective formulation, spelling of the English language.

4.4.4 The University of St. Martin and the training: critical thinking.

In collaboration with USM a second training was organized during the year. This time the training dealt with: critical thinking. A training developed specifically for the Council geared towards substantiating an opinion, providing reasons that prove that the authenticity of a statement is not innate. Critical thinking on the different socio-economic issues requires time and effort. To remedy this, the USM developed training in "critical thinking" for the members of the SER". The program allowed all board members to reflect critically on the social and economic developments, so that at the end well-reasoned opinions are formulated, giving advice to government.

SER members at work during the training: Critical Thinking

Chapter 5

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Financial Reporting

Chapter 5. Financial reporting

5.1 Budget 2014

The Social Economic Council specifies its budget annually, after approval by the Council, the budget is subsequently submitted to the Minister of General Affairs and the Minister of Finance.

The budget of the Social Economic Council is part of the annual budget of country Sint Maarten. In accordance with article 23, paragraph 2 of the National Ordinance of the Social Economic Council the Chairperson is responsible for financial management.

The Secretary-General is authorized to sign agreements up to a maximum amount of ANG 5.000,-
The Chairperson may delegate the authority to enter into financial obligations to the Secretary-General.
This is especially important for regularly recurring management costs that do not exceed a certain amount.

Government has allocated a budget of ANG 1,295,398 for the year 2014 for the Social Economic Council. Compared to 2013, the difference amounts to a surplus of ANG 46.261,- The difference is ascribed to the organization of the second symposium “Inclusive Development”.

5.2 Budget realization

This paragraph contains a representation of the cost based on 2014 budget. On the basis of 2014 draft budget approved by the Council on August 8th, 2013.

Budget post	Budget 2014	Actual expenditures	Balance
Personnel expenditures	ANG 609,398	ANG 544,742	ANG 64,656
Material cost goods and services	ANG 686,000	ANG 674,775	ANG 11,225
Totaal kosten	ANG 1,295,398	ANG 1,219,517	ANG 75,881

There is a difference ANG 64.656 in personnel expenditures due to the vacancy of the administrative employee B which was not filled during the course of the year. The material costs were less than initially budgeted. The difference is ascribed to the reduced spending of the budget post Legal and Professional Council (in Dutch Rechts-en deskundig advies). The SER stayed within the budgeted amount of ANG 1,295,398.

The actual expenditures and differences are provided by the Finance Department. During the compilation of the annual report 2014, the amounts could not be verified by the assigned Financial Controller of the SER.

Chapter 6

Symposium: "Inclusive development"

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Chapter 6. Symposium: "Inclusive development"

In May 2014, the Social Economic Council organized its second symposium. The theme of the symposium was "Inclusive Development"; for better Sint Maarten. Guest speaker at the symposium was Mr. Owen Seymour Arthur, former Prime Minister of Barbados from 1994 to 2008. Mr. Arthur currently serves as a Member of Parliament of Barbados.

The symposium dealt with the challenge of reconciling our rapid tourism- driven economic development on the one hand and on the other hand the ensuing social challenges related to admitting and integrating immigrant workers, all the while safeguarding and further developing the national identity of our young country. Upon the conclusion of Mr. Arthur's speech, the invited guests were given the opportunity to ask questions. There were approximately 175 guests in attendance.

During the symposium Mr. Owen Arthur was supported by the following panelists: managing partner and co-founder of Computech, Mr. Jean Arnell, National Development Plan representative, Mrs. drs. Okama Epke-Brook, founder and director of the Belvedere Community Association, Ms. Jessica Richardson and Collaborative Foundation (Samen-werkende Fondsen) representative, Mrs. José Verschueren-Sommers.

From left to right: member Henriquez-Dijkhoffz (SHTA), member E. Gumbs-Vlaun, former member E. Smith (UFA), chairperson O. Bryson-Pantophlet, guest speaker. O. Arthur, substitute member S. Pantophlet-Gregoria (WIFOL union), former chairman Arthur Bute, vice chairman D. Williams, former member W. Reed (WICSU/PSU union), lid T. Thompson (WIFOL union).

Chapter 7

Communication and international contacts

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Chapter 7: Communication and international contacts

SER Sint Maarten maintains contact with various institutions and Social Economic Councils from other countries. In the paragraph below you will find short reports of the two conferences in 2014 in which SER Sint Maarten participated. For the complete reports, please visit our website www.sersxm.org

7.1 CESALC conference Argentina

From April 9th to 11th, 2014, SER Sint Maarten attended the CESALC (SER Network of Latin America and the Caribbean) conference for Social Economic Councils in Argentina, Buenos Aires. CESALC consists of 22 Social Economic Councils and similar institutions from nine different countries representing the Latin America and the Caribbean region. Especially Argentina and Brazil have several regional Social Economic Councils that represent their central government on matters of civil society more specific; social and Economic issues.

The meeting in Buenos Aires was the second meeting since the inception of the organization. During the conference, a 2014-2016 work plan and the election of the executive committee for the next two years were on the agenda. Membership of CESALC requires no financial obligations, and is focused on flexible network information and "best practices" for the institutions, who share and meet similar institutional roles in their respective countries. During the conference SER Sint Maarten was represented by former chairman, Mr. Arthur Bute and member Mrs. E. Henriquez-Dijkhoffz (SHTA).

7.2 Curaçao conference on Economic growth and Human capital

On September 25th and 26th 2014, SER Sint Maarten took part in the international conference held on Curacao. The Chairperson, vice chairperson and Secretary-General were present at the international conference.

From left to right: Secretary-General, G.M.C. Richardson, Chairperson, O. Bryson-Pantophlet, Vice chairman, D. Williams

The purpose of the conference was to discuss the challenges, common interest, and issues to better identify solutions on economic growth and the strengthening of human capital and the industrial performance in the region. The conference was organized by the International Association of Economic and Social Councils and Similar Institutions (AICESIS) in collaboration with SER Curaçao.

Chapter 8

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Appendix

8. Appendix

8.1. Advice issued during the course of the year

In the year under review, two advices were sent to SER by government for advice.
The first advice request concerns, the draft Ordinance on the proposed amendments to the Civil Code in respect to the National Ordinance on Labor contracts of May 29th, 2014 from the Ministry of Justice.

The second advice was on the draft Ordinance remittance taxes on June 10th, 2014 and reached the SER through the Ministry of General Affairs.

Both advices are included as annexes to this report. The advices are not translated in Dutch and are included in English as was submitted to government.

The unsolicited advice: Flexicurity (opinion on a flexible dismissal and a pro-active job market policy for Sint Maarten) and a Mandatory pension system for Sint Maarten are available for download by visiting the SER website www.sersxm.org

8.1.1 Draft Ordinance remittance of taxes

Belastingkantoor Sint Maarten 9 SEP 2014

Sociaal Economische Raad
Social Economic Council

To the Minister of General Affairs
Prime- Minister Sarah Wescott- Williams
Government Administration Building
Clem Labega Square
Philipsburg

Philipsburg, August 25th, 2014

Our reference: SER /14/DCB/076

Re: Letter of advice concerning " Ontwerp Landsverordening Kwijtschelden belastingschulden".

Honorable Prime Minister Wescott- Williams,

In reply to your request for advice, dated June 10th 2014, concerning the remittance of taxes (in Dutch:" Ontwerp Landsverordening Kwijtschelden belastingschulden") the Social Economic Council (SER) informs you as follows:

Background:

In the National Gazette of May 24th, 2013, the (then) Minister of Finance, Roland Tuitt, published a temporary waiver for taxes and AVBZ debt [algemene verzekering bijzondere ziektekosten] regarding the period 1976- 2006 with a proviso that the ordinance "Kwijtschelden belastingschulden" should enter into force first. Thus these taxes will only be waived if and when the ordinance "Kwijtschelden belastingschulden" goes into effect.

The reasons for the Minister to establish such a policy are twofold:

1) Clean up of the tax administrative system [opschoning system]
2) For reasons of efficiency [efficientie oogpunt] in order to better focus on tax debts from 2007 onwards, and thus generate more tax revenues.

In summary, the policy document states that as of February 1st, 2013, the Receivers Office is not allowed to collect taxes pertaining to the years 1976- 2006.
The execution of this policy document is as follows:

- There will be no active collection of taxes from the period 1976- 2006.
  This means that the Receivers Office does not send notices or summons and does not take any enforcement action for taxes owed by businesses and individuals to the Government of Sint Maarten concerning the years 1976 up to and including 2006.

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- In case the taxpayer does (come to the Receiver's Office to) pay the outstanding taxes concerning the period 1976- 2006, that amount paid will be deducted from the taxpayer's tax debts of 2007 or later on, or the amount will be reimbursed, in case the taxpayer concerned does not have (other) outstanding tax debts from 2007 onwards.

The total amount of taxes written off, as a consequence of the decision to write off taxes from 1976-2006 is Naf 4,470,933,628.-.

This policy document is to be regarded as a temporary instruction given to the Receivers Office in anticipation of a law being passed.

Based on the background of the draft ordinance "Kwijtschelden belastingschulden" the following was taken into consideration:

First of all, every government needs income to perform civil operations, such as health care, education, develop the infrastructure of the state like roads, hospitals and to administrate the running of the state. This income is generally collected from the citizens of the state, better known as "tax (es)".

Paying taxes concerns an arrangement which no government would ever make dependent on the good will of its citizens. Paying taxes is made compulsory worldwide. In collecting taxes, the government does not ask whether the taxpayer can afford the compulsory charge, or wants to pay it. The taxed citizen has no say in the definition of the rates of taxation.

If no one is paying their tax, society would disintegrate, the country would fall apart. Therefore, it is important for every citizen of Sint Maarten to pay his or her tax regularly.

The SER has the following concerns:

The reasons provided to waiver taxes from 1976 up to and including 2006 are to clean up the tax administrative system [opschoning system] and for reasons of efficiency, in order to better focus on tax debts from 2007 onwards, and thus generate more tax revenues. Nonetheless, in January 2014 the CFT reported[1] that tax revenues are still too low compared to the economic growth in Sint Maarten.

From the SER's point of view these reasons are not very weighty reasons to waiver taxes.
According to the Receivers Office, some tax debts are indeed too old, thus expired [verjaard] and therefore too difficult to collect. However, the Receivers Office reported not to have a problem collecting taxes from the year 2006 or even from the year 2005. As a matter of fact, that is just what the Receiver's Office was doing, until the instruction came from the former Minister of Finance outlining that no outstanding tax debts prior to 2006 should be collected.

[1] See CFT report http://www.cft.an/jdownloads/Adviezen/Sint%20Maarten/cft_201400020-advies_op_basis_van_artikel_12_bij_de_vastgestelde_begroting_2014_sint_maarten.pdf

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It is not clear why the year 2006 was chosen as a benchmark to stop collecting taxes. In 2013 the then Minister of Finance explained that it is the government's ultimate goal to only collect taxes for the previous year (at that time referring to the year 2012) and the current year (at that time referring to the year 2013). For this reason, the Minister found it opportune to waive outstanding taxes from 1976-2006, stating that " if we do not start to take steps to achieve that goal , then 10 years from now, we will still not be close to that goal[2]".

The SER is of the opinion that the root of the problem is not being addressed by implementing a policy to waive taxes. The relevant question here to be addressed is: why are individuals or businesses not paying their taxes? What is the government doing about the lack of tax compliance?

The SER strongly believes that if overall tax compliance in Sint Maarten is not improved, in 10 years we will still be facing the same problems and we will probably find ourselves writing off outstanding taxes again. As a matter of fact, some time ago when Sint Maarten was placed under Dutch supervision non tax compliance was already a major issue then and it still seems to be a major issue now

After numerous reports spanning decades and implementing additional technical assistance, there is still no significant increase in compliance. The SER urges the government to investigate what the reason is why tax compliance remains too low, and in her deliberations consider instituting a simpler tax system, that ensures a broader tax base with a lower overall effective rate that because of its competitiveness and uncomplicated nature in and of itself drives down the urge for non-compliance.

In addition, in the case of this draft law, the SER detected other weighty reasons for rejecting it:

- This policy aims to "award" taxpayers who are not compliant with the law. The message the Government of Sint Maarten is sending out with such a policy is, for its citizens not to pay their taxes on time or in fact, at all, since one is being rewarded for not fulfilling his obligation to pay taxes/ for not complying with the law.

- This policy, if enacted into law, will be referred to as an example to waive future tax debts. As a matter of fact, this has already happened in December 2013 when Parliament passed a motion presented by Independent Member of Parliament Mr. Patrick Illidge to write off taxes owed to the Government of Sint Maarten by businesses and individuals from 2006 until 2010.

- The SER can understand that there might be difficulties to collect (very) old tax debts. However, if a taxpayer willingly reaches out to the Receivers Office to pay an outstanding tax debt originating from before 2006, it is unacceptable not to write off that outstanding amount for the year 2006 or previous, and deduct that amount paid from the taxpayer's tax debts of 2007 or later, or to reimburse the amount paid (in case the taxpayer concerned does not have other outstanding tax debts from 2007 onwards).

[2] http://www.todaysxm.com/2013/02/07/finance-minister-tuitt-says-goodbye-to-old-taxes/

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- The SER also ponders how the government will generate revenue in order to provide goods and services to the public and to pay for public expenses. The total amount of taxes written off, as a consequence of the decision to write off taxes from 1976- 2006 is Naf 4,470,933,628. - Higher (income) tax rates are not the way to compensate for this loss. Higher rates will discourage working, saving and investing and will further encourage people to base decisions on tax considerations, rather than on real economic fundamentals. The Government of Sint Maarten cannot write off Naf 4,470,933,628. – in taxes on the one hand and apply for loans on the other hand.

Furthermore, the SER wishes to emphasize the objective and the scope of a policy document, according to the "Algemene wet Bestuursrecht[3]".
A policy document [beleidsregel] is a guideline; a document wherein the executive body [bestuursorgaan], for example a Minister, gives a description or an explanation on how a particular law should be implemented or executed. A policy document can also be a general rule that is used to balance the different interests of different stakeholders. In addition, a policy document can also be used to establish facts.

Thus: a policy document should be a guideline to provide clarity on a certain law, not the other way around; in this case drafting a policy document in order to amend or draft a new law). A policy document is never designed to allow authorities to give an incorrect interpretation to the law[4] or to draft a new law.

When drafting a policy document, the principles of good governance should always be taken into consideration.
With regard to the policy document to waive taxes and AVBZ debt:

- an appropriate balance among all interests involved has not been made [belangenafweging];
- insufficient research [zorgvuldigheidsbeginsel] was done when drafting this policy, which qualifies this policy to be based on randomness [willekeur].
- the Minister used the policy document to serve another objective than the objective a policy document should serve. The Minister drafted a new ordinance [détournement de pouvoir].
- the legal basis for the Minister of Finance to draft the policy document was not mentioned in the National Gazette of May 24th, 2014 when the policy document was published.

Therefore, the SER concludes that this policy to waive taxes from 1976- 2006, is an unlawful [onrechtmatig] policy.

[3] Art. 4:81 AwB
[4] See "Commentaar Artikel 4:84 AwB to be found at https://openaccess.leidenuniv.nl/bitstream/handle/1887/3674/360_138.pdf?sequence=1

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The SER has reached consensus on the following:

- That the policy document designed to write off outstanding taxes for the period 1976- 2006 owed to the government of Sint Maarten by individuals and businesses, is unlawful [onrechtmatig].
- That the policy document and the draft law "Kwijtschelden belastingschulden", designed to write off outstanding taxes for the period 1976- 2006 owed to the Government of Sint Maarten by individuals and businesses, is not in the (fiscal) interest of country Sint Maarten.
- That the draft law "Kwijtschelden belastingschulden" is not the answer to the objectives set out in the elucidation of this draft law.
- That the content of this policy sets the wrong precedent for Sint Maarten.

Advice:

The SER has taken notice of the draft ordinance "Kwijtschelden belastingschulden". Pursuant to the SER meeting on this topic, the SER advises:

- To disregard the policy document to temporarily waiver taxes since this policy document is unlawful.
- Not to accept the draft Ordinance "Kwijtschelden belastingschulden" based on above-mentioned concerns.
- To take measures to increase tax compliance on Sint Maarten and to investigate why tax compliance in Sint Maarten remains too low after numerous efforts to increase same.
- The government to consider instituting a simpler tax system, that ensures a broader tax base with a lower overall effective rate that because of its competitiveness and uncomplicated nature in and of itself drives down the urge for non-compliance.

We trust to have informed you sufficiently herewith.

Should you require any additional information after reading the above, please feel free to contact us at your earliest convenience.

Respectfully,

Oldine V. Bryson- Pantophlet
Chairwoman

Dwight Williams
Vice-Chairman

Cc: The Honorable Minister of Finance, Mr. M. Hassink.

Kabinet Sint Maarten
09 SEP 2014

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8.1.2 Draft Ordinance on the proposed amendments to the Civil Code.

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Social Economic Council

24 JUN 2014

To the Minister of Justice
Mr. Dennis L. Richardson MBA
A.T. Illidge road 8
Philipsburg
Sint Maarten

Philipsburg, June 23rd, 2014

Our reference: SER /14/DCB/74

Re: Letter of advice concerning " Ontwerp Landsverordening Arbeidsovereenkomst".

Honorable Minister Richardson,

In reply to your request for advice which was received by the Social Economic Council (SER) on Thursday, May 29th 2014, concerning the proposed amendments to the Civil Code in respect of the National Ordinance on Labor Contracts (in Dutch:" Ontwerp Landsverordening Arbeidsovereenkomst") the SER informs you as follows:

Background:

The proposed amendments to the National Ordinance on Labor Contracts aim to rectify the Civil Code by substituting Book 7A of the Civil Code with title 10 of Book 7 Civil Code. The bulk of the proposed changes are of a technical nature with a few substantive changes.

The Ordinance was drafted after consultation with various stakeholders before October 10, 2010. The Social Economic Council of the Netherlands Antilles, at that time, also provided its advice[1] on this draft law. Unfortunately the draft law was not presented to the Parliament of the Netherlands Antilles on time (before October 10th, 2010) and consequently the Parliament of Sint Maarten had no authority to resolve to process this draft National Ordinance[2].

Since then, two additional drafts were added to the initial amendments by the Labor Department of the Ministry of Public Health, Social Development and Labor:

- The draft ordinance on the elimination of abuse of short term labor contracts
- Draft on the rights of employees upon transfer of an enterprise

The SER already offered its recommendation on the draft ordinance on the elimination of abuse of short term labor contracts in its advice of September 2012 (SER advice nr. 2012-001).

Most recently the SER provided government with an unsolicited advice of January 31, 2014 (SER advice nr. 2014 – 001) titled "Flexicurity for Sint Maarten". The advice provides an integrated approach to dismissal procedures, short term labor contracts an unemployment insurance.

[1] 114/2010- SER, July 6, 2010.
[2] See Additional Articles Article IV of the Constitution of Sint Maarten.

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<u>The SER has the following concerns:</u>

With reference to the articles on the elimination of abuse of short term labor contracts the SER notes that most of its recommendations were followed.

- Article 668a:

However, the newly proposed article 668a still mentions a maximum term. The SER advice 2012-001 as well as the Policy paper of the Directorate of Labor Affairs[3] both suggested removing any mention of a maximum term. This would mean that any fourth labor contract between an employer (or his successor) and an employee will automatically be converted into a permanent labor contract, no matter the intervals between the contracts. The risk not to remove any mention of a maximum term in article 668a is that employers might start creating intermissions of more than 3 months between two contracts, which will not solve the core of the abuse problem concerning short term labor contracts.

With reference to the articles on maternity leave the SER remarks the following:

- Article 629a paragraph 3:

" Dagen van arbeidsongeschiktheid ten gevolge van ziekte worden aangemerkt als dagen waarover zwangerschapsverlof wordt genoten."

The explanatory memorandum explains that maternity leave will be extended from 12 weeks to 14 weeks according to the ILO Maternity Protection Convention No. 102. The way in which paragraph 3 was formulated, creates the impression that any day during her pregnancy, if a pregnant woman is unable to work due to illness, those sick days are being deducted from the 14 weeks maternity leave. Thus, if a pregnant woman is sick during the first trimester in her pregnancy and she is unable to work, those sick days will be deducted from her 14 weeks maternity leave. This can never be the intention of the lawmakers, as the whole idea behind the ILO Maternity Protection Convention No. 102 is to expand the scope and entitlements related to maternity protection at work.

The SER suggests that the lawmakers must have meant that a pregnant woman who is unfit to work during the last 7 weeks before her scheduled due date should take her maternity leave 7 weeks before the due date instead of calling in sick". If not, for every day the pregnant woman calls in sick, this day will be deducted from het maternity leave.

However, being pregnant has nothing to do with being ill. Sometimes a pregnancy can leave a woman feeling sick. But pregnancy is no illness and should therefore not be treated as such by law. If a woman is ill, she should be treated the same way as her male colleague who is ill. Under no circumstance should a "sick leave" (*ziekte verlof*) be deducted from the maternity leave.

The SER understands the concern of abusing sick leave while being pregnant. But this is not the way to deal with this concern. The SER suggests that the Labor Department introduces the so called

[3] See page 20 "*Beleidsnota betreffende kortlopende arbeidscontracten*".

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" *controlerende geneesheren*" , not specifically for pregnant women, but in general. These "*controlerende geneesheren*" then will be in charge of verifying whether someone is sick indeed.

The SER further advises that the 14 weeks maternity leave should be flexible; in the sense that a pregnant woman should be able to choose how she wishes to effectuate the 14 weeks of maternity leave.

Women who are able to work up to the last day before going into labor, should be able to do so. A study by the US National Bureau of Economic Research revealed that a short maternity leave has negative health outcomes for both mother and child. Interestingly, the study also found that it is only when the mother has to go back to work too quickly that her health and the health of her child suffers. The key to a healthy mother and child seems to be not necessarily staying out of the workforce entirely, but rather having the time to transition back to full-time work[4]. Therefore, the law should be flexible in the entire 14 weeks of maternity leave, leaving it up to pregnant women and her gynecologist or midwife, to decide how they want to carry out their maternity leave.

Lastly, the SER once again emphasizes the importance of increasing the awareness among employees with regard to their (new) rights and entitlements. Especially among temporary employees (recent) immigrants are overrepresented and find themselves in a by definition more vulnerable position. Awareness of one's rights as a citizen is an essential part of integration in society. Government, the labor unions and other NGO's have a specific role and responsibility in this field.

The SER has reached consensus on the following:

That it is indeed desirable to amend the Civil Code by substituting Book 7A of the Civil Code with title 10 of Book 7 Civil Code.

Advice:

The SER has taken notice of the request concerning the proposed amendments to the Civil Code with regard to the National Ordinance on Labor Contracts. Pursuant to the SER meeting on this topic, the SER **unanimously** advises:

- To once again take into account the recommendation of SER advice 2012-001, as they relate to The "Ontwerp Landsverordening Arbeidsovereenkomst"
- To once again take into account the recommendation of SER advice 2014-001, as they relate to The "Ontwerp Landsverordening Arbeidsovereenkomst"
- To amend article 629a paragraph 3, first sentence in such a way that pregnant women, together with their gynecologist or midwife, can determine how they wish to effectuate the 14 weeks maternity leave.

[4] NBER Working Paper 17121, July 2011 "*Early Maternal Employment and Family Wellbeing*".

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- To delete article 629a paragraph 3, second sentence and instead introduce "*controlerende geneesheren*" who will verify whether someone is ill.

- To encourage employees to assert their rights and entitlements under the existing rules; encourage the dissemination of standardized information on their legal rights – to be provided by government - in a language the employee commands. The responsibility to provide this information should be shared by employers, labor unions and government.

We trust to have informed you sufficiently herewith.

Should you require any additional information after reading the above, please feel free to contact us at your earliest convenience.

Respectfully,

Oldine V. Bryson- Pantophlet
Chairlady

Gérard M.C. Richardson
Secretary-general

Cc: The Honorable Minister of Public Health, Social Development and Labor, Mr. V.H.C. de Weever.

Attached:

- SER advice nr. 2012-001. "Draft ordinance short term labor contracts"
- SER advice nr. 2014-001 "Flexicurity for Sint Maarten".

4

List of abbreviations.

SER	Social Economic Council
LIOL	Landsverordening inrichting en organisatie landsoverheid
COIC	Chamber of Commerce & Industry
WICSU/PSU	Winward Islands Civil Servants Union/Private Sector
SHTA	Sint Maarten Hospitality and Trade Association
UFA	United Federation of Windward Antilles
WIFOL	Winward Islands Federation of Labour
Drs	Doctorandus
Ir	Engineer
MSc	Master of Science
LL.M.	Master of Laws
USM	University of St. Martin
AICESIS	The International Association of Economic and Social Councils and Similar Institutions
CESALC	Economic and Social Councils Network for Latin America and the Caribbean