



Sociaal Economische Raad  
Social Economic Council

To the Prime Minister of Sint Maarten  
The Honorable Mr. William Marlin  
Clem Labega Square  
Philipsburg  
Sint Maarten

Philipsburg, February 19<sup>th</sup>, 2016

## LETTER OF ADVICE

Our reference: SER /16/DCB/026

Re: Letter of advice concerning amendments from 25% to 22% to the "National Ordinance concerning Civil Service Pensions" [Pensioenlandsverordening Overheidsdienaren]

Honorable Prime Minister Marlin,

In reply to your request for advice which was received by our Council on February 15<sup>th</sup>, 2016 concerning the changes to the "National Ordinance concerning Civil Service Pensions" (in Dutch: [Pensioenlandsverordening Overheidsdienaren]) we inform you as follows:

The Social Economic Council (SER) has evaluated the social, economic and legal consequences of the advice request and came to the following conclusions:

### Background :

In accordance with article 58 of the National Ordinance Pensioenlandsverordening Overheidsdienaren, employers must pay a pension premium contribution of 25% of the gross salary to the "Algemeen Pensioenfonds Sint Maarten" (APS<sup>1</sup>).

APS' predecessor was the APNA. The pension premium contribution collected by APNA was 22% of the gross salary. Since October 10<sup>th</sup>, 2010, the pension premium charged by APS was erroneously 22%. Thus, there is a discrepancy between what is actually being collected (22%) and what is stipulated in the law (25%), since October 10<sup>th</sup>, 2010.

APS informed the Government of Sint Maarten on numerous occasions that the 22% which is charged currently, deviates from the 25% premium stated in the National Ordinance Pensioenlandsverordening Overheidsdienaren<sup>2</sup>. By the end of the year 2014, APS started informing all stakeholders that it will claim the statutory pension premium of 25% as of October 10<sup>th</sup>, 2010. APS further informed the stakeholders that it will collect the still outstanding difference as of January 1<sup>st</sup>, 2016, meaning that as of January 2016, employers will be invoiced at a rate of 25%, retroactively to October 10<sup>th</sup>, 2010. This should have allowed employers sufficient time to make arrangements for the 25% premium in their administration.

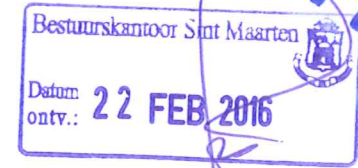
<sup>1</sup> APS is a self-governing entity, established by law and forms part of the portfolio of the Minister of Finance of Sint Maarten.

<sup>2</sup> See among others: Financial Statements of the APS of the years 2011, 2012, 2013 and 2014.

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The Government of Sint Maarten now wishes to eliminate this discrepancy by lowering (decreasing) the legal pension premium contribution of 25% to 22%, retroactively to October 10<sup>th</sup>, 2010. In order to do so, the National Ordinance Pensioenlandsverordening Overheidsdienaren, will be amended accordingly.

The Government stated the following reasons to decrease the legal pension premium contribution of 25% to 22%:

1. The Government of Sint Maarten currently faces great financial difficulties and needs to take measures to structurally improve its finances;
2. During the Kingdom Council of Ministers' meeting in September 2015, an instruction was approved for Sint Maarten to bring its 2015 budget and multi-year plans up to date. The decision for the instruction was based on the advice of the Financial Supervision Committee for Curacao and Sint Maarten (Cft). The Government of Sint Maarten translated this instruction by implementing measures related to the pension fund, which measures have to lead to further decreasing the pension premium contribution.
3. The first concrete measure is to eliminate the discrepancy between the legal 25% and the actual 22% pension premium contribution, by decreasing the legal 25% to 22%.
4. Neither the Government of Sint Maarten, nor APS considered the higher pension premium contribution of 25% in its budget between 2010- 2015. For this reason, the Government decided to dismiss APS' claim to pay the additional 3% retroactively to October 10<sup>th</sup>, 2010.
5. According to "aanwijzing" 135, paragraph 1 of the Regulation of the Prime Minister<sup>3</sup>, there is a "special reason" [bijzondere reden] to grant retroaction to the National Ordinance amending the pension premium contribution of 25% to 22%.
6. The proposed changes do not bring any negative impact [belastende wettelijke regeling] with it, since the civil servants will not be charged more. See "aanwijzing" 135 paragraph 3.
7. Even though APS indicated (based on actuarial research) that the Fund aims to have a funding ratio of 105% and that the current legal pension premium contribution of 25% is not sufficient to sustain a healthy fund, the Government still finds that lowering the current legal pension premium contribution of 25% to 22% is feasible.

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<sup>3</sup> Regelgeving van de Minister- President van 27 juni 2013, houdende de vaststelling van de Aanwijzing voor de regelgeving van Sint Maarten, P.B. 2013, no. 26



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**Advice:**

Given the information that was provided and the time constraint, the SER- in its meeting of Friday February 19<sup>th</sup>, 2016, **unanimously** advises the Government as follows:

1. not to decrease the legal pension premium contribution of 25% to 22%. Any decrease in premium does not reduce liability for the Government. Any funds shortage needs to be paid by the Government anyway.
2. To be in compliance with the law and settle its payment arrears with APS.

The SER refers to attached Elucidation and emphasizes that the instruction given to Sint Maarten based on article 13 paragraph 6, article 16, paragraph 12, article 17 and article 18 of the Kingdom Financial Supervision Law [Rijkswet Financieel Toezicht] means that Sint Maarten would have to carry out the instruction<sup>4</sup> before it could obtain financial loans through the Netherlands for capital investments. Part of the instruction includes that the Sint Maarten Government will have to adapt the budget to fully include the pension and health care premiums.

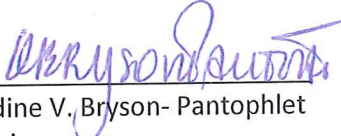
In addition, the SER would like to point out that the APS needs total reformation where at least the following points should be addressed:

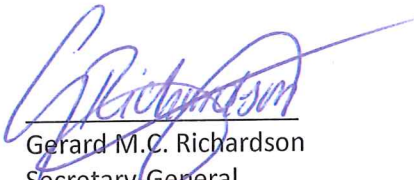
- Switch from defined benefit fund to defined contribution;
- Change final pay to average pay;
- The pension age of civil servants, in order to bring civil servants' pension rights in line with the market.

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

  
Gerard M.C. Richardson  
Secretary-General

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<sup>4</sup> Staatsblad 2015, no. 343 last paragraph Explanatory Memorandum: "Zodra Sint Maarten een begrotingswijziging heeft vastgesteld, welke is voorzien van een positief advies van het Cft, waarin tekorten meerjarig worden gecompenseerd en de zorg- en pensioenlasten **volledig** ("emphasis added") zijn opgenomen, alsmede alle besluiten ten aanzien van de herziening van het pensioen- en zorgstelsel in uitvoering heeft genomen, zou er mogelijk weer geleend kunnen worden voor het doen van overheidsinvesteringen. Concreet betekent dit dat de eerste drie aanbevelingen moeten zijn opgevolgd."



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## Elucidation

With reference to the reasons stated by the Government of Sint Maarten to justify the decrease of the current legal pension premium contribution of 25% to 22%, the SER has the following concerns:

1. The SER is of the opinion that safeguarding pensionable earnings of all APS stakeholders should be a priority for the Government of Sint Maarten. APS as well as an (independent) actuary have stated that the legal premium of 25% is no longer sufficient to cover all costs associated with the pension scheme. The Fund has not been afforded the opportunity to build up financial reserves, meaning that at some point the Fund will no longer be able to meet its financial obligations. Therefore, the retroactive collection of the 3% difference between the provisional pension premium (22%) and the legal pension premium (25%) should be paid in order to provide participants with the certainty of a pension income upon retirement that is inflation- proof. The SER understands the difficult financial position of Sint Maarten, but is of the opinion that the financial solidity of the Fund should not be further exacerbated.
2. Indeed, Cft advised to adjust the 2015 Sint Maarten budget or to retroactively adjust the National Ordinance Pensioenlandsverordening Overheidsdienaren<sup>5</sup>. The instruction of the Kingdom Council Ministers<sup>6</sup> however, obliged the Government of Sint Maarten to:
  - a. settle its payment arrears; compensate for the deficits accumulated in 2010-2014;
  - b. amend the 2015 budget to include all costs related to the public pension scheme and the healthcare system;
  - c. implement the measures related to the retirement and healthcare system that have already been agreed upon in the Council of Ministers;
  - d. to reform both the pension and the healthcare system.

Thus, the instruction of the Kingdom Council Ministers did not give the Government of Sint Maarten an option whether to amend the National Ordinance Pensioenlandsverordening Overheidsdienaren, or to settle its payment arrears. The instruction clearly stated that the 2015 budget should include all costs related to the public pension scheme. Only when the first three

<sup>5</sup> See [http://www.cft.cw/jdownloads/Adviezen/Sint%20Maarten/cft\\_201500206\\_-\\_reactie\\_op\\_de\\_concept\\_1e\\_begrotingswijziging\\_2015\\_sint\\_maarten.pdf](http://www.cft.cw/jdownloads/Adviezen/Sint%20Maarten/cft_201500206_-_reactie_op_de_concept_1e_begrotingswijziging_2015_sint_maarten.pdf) page 4 under point 2.

<sup>6</sup> See Besluit van 8 september 2015, houdende het besluit van de Raad van ministers van het Koninkrijk betreffende het geven van een aanwijzing aan het bestuur van Sint Maarten tot het oplossen van de ontstane betalingsachterstanden, de compensatie van gerealiseerde tekorten op de gewone dienst in periode 2010–2014, het in de begroting 2015 en de meerjarenbegroting volledig opnemen van de zorg- en pensioenuitgaven en het nemen van maatregelen ten behoeve van een houdbaar pensioen- en sociale zekerheidsstelsel om nieuwe betalingsachterstanden te voorkomen at <https://zoek.officiëlebekendmakingen.nl/stb-2015-343.html>



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instructions have been executed, Sint Maarten may again be eligible to obtain financial loans for capital investments<sup>7</sup>.

3. Decreasing the legal 25% to 22% was not instructed by the Kingdom Council Ministers. APS has repeatedly made clear that even the legal premium at 25% of the salary sum is insufficient to cover all of the expenses associated with the pension plan. By continuing receiving 22% in pension premiums instead of 25%, the Fund is constantly being short- changed which will lead to further insolvency.
4. Even though the Government of Sint Maarten and APS did not consider the higher pension premium contribution of 25% in their respective budgets between 2010- 2015, the Government of Sint Maarten still has to comply with the law and pay out the additional 3% retroactively to October 10th, 2010 and for this reason the Government cannot dismiss APS' claim.

In fact, it was agreed with the then Minister of Finance, Mr. Hassink, who also approved APS' 2015 budget<sup>8</sup> that the additional 3% that will be collected retroactively to October 10<sup>th</sup>, 2010 will be reflected in the 2016 budget of APS<sup>9</sup>.

5. The explanatory memorandum erroneously quotes "Aanwijzing" 135. This should be "aanwijzing" 125 paragraph 1. The Government justifies the "special reason" [bijzondere reden] by explaining that Government will be confronted with extra costs which may have severe financial consequences. However, the SER understands that the board of the APS has brought this matter to the attention of the Minister of Finance on numerous occasions. It has even been consulted with and agreed by the Minister of Finance to postpone implementation of the additional 3% collection<sup>10</sup>.

Page 4, the first and second paragraph under 1.5.3. PREMIUM of APS' Budget dated March 24<sup>th</sup>, 2015:

*" Result of this review is that there is no (longer a) legal basis for the collection of the lower pension premium contribution. For this reason, APS will collect retroactively to October 10<sup>th</sup>, 2010, the legal percentage of 25% of the gross salary sum effective January 1, 2016.*

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<sup>7</sup> See Staatsblad 2015 no. 343

<sup>8</sup> See AB 2010, GT no. 65 National Ordinance APS [Landsverordening Algemeen Pensioenfonds], article 17.

<sup>9</sup> See letter from the then Minister of Finance Mr. Hassink in a letter to APS dated August 8th, 2015 with reference 1003/15.

<sup>10</sup> See APS Budget of March 24<sup>th</sup>, 2015 which was approved by the then Minister of Finance Mr. Hassink in a letter to APS dated August 8<sup>th</sup>, 2015 with reference 1003/15.



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*It is agreed with the Minister of Finance that this will be reflected in the 2016 budget. The difference in the pension contribution premium between October 10<sup>th</sup>, 2010 and December 31<sup>st</sup>, 2015 (approx. 21,5 MM) will be included in the 2016 budget of the Country of Sint Maarten."*

In other words, these extra costs are no surprise to the Government. The Government was aware of this and should have made arrangements for the 25% premium in its budget. Since 2014 letters were sent to all stakeholders informing them of the additional 3% to be collected. Follow-up action by APS has also taken place since then.

In addition, various letters were sent to the Government of Sint Maarten to get its finances in order and have a balanced budget<sup>11</sup>.

6. Aanwijzing 125 (not 135) paragraph 3 explains that the proposed changes do not bring any negative impact [belastende wettelijke regeling] with it, since the civil servants will not be charged more. The SER notices that there is indeed a negative impact when lowering the legal pension premium from 25% to 22%. In 2014 it was confirmed by APS<sup>12</sup> that the Fund is under substantial financial pressure and has reached the point where under unchanged circumstances it cannot meet its financial obligations. This means that it is not certain whether all participants (current and future beneficiaries) are able to receive a pension that they are entitled to.

Furthermore, lowering the pension premium from 25% to 22% retroactively only worsens the financial problems. APS informed the SER that the pensions that have been awarded since October 10<sup>th</sup>, 2010 are based on the 25% pension premium and not on the 22%. If APS is forced to adapt future pension benefits, this will constitute an infringement of legal certainty [aantasting rechtszekerheid], because APS did not receive the additional 3%.

7. Actuarial analyses done on the Fund's participants' base have made clear that the cost covering premium is 31.3%. In other words, 31.3% of the total salary sum is needed in order to cover all expenses related to the pension plan. Furthermore, the solvency of the Fund is subpar with a coverage ratio of 97.6%, which is below the minimum coverage ratio of 100% and also below the target ratio of 105%. All issues are of concern as they indicate that the Fund is not in a financially sound position. Lowering the pension premium percentage to accommodate the country's financial situation can only be considered when the financial position of the Fund is sound.

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<sup>11</sup> Letters dated February 16<sup>th</sup>, 2015; March 16<sup>th</sup>, 2015; June 4<sup>th</sup>, 2015; June 25<sup>th</sup>, 2015; July 10<sup>th</sup>, 2015 from Cft and from Dutch Minister of Home Affairs and Kingdom Relations Ronald Plasterk to the Government of Sint Maarten and or Parliament of Sint Maarten.

<sup>12</sup> See 2014 Financial Statements APS page 10.



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In closing, the SER would like to quote the actuary's declaration in APS' 2014 Financial Statements:

*“ De ontvangen premie is opnieuw niet voldoende om de benodigde inkoop te financieren. Daarnaast is er geen premie beschikbaar voor het vormen van de solvabiliteitsbuffer.*

*De vermogenspositie van het Algemeen Pensioenfonds Sint Maarten is naar mijn mening slecht, vanwege de onderdekking, daarbij mede in acht genomen het grote aandeel vorderingen in het pensioenvermogen en de ontoereikende premie”.*

*Purmerend, 8 december 2015  
Drs. R.T. Schilder AAG.*