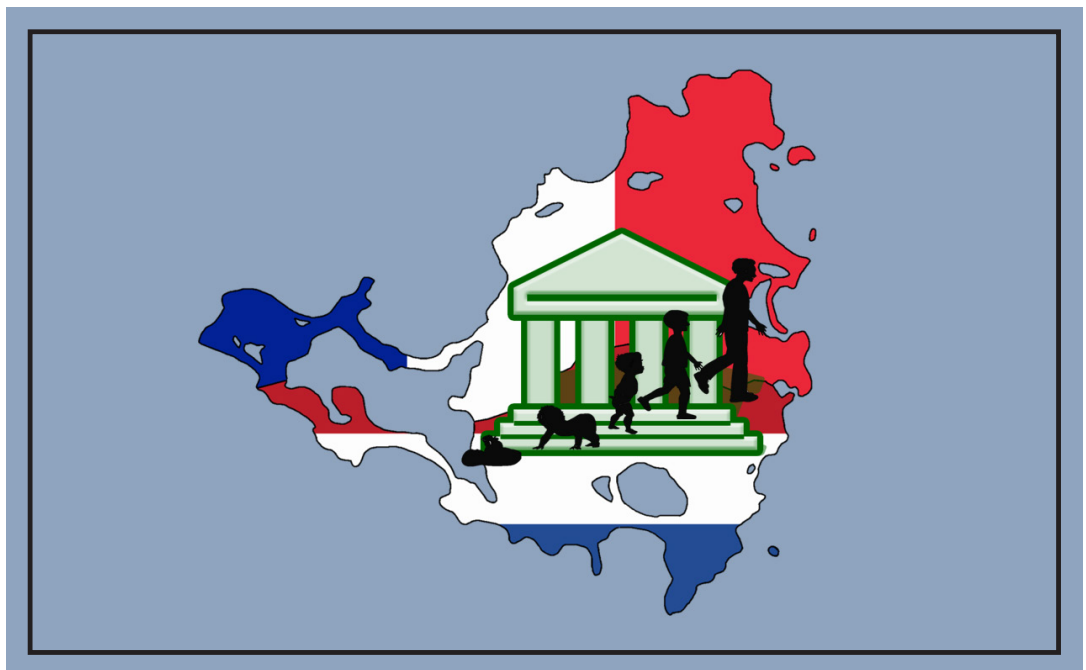


Sociaal Economische Raad
Social Economic Council

Letter of Advice

Draft National Ordinance containing measures regulating the establishment and acquisition of shares of the Development Bank of Sint Maarten” [Concept landsverordening houdende regels met betrekking tot het oprichten van en het verwerven van aandelen in de ontwikkelingsbank van Sint Maarten]

SER /16/SA/060
August 3rd, 2016



Information

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The SER was established by law (“Landsverordening Sociaal-Economische Raad GT no.19”) in 2010.

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For more information, please visit our website www.sersxm.org

Colophon

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To the Prime Minister of Sint Maarten
the Honorable Mr. William Marlin;
the Minister of Finance, R. Gibson Sr.
Clem Labega Square

Philipsburg, August 3rd, 2016

Letter Of Advice

Our reference: SER /16/SA/060

Re: Letter of advice “Draft National Ordinance containing measures regulating the establishment and acquisition of shares of the Development Bank of Sint Maarten” [Concept landsverordening houdende regels met betrekking tot het oprichten van en het verwerven van aandelen in de ontwikkelingsbank van Sint Maarten]

Honorable Prime Minister Marlin,

In reply to your request for advice which was signed on June 22nd, 2016 and received by our Council on June 27th, 2016, concerning the “Draft National Ordinance regulating the establishment and acquisition of shares of the Development Bank of Sint Maarten” (in Dutch: Concept landsverordening houdende regels met betrekking tot het oprichten van en het verwerven van aandelen in de ontwikkelingsbank van Sint Maarten) the Social Economic Council would like to inform you as follows:

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

Background:

In general, Development Banks are often established to either promote underdeveloped sectors of the economy, long- term financing of projects or to fill the gap of underfinanced projects by private (commercial) creditors among others. Development Banks can also act as a catalyst in promoting and supporting Small Medium Enterprises¹.

1 United Nations -DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS
Financing for Development Office. Back ground paper: ‘Rethinking the Role of National Development Banks’ 2005.

The Government indicates in the draft ordinance that ‘in order to promote projects that can offer a clear contribution to a sustainable social-economic development of Sint Maarten, it is desirable to establish a Development Bank’.

The Government provided the following reasons to establish a Development Bank:

1. Presently, there is no development bank on Sint Maarten that encourages development;
2. With the establishment of the development bank, investments would be possible by issuing loans or by joining companies in projects that contribute to a sustainable social-economic development;
3. Next to financial support, the development bank will grant technical and administrative support as well as financial advice. The Bank will also provide recommendations on social-economic areas for the benefit of development policy of Sint Maarten;
4. With the establishment of the development bank, a financial instrument is created and expertise gained in the benefit of the sustainable social-economic development of Sint Maarten.

Summary

The SER is of opinion that the draft ordinance Development Bank of Sint Maarten is lacking vital information. As a result, the SER highlights the core principles and characteristics that must be considered when establishing a Development Bank. None of said principles and characteristics for the establishment of the DBS has been addressed and included in the draft ordinance.

Therefore, the SER will like to emphasize that the current draft ordinance Development Bank of Sint Maarten does not provide decision makers with sufficient information to be able to make a well-reasoned decision on the establishment of the Development Bank of Sint Maarten. Additionally, the SER reiterates that it is currently conducting research based on the solicited advice which was received from parliament on the viability of a development Bank for Sint Maarten. The SER kindly refers to the elucidation for the full argument.

Advice:

Given the information that was provided, the SER in its meeting of Thursday, July 28th, 2016, **unanimously** advises the Government as follows:

1. The draft ordinance is not mature enough and lacks vital information for a well-reasoned and balanced decision and;

2. To revise the draft ordinance in accordance with the concerns mentioned by the SER under the elucidation of this advice;
3. To await the elaborate SER advice to parliament on a possible future Development Bank for Sint Maarten. This advice will provide Government, specifically the Minister of Finance, with the needed details with respect to the establishment of a Development Bank.

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

Elucidation

The SER recognizes that presently there is no Development Bank established on Sint Maarten as well as the need to promote sustainable development. However, currently, the SER is also compiling an advice solicited by (the President of Parliament on behalf of) Member of Parliament of the National Alliance (NA) faction Christophe Emmanuel *‘to conduct a study on the social and economic impact of establishing of a development bank on Sint Maarten’*.

Based on the above, this advice will focus primarily on the draft ordinance. With reference to the reasons stated in the draft ordinance by the Government to justify the establishment of the Development Bank of Sint Maarten, the SER has the following concerns:

Core principles and characteristics

When establishing a Development Bank there are some core principles and characteristics of a Development Bank that must be considered such as the role, the function, regulation and supervision, ownership and funding. For further elucidation we refer you to the underlying paragraphs.

Role

The role of the Development Bank of Sint Maarten (hereafter: DBS) in promoting social-economic development must be clearly defined. For example, will the DBS focus on providing funds, on planned development, the development of underdeveloped sectors or employment generation or other economic activities? A strategic choice must be made what the role of DBS will be in the future. The definition of this role should not only be defined in the Articles of Association afterwards, but should be reflected in the draft ordinance, in order for Parliament to be able to make an informed decision.

Function

With respect to the function of the DBS, Government should indicate whether the DBS will cater to more universal projects or will the focus be solely on specific sectors of the economy, or on infrastructure. Additionally, will the DBS support long-term sustainable projects or mainly focus on increasing the number of (young) entrepreneurs on the island? The findings of various studies² have shown that several sectors of the economy are underdeveloped. One main underdeveloped sector remains

2 Economic Diversification Study- Final Report. SWQ Economic Development Consultants 2006; SME Policy Framework for St. Maarten May, 2014
Department of Economic Affairs, Transportation & Telecommunication

the Small and Medium Enterprises (SME's). A strategic choice must be made with regard to the function of the Development Bank and this choice must be reflected in the ordinance as well.

Regulation and supervision

The governance structure of the Development Bank must also be given serious thought, such as the issue on who will be the regulator and supervisor of the Development Bank. Presently, banks are subjected to the regulations and supervision of the Central Bank of Curaçao and Sint Maarten³. The draft ordinance does not make any mention of how the DBS will be regulated and supervised. Regulation and supervision of the DBS must be included in the ordinance.

Corporation type [rechtspersoonlijkheid] and ownership

While the draft ordinance provides the legal basis for the Minister of Finance to establish the bank, it fails to mention the type of Corporation [rechtspersoonlijkheid] it will constitute. It must be clearly indicated whether the DBS will be established as an (public) independent body (zelfstandig bestuursorgaan) or another Corporation type?

Additionally, with respect to ownership, no reference is made whether the DBS will be fully government-owned or shall have both local and international owners. The SER is of the opinion that next to Corporation type, ownership of the DBS must be addressed as this will have an impact of the acquisition of shares as well as funding.

Funding

How the Development Bank aims to acquire funds is of importance. Will funding originate from local or international financial (credit) institutions? This choice must be reflected in the ordinance and included in the definition list.

Credit institution

Assuming that the Development Bank of Sint Maarten will, among others, function as a credit institution, this must also be reflected in the draft ordinance.

Articles of Association

The Articles of Association must reflect the role, goals and mission of DBS including the loan policy. For example, a choice must be made on whether the DBS will be

3 National Ordinance on the Supervision of Banking and Credit Institutions (P.B 1994 no. 4)



competitive with commercial banks or not. (see consultation process below). The SER points out that Book 2 of the Civil Code⁴ stipulates what must be included in the statutes.

Financial paragraph

The SER is of the opinion that the financial paragraph in the Explanatory Memorandum is inadequately substantiated and not concrete enough. There is no financial overview of anticipated loans, income or investment amounts mentioned. This overview is intertwined with the decision of the role of DBS (see above characteristics under Role). Similarly, a financial overview of all operational costs of DBS is lacking. These costs should be specified and expressed in a percentage of the banks' total budget.

Consultation process

The SER regrets that the Government failed in its due diligence with regard to the consultation process. Key stakeholders approached by the SER have not been consulted⁵ and included when drafting the ordinance Development Bank of Sint Maarten. The basis for the consultation process begins with the start note [startnotitie] in identifying key stakeholders for their input with respect to the gaps in the financial structure of Sint Maarten. The consultation process will aid in defining what role and how the DBS may be able to fill financial gaps or support in underdeveloped sectors, next to other socio-economic challenges.

Conclusion


In conclusion, none of the aforementioned principles and characteristics of establishing the DBS has been addressed and included in the draft ordinance.

Therefore, the SER will like to emphasize that it is not in agreement with the current draft ordinance (in Dutch: negatief advies). The current draft ordinance Development Bank of Sint Maarten does not provide decision makers with sufficient information to be able to make a well-reasoned and balanced decision on the Development Bank of Sint Maarten.

Additionally, the SER reiterates that it is currently conducting research based on the solicited advice on the viability of a development Bank of Sint Maarten.

4 Book 2- Civil Code (Title 5)

5 Information from the Bankers Association



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