Labor Market Sint Maarten

Analysis, recommendations and implementation

Final report

October 2022

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Ministerie van Binnenlandse Zaken en Koninkrijksrelaties



Ministerie van Sociale Zaken en Werkgelegenheid

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Management summary

Bottlenecks and inefficiencies in the labor market of Sint Maarten do not stem as much from legislation and regulations, but are mainly related to lack of compliance, insufficient control and enforcement, and inefficient government procedures. The proposed package of reforms builds upon the SER (2014) and the Tripartite consensus document (2016). Implementation requires external support and a governance structure that makes the implementation process, roles and responsibilities clear to all parties involved. Labor market reforms should be implemented in coherence with reforms in the social security system and with other themes of the country package. Involvement of social partners in the process is key.



Temporary contracts and foreign workers accommodate the volatile and seasonal economy of Sint Maarten

Sint Maarten has an open economy that relies heavily on tourism. With the highest trade-to-GDP ratio in the Caribbean region, the economy is vulnerable to external shocks while tourism is strongly seasonal. Temporary contracts and the inflow of (temporary) foreign labor accommodate the volatile and seasonal economy of Sint Maarten. Despite recent external shocks (hurricanes Irma and Maria, and Covid-19), the participation rate has remained roughly stable over the last years and the unemployment rate is in line with regional peers.

On the supply side of the labor market, labor mobility is low among highly educated employees as they tend to stay in jobs once they have a permanent contract. This is caused by a lack of job opportunities for highly educated workers, the drastic financial consequences of losing a job (as there is no unemployment benefit scheme). In addition, changing jobs implies that the accumulation of Cessantia is reduced, which hinders labor mobility. At the lower end of the labor market, labor mobility is higher as temporary (immigrant) workers switch jobs a lot due to the short duration of their contracts.

On the demand side of the labor market, there is a shortage from lower to higher skilled workers. As such, immigrant workers are hired to fill vacancies. Temporary contracts are increasingly common in Sint Maarten and are mostly used for lower-skilled seasonal work. Employment and contracting agencies are widely used for hiring temporary workers. Still, most employment relationships in Sint Maarten are permanent.

Sint Maarten has a large informal economy, the exact size of it is unknown. The informal economy consists of people having second jobs 'off the radar' and illegal (foreign) labor. Countering the informal economy and illegal employment of (foreign) workers is addressed in themes E.2 and E.3 of the country package of Sint Maarten.

Bottlenecks and inefficiencies in the labor market do not stem as much from legislation and regulations, but are mainly related to lack of compliance, failing control and enforcement and inefficient government procedures

A major bottleneck to the efficient functioning of the labor market is lack of compliance to labor legislation by some employers. Examples include the abuse of temporary contracts, hiring undocumented workers, long working days for employees without compensation, and payment below the minimum wage. This all is possible due to a lack of control and enforcement by the government. In addition, not all employees are aware of their protective rights. In particular lower-skilled, foreign workers have little knowledge about laws and regulations. Existing legislation on temporary agency work mainly deals with permits for private employment agencies but provides insufficient protection for employees against proliferation and exploitation. Measures to increase enforcement, to increase knowledge about rights and obligations among employers and employees, and to increase protection of temporary agency workers, are part of the proposed package of reforms.

Other major bottlenecks for the functioning of the labor market stem from inefficient procedures for dismissal and for hiring foreign workers. Dismissal procedures are considered non-transparent as it is not always clear what documentation is required in those procedures. For hiring foreign workers, the procedure is considered bureaucratic and lengthy. The sticky procedure contributes to the employment of illegal immigrants. Recommendations to improve the process for dismissal and to accelerate the permit procedure related to hiring foreign workers tie in with initiatives undertaken by the respective organizations and are part of the proposed package of reforms.

Facilitating the inflow of (skilled) foreign labor reduces incentives for employers to invest in the local labor force of Sint Maarten in terms of schooling and training. Therefore, accelerating the process of attracting foreign workers should be accompanies by policy aimed at investing in the local labor force (e.g. expanding vocational education facilities).

Some essential building blocks for effective labor market policy are missing or need to be strengthened

There is no unemployment benefit scheme providing insurance against loss of income in the event of unemployment. Losing a job has major financial and social consequences for households, making employees reluctant to take risks in changing jobs, leading to lower labor mobility and to suboptimal match between labor supply and demand.

In addition, dialogue between employer associations, labor unions and the government does not take place on a structural basis. Consequently, employer associations and labor unions have insufficiently been involved in policy making. Strengthening of the position of the social partners is required for successful implementation of labor market reforms and for effective future policymaking.

The current level of the minimum wage insufficiently protects earnings at the lower end of the labor market. The minimum wage has not been indexed since 2016 (except for a 1 cent increase in 2020) and is the lowest of the Caribbean part of the Dutch Kingdom, while the costs of living is the highest.*

The impact of the public employment office, responsible for supporting and connecting employers and job seekers, needs to be increased. The National Employment Service Center (NESC) has done efforts to this end, however insufficient capacity within the NESC hinders the organization from improving its effectiveness.

The Council of Education and Labor, responsible for the coordination between vocational education and the labor market, is inactive. Bridging the gap between the skills of the local labor force and the demand for labor requires an active and effective Council of Education and Labor.

The proposed package of reforms builds upon the SER (2014) and the Tripartite consensus document (2016)

The existing regulatory framework in general provides sufficient room for dynamism in the labor market. The proposed reforms do not imply rigorous changes in existing labor market legislation and regulations, and take the SER (2014) and the Tripartite consensus document (2016) as a starting point.

The proposed package of reforms is a structured plan to modernize and improve the functioning of the labor market. The recommendations are divided into three phases: 1. Preconditions; 2. labor market reforms; and 3. role of the government.

Phase 1 - Preconditions

1. Strengthen the role of social partners and (re)start and structurally embed the social dialogue bi-partite and tri-partite. The social partners need to increase the frequency and consistency with which consultations are had. This will allow them to bring forward a joint position towards Government. This improves the balance of power, with more efficient decision-making and more impact. The government can help professionalizing the labor unions and to put the employers' organizations and the labor unions in a position in which they can be more effective, by facilitating cooperation and knowledge exchange with Dutch and/or other international counterparts.

Being a precondition for successful implementation, the strengthening of the role of the social partners should be started with prior to the start of the implementation process of integrated reforms of the labor market and the social security system.

^{*} Since the first publication of this report, the minimum wage has been increased from ANG 8.84 to ANG 9.95 (AB 2023, no. 35).

2. Strengthen the enforcement function and executive organizations. Strengthening the enforcement function is part of theme B of the country package and it is recommended to apply an integrated, coherent approach to enforcement functions in different areas (labor, tax, healthcare, immigration, etc.). Aligning procedures, methodologies, risk analysis, intelligence/data, etc. in different areas of enforcement, may lead to significant improvements in effectiveness and efficiency.

Strengthening the enforcement function should be started with from the outset of the implementation process and executed as part of theme B (cost and effectiveness of the public sector) of the country package.

Phase 2 – Labor market reforms

3. Design a simple, yet effective unemployment benefit scheme and further investigate its feasibility as part of the E.4 research project. Research into a possible unemployment benefit scheme for Sint Maarten is part of E.4 (social security) of the country package. In this labor market assessment, it is recommended to design a simple, yet effective unemployment benefit scheme and further investigate its feasibility as part of the E.4 research project. An unemployment benefit scheme will be essential for efficient functioning of the labor market of Sint Maarten.

Preparations (legislation, execution) for an unemployment benefit scheme can commence in the medium term, introduction is recommended when effective enforcement is in place, the public employment office is strengthened, and policy aimed at investing in the local labor force is developed.

4. Accelerate dismissal procedures and have further legal research carried out into the (adjustment of) various elements of the dismissal legislation. The existing dismissal law of Sint Maarten may require adjustments to improve dismissal procedures. While in general no substantial bottlenecks have been observed in the dismissal legislation, there are several discussions at play, concerning the complexity and duration of dismissal procedures. At the same time, amending dismissal law requires utmost caution of balancing legal positions of employees and employers. It is therefore recommended to have a legal expert specialized in dismissal law to assess the existing legislation and procedure with the central question of whether the dismissal procedure can be improved such that the legal positions of employers and employees remain balanced. Specific research questions that need to be addressed in the assessment, are defined in this report.

Given the additional research that needs to take place, conclusions and recommendations on this matter are expected in the medium term.

5. Make explicit and increase legal certainty for employers and accelerate the process of attracting foreign workers. A permit should be granted by default on a permit request that was never responded to or responded to after the legally allowed time-frame. This would be a major step forward towards strengthening the position of the permit applicant and strengthening the accountability of the issuing authority. With regard to the work permit, it is recommended to attach a fictitious positive decision to the six-week term for decision-making. With regard to the residence permit, it is recommended to reduce the reasonable four-month term as this ties in with the objective and procedural improvements of the immigration office to improve and shorten the procedure. Legally defined or reasonable terms refer to situations where the applicant complies with the procedure and the required documentation.

It is recommended to implement these amendments in the medium term in conjunction with comparable legal and procedural amendments in the permit system as part of reforming the business climate (E.6).

6. Develop legislation and set up enforcement aimed at the temporary agency workers. Adjusting regulations regarding temporary agency work is complex. A framework will have to be developed based on the specific situation in Sint Maarten, which should not be too complex and yet effective. Simple adjustments concern sanctions (when are administrative fines imposed, when are licenses revoked). Investing in enforcing the temporary agency rules is a priority.

The development of a regulatory framework for temporary agency workers is projected to take place in the medium term. Taking the consultation and legislative process into consideration, implementation is projected for the long term.

7. Develop policy aimed at investing in the working population and the quality of work. Invest in the local labor force by expanding and improving vocational education programs. This contributes to job opportunities for the young and to combating youth unemployment and brain drain. In addition, introduce a light, but legally required, risk inventory and evaluation (RI&E) tailored for Sint Maarten, which describes the risks to the health and safety of employees. This should be accompanied by government information and (a light form) of enforcement. This improves awareness among employers and employees of the importance of proper working conditions. Finally, invest in the Council of Education and Labor that is currently not active.

This recommendation should be implemented in conjunction with the plan of action that will be developed following the screening of the educational system as part of theme G.1 of the country package.

Phase 3 – Role government

- 8. Bring the minimum wage in line with the costs of living such that earnings at the lower end of the labor market are protected. It is recommended to bring the minimum wage to a level that it would have reached if the minimum wage was indexed (yearly) over the period 2017-2022. Based on the CPI, this would increase the hourly minimum wage from ANG 8.84 to ANG 9.62.* Considering the urgency of this matter, as well as the recent advice by the SER, it is recommended to implement the increase of this minimum wage in the short term. For the medium and long term, it is important to bring the minimum wage in line with the costs of living and to apply annual indexation.
- 9. Strengthen the public employment office. The public employment office should be strengthened regarding gathering and providing information (especially to job seekers), matching supply and demand on the labor market, and training of job seekers. It is recommended to recruit an expert change manager who can manage the strengthening of the public employment office.

The public employment office, as part of the government organization of Sint Maarten, carries out an essential public task. The strengthening of the organization should be part of theme B of the country packaged (costs and effective-ness of the public sector) and is projected for the medium term.

10. Make labor market legislation transparent and increase knowledge about rights and obligations among employers and employees. Improve the provision of information to labor unions and employers' organizations as well as to individual companies and employees. In addition, have an easily accessible help desk/information center in place for employees (physically and online) at the Chamber of Labor Unions (WIFOL) and for employers at the Chamber of Commerce for all labor related issues. Implementation is foreseen for the long run.

^{*} The recommended increase has already been implemented (AB 2022, no. 57; AB 2023, no. 35).

11. Gather systematic information to monitor the labor market and to assess and evaluate policy and implementation. Start an internal project aimed at systematically collecting information and data about the labor market and ensuring that this information is used to monitor the labor market and evaluate policy. While essential for developing and monitoring labor market policy, this recommendation should be implemented in conjunction with the broader project of improving statistical information for policy development as part of theme A.2 of the country package. A set of focal points for this data project is defined in this report.

Table 1 Recommendations for reforms

Phase	Recommendation	Planning*	Relation with other themes	
Phase 1: Preconditions	1. Strengthen the role of social partners	Short term	E.4	
	2. Strengthen the enforcement Short term (realiza- function tion long term)		B.4, B.6, B.11	
Phase 2: Labor market	3. Design an unemployment benefit benefit scheme	Medium term (intro- duction long term)	E.4	
reforms	4. Accelerate dismissal proce- dures	Medium term	E.4, E.6	
	5. Accelerate the process of attracting foreign workers	Medium term	E.4, E.6	
	6. Develop legislation for tem- porary agency workers	Medium term (im- plementation long term)	-	
	 Develop policy aimed at in- vesting in the working population 	Medium term (im- plementation long term)	G.1	
Phase 3: Role govern- ment	8. Bring the minimum wage in line with the cost of liv- ing	Short, medium and long term	-	

^{*} Short term = 0-1 year; medium term = 1-2 years; long term = 2-5 years.

Phase	Recommendation	Planning*	Relation with other themes
	9. Strengthen the public em- ployment office	Medium term	B.4, B.6
	10. Increase knowledge about rights and obligations	Long term	-
	 Set up system of struc- tured information to moni- tor labor market 	Short term (realiza- tion long term)	A.2

Implementation requires external support and a governance structure that makes the implementation process, roles and responsibilities clear to all parties involved There are several risks that could hinder successful implementation of reforms. These include resistance from within the government, resistance from social partners, the burden of the implementation process on Sint Maarten's civil service and insufficient external capacity, knowledge and resources. These risks largely fall within the sphere of influence of Sint Maarten and the Netherlands and can be managed with clear agreements at the political level in Sint Maarten and between Sint Maarten and the Netherlands.

Prior to the start of the implementation process, a six-months preparation period applies in which the process of communication, education and consultation takes place and agreements are made between Sint Maarten and the Netherlands for the required support. The proposed timelines (short, medium and long term) reflect achievable lead times for the three phases of reform, but their final adoption must take into account the available capacity within Sint Maarten's civil service and the implementation of other parts of the country package. For the implementation of the three phases, external support is required for: expanding capacity; developing legislation; education and training; writing procedures; communication and introducing ICT solutions.

It is essential that a supportive governance structure is established that makes it clear to all organizations and persons involved in the implementation process how responsibilities for implementation are organized and who is responsible and accountable for what. The following conditions need to be in place for a successful implementation.

First, the Prime Minister of Sint Maarten and the State Secretary for the Interior and Kingdom Relations of the Netherlands should remain informed about the progress of the reforms and the fulfilment of agreements made in the country package and the implementation agendas, so that they can be accountable to the parliaments of Sint Maarten and the Netherlands.

Second, the Minister of VSA should be mandated by the Council of Ministers of Sint Maarten as the responsible minister for the implementation of the program. This implies that, when it concerns the implementation of labor market reforms, all departments, agencies and officials involved in the implementation process work on behalf of the Minister of VSA.

Third, broad consensus should be sought with the employers' organizations and the labor unions in advance of the start of the implementation program. During the implementation, regular tripartite consultations take place to monitor and reach consensus on various decisions that will have to be made during the implementation process.

Fourth, a steering committee should be established to control the program that falls under the commissioning Minister of VSA. The steering committee consists of the sg's and directors of departments and agencies involved in the implementation. It is recommended to have the steering committee led by an independent chair and supported by an external project manager. Fifth, implementation is organized in project teams. Project teams are led by (top) officials or internal experts of the departments and agencies and staffed by expert employees of departments/services involved (including lawyers).

Last, it is essential that TWO has access to adequate and up-to-date progress information, as TWO's role is to facilitate implementation by making capacity and expertise available, monitoring progress and providing information and advice to the State Council of Ministers (Rijksministerraad) and it serves as an escalation platform in the event of problems encountered in implementation.

Labor market reforms in coherence with reforms in social security and other areas, and with involvement of social partners

For seeking and maintaining consensus, for decision-making and for successful implementation, labor market reforms (E.1) should be aligned with reforms of the social security system (E.4) and with reforms in other areas - tackling the informal economy (E.2) and combating illegal labor (E.3) – such that a coherent and balanced package of reforms is designed. In addition, involvement of the social partners – employers' organizations and unions – is key for successful implementation.

Functioning

Existing regulatory framework provides room for dynamics in the labor market



Open economy dependent on trade



Tourism is strongly seasonal



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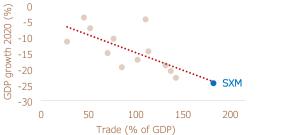
Vulnerable to external shocks



High use of temporary contracts

High number of foreign workers

Correlation opennes and vulnerability



Labor market Sint Maarten

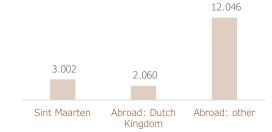
Bottlenecks

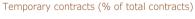
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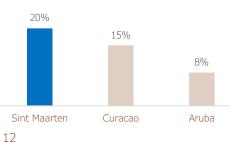
Bottlenecks are mostly related to compliance, control and enforcement and government procedures

- Some employers incompliant to legislation
- Little protection of temporary agency workers
- Insufficient enforcement by the government
- \mathbf{X} Hiring foreign workers is lengthy and complex
 - Intransparent dismissal procedure
 - Lack of knowledge about labor legislation

Place of birth employed workers, 2011







Building blocks

Policy lacks building blocks that contribute to security and a better functioning of the labor market



No unemployment insurance

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No structural tripartite discussion



Minimum wage not in line with cost of living



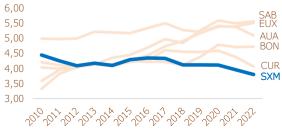
Insufficient capacity at public employment office



Council of Education and Labor inactive

Underinvestment into the local labor force

Minimum wages in the Dutch Caribbean since 2010, in 2010 prices (USD)



Economisch Bureau Amsterdam



	Labor mar	ket reforms			
No of e	rigorous changes need to be made in terms Recommendations fo existing labor market legislation				
	Phase 1 P	Preconditions			
	Strengthen the enforcement function and executive organizations	Strengthen the role of social partners and embed social dialogue			
	 Phase 2 Labor market reforms Design an unemployment benefit scheme Accelerate dismissal procedures Accelerate the process of hiring foreign workers Develop legislation for temporary agency workers Develop policy to invest in the working population 	Phase 3 Role government Image: Strengthen the public employment office Image: Strengthen the public employment office Image: Image: Strengthen the public employment office Image: Strengthen then then then then then then then			
	Implementatio	on and governance			
Mandate Minister of VSA as responsible minister of the implementation of the program Seek consensus with social partners prior to implementation Establish a steering committee to control the program Assure involvement of social partners in implementation in project teams					
13					

1. Introduction

This report contains a description of the functioning of the labor market (chapter 2), a summary of the relevant legislation and labor market policies (chapter 3), an assessment of bottlenecks and inefficiencies in the functioning of the labor market (chapter 4), recommendations for improving the labor market (chapter 5) and an implementation plan (chapter 6).



Background

Sint Maarten and the Netherlands agreed upon the country package ('landspakket') Sint Maarten. Part of the economic reforms concerns labor market policy (measure E.1 in the country package). It has been agreed that an integrated analysis of the current labor market policy and the relevant legislation and regulations will be carried out. Based on the analysis, recommendations for improving the functioning of the labor market would be developed as well as an approach for how these should be implemented.

Insights into the functioning of the labor market of Sint Maarten already exist, as well as proposals to improve the labor market. The Social Economic Council (SER) (Flexicurity for Sint Maarten, 2014) and the Tripartite Committee (Consensus document, 2016) have proposed reforms toward more flexibility and security in the labor market. However, implementation of these reforms has hardly gotten off the ground. The findings, recommendations and proposals in earlier research and policy documents, are the starting point for this study.

Research questions

The overarching research question as formulated in the country package is:

How can the labor market of Sint Maarten be reformed and modernized to achieve a balance in resilience for economic shocks (such as downturns) while also improving labor market dynamics?

Sub research questions addressed are:

- 1. Which existing policies, laws and regulations involved in the current labor market should and can be adapted/modernized, in order to address the current challenges effectively?
- 2. Which policies and plans are already in development and can be accelerated?

- 3. What are best practices from other countries that have proven to be effective in a context similar to Sint Maarten?
- 4. What are alternatives for dismissal procedures, for example mediation and arbitration and the feasibility of implementing of alternative procedures?
- 5. What policy options are not yet reflected in reports and studies but can improve the current labor market (blind spots)?
- 6. What are gaps in resources, exhibited over time, related to (scenarios of) categories (immediate, midterm and long-term projects)?
- 7. What are effective labor market reform measures that can be implemented bearing in mind the current and future labor market dynamics?
- 8. What overlap exists with other policy recommendations (E4, E6, G1) from the country package/what is needed from these other policy recommendations (E4, E6, G1) to make the modernization of labor market policies a success?
- 9. How do several policy options to improve the labor market, interact with potential (future) improvements in social security?

Scope of this draft final report

This draft final report includes:

- A quantitative and qualitative description of the labor market (chapter 2)
- An overview of the current legal framework and labor market policy (chapter 3)
- An assessment of bottlenecks and inefficiencies in the labor market (chapter 4)
- Recommendations for improving the functioning of the labor market (chapter 5)
- An implementation plan and governance structure (chapter 6)

Definite finalization of this report will take place when the results and recommendations of the social security research project (E.4) are available and tested with stakeholders. In addition, an analysis of SZV data will be added to this report.

Approach

For this research, relevant and readily available documents and data have been studied and analyzed. Subsequently, interviews have been conducted with government departments, employers' organizations, labor unions, the educational sector, as well as interviews with key persons on the island.

Relation with other areas

The labor market is not only about employment and businesses employing workers. There are important links, relations and overlaps with other policy areas that are addressed in the country package. The most important are:

- A.2: Strengthening use of statistical information and data for policymaking
- B.4, B.6 and B.11: Costs and effectiveness of the public sector
- E2 and E3: Informal Economy and illegal labor and illegal employment of foreign laborers
- E4: Social security
- E5: Pension
- E6: Investment climate and entrepreneurship
- G1: Education

It is strongly recommended that the separate studies and recommendations that come forward out of the different studies, are aligned in setting policy and priorities for implementation. A close alignment between E.1 and E.4 is already agreed upon by the supervisory committee.

Structure of this report

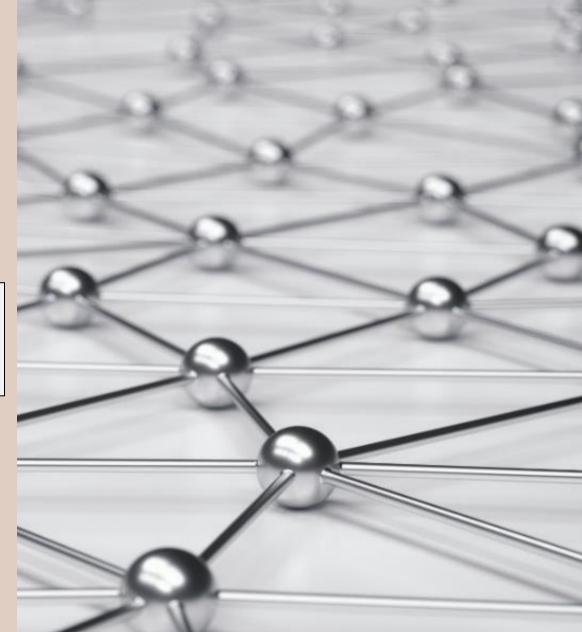
Chapter 2 provides a factual description of the functioning of the labor market. Chapter 2 describes the regulatory framework. Chapter 4 identifies the main bottlenecks and inefficiencies in the functioning of the labor market. Chapter 5 presents recommendations for reforms. Chapter 6 contains recommendations for implementation. Annex 1 presents the answers to the abovementioned research questions that result from the assessment described in this report. Annex 2 includes additional technical information on the proposed increase in the minimum wage.

Finally

The research team is grateful for the assistance and guidance provided by the supervisory committee that was established for this assessment and for the fruitful discussions with stakeholders in Sint Maarten.

Sint Maarten is a single-pillar economy, small with a high degree of openness and highly vulnerable to external shocks. The labor market in Sint Maarten is characterized by a large presence of foreign-born individuals, and a relatively large share of temporary contracts. This makes the labor market of Sint Maarten dynamic. There are significant differences in employment between the highly educated minority on the one hand and the majority with a lower educational level on the other. Sint Maarten also deals with significant brain drain.

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Approach

The description of the labor market is based on public data sources, data provided by the government of Sint Maarten and interviews with experts and stakeholders

This chapter provides a description of the labor market based on data from different sources and interviews with experts and stakeholders. By interviewing many different stakeholders, the research team has done an effort to get a balanced and accurate view on the functioning of the labor market. An important note is that due to a lack of data on the Sint Maarten labor market, most of the information that is shared with the research team during the interviews is qualitative and could not always be verified.

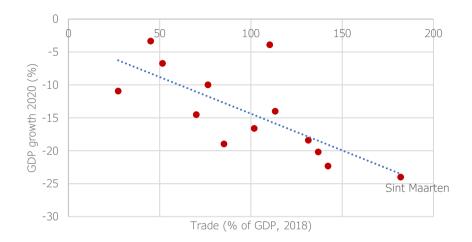
Public sources include STAT and the IMF; the Ministry of Public Health, Social Development & Labor (VSA) provided relevant data as well.

Economic context to the labor market

The economy of Sint Maarten heavily relies on tourism and is vulnerable to external shocks

Sint Maarten has an open economy that is largely dependent on tourism. In fact, Sint Maarten is the one country with the highest trade-to-GDP ratio of the entire Caribbean region. Meanwhile, it is the country that experienced the largest impact of the Covid-19 pandemic in terms of reduced real GDP (Figure 1). This exposes how the country's open nature implies vulnerability to external shocks.

Compared to other Caribbean small states, tourism receipts account for a major share of exports (Figure 2). Although the tourism receipts to exports ratio strongly decreased after hurricanes Irma and Maria, tourism remained responsible for most of the exports. Figure 1 Correlation between openness (measured by relative trade volume) and impact of the Covid-19 shock. Source: Amsterdam Bureau for Economics (2022) based on IMF and World Bank.



Tourism in Sint Maarten is highly seasonal. The high season starts in December and ends in May/June. During the other months, tourism numbers are considerably lower and can reduce to 40 percent compared to the high season during the peak of the hurricane season (August, September, October).

The biggest economic sectors in Sint Maarten are wholesale & retail, real estate, transportation & storage and construction (see Figure 3). Almost all sectors in Sint Maarten, including the ones mentioned, are related to tourism.

Figure 2 Tourism receipts^{*}, % of total exports - before and after Irma. Source: Amsterdam Bureau for Economics (2022) based on World Bank

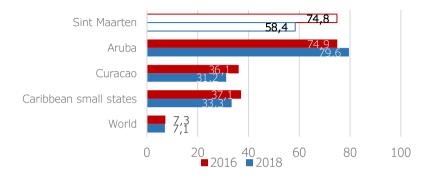
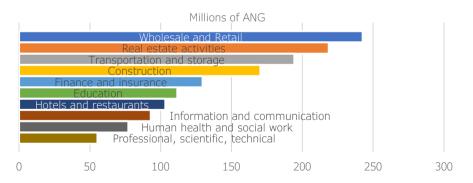


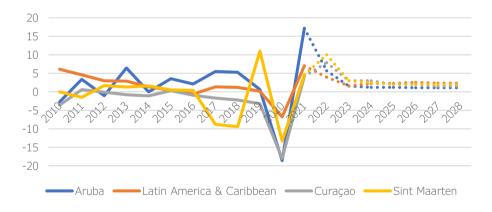
Figure 3 Value added of the 10 largest sectors in Sint Maarten (2018). Source: Amsterdam Bureau for Economics (2022) based on STAT



Although GDP is volatile, unemployment is comparable to regional peers

Figure 4 demonstrates the volatility of Sint Maarten's economy. The economy is visibly hit hard by the hurricanes Irma and Maria and by the Covid-19 pandemic. The economy has shrunk in the years 2017 and 2018 before recovering again in 2019. In 2020, Sint Maarten's GDP fell by about 13 percent. However, a recovery took place in 2021 and is estimated to have continued in 2022.⁺ Where the economic shock in 2020 was more severe in Sint Maarten than in the region as a whole, its estimated GDP growth rate in 2022 was higher as well.

Figure 4 Real GDP growth of the CAS islands and the regional average. Source: Amsterdam Bureau for Economics (2022, updated 2023) based on $\rm IMF^1$



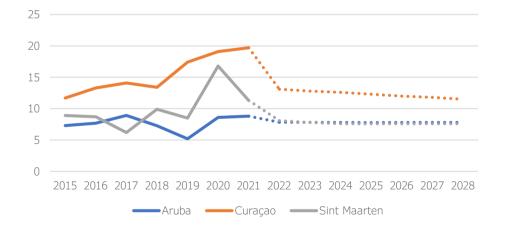
* The value of tourism receipts is equal to all income generated from international inbound visitors.

⁺ The real GDP growth for 2022 is still referred to as estimated growth.

Covid-19 has also had adverse effects on the labor market, reducing employment by approximately 1,500 people in 2020.² The effect that it had on the unemployment rate on Sint Maarten was more severe than the effects experienced on Aruba and Curaçao (Figure 5).

Unemployment on Sint Maarten has likely peaked in 2020 at 16.8 percent of the labor force, which is much higher than the level of 2019 at 8.5 percent (Figure 5). In 2021, unemployment fell to an estimated 11 percent. This rate is estimated to have reached the pre-COVID level in 2022.

Figure 5 Unemployment rate in Aruba, Curacao and Sint Maarten. Source: Amsterdam Bureau for Economics (2022, updated 2023) based on IMF^1



The employment elasticity helps linking economic growth to employment

The responsiveness of employment to GDP is captured by the employment elasticity. The employment elasticity in Sint Maarten is estimated at 0.88, which implies that a 1 percent increase in GDP is associated with a 0.88 percent increase in employment.³ This means that employment growth and GDP growth are connected less than one-to-one. As a result, the estimate implies that an economic growth is explained by changes in employment and productivity growth as well.

The elasticity allows for an exploratory calculation of the future employment, based on the elasticity coefficient, IMF projections of economic growth and a press release by STAT of employment in 2022 (Table 2). In that calculation, around 24,000 Sint Maarteners are employed by 2028.

Table 2 Exploratory projections of employment based on projections of GDP growth. Source: Amsterdam Bureau for Economics (2022, updated 2023) based on STAT⁴ and IMF¹

	2022	2023	2024	2025	2026	2027	2028
Projected GDP growth		3%	2.5%	2%	2%	2%	2%
Employment	21586	22156	22643	23042	23447	23860	24280

19 percent of households live on less than ANG 1,000 per month

Although Sint Maarten is classified as a high-income country, it still faces a lot of poverty. Figure 6 displays the income distribution of households in Sint Maarten. In 2018, 5 percent of households had no income, and 14 percent of households had an income of a thousand guilders or less.

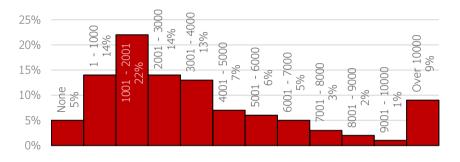
For comparison, the minimum hourly wage is equal to ANG 8.84 and has not been indexed since 2016, except for a 1 cent increase in 2020^{5} .* This equals a monthly income of ANG 1,531, or ANG 1,529 before the indexation in 2020^{6} . The SER has used an indicative poverty line of 80 percent of the minimum wage,⁷ which would

^{*} Since the first publication of this report, the minimum wage has been increased from ANG 8.84 to ANG 9.95 (AB 2023, no. 35).

result in a household poverty line of ANG 1,223 for 2018. This means that at least 19 percent of households is below the poverty line.

The basic amount of financial assistance was ANG 983 in 2018.7

Figure 6 Household income distribution in 2018 (ANG). Source: Amsterdam Bureau for Economics (2022) based on $STAT^{12}$



The minimum wage on Sint Maarten had become the lowest of all Caribbean islands of the Kingdom, while costs of living are amongst the highest

In 2010, the minimum wage on Sint Maarten was the highest of what was then the Netherlands Antilles (Figure 7). In the decade thereafter, the minimum wage on Sint Maarten was surpassed by those of all other countries and public bodies of the Dutch Caribbean.

The Sint Maarten minimum wage has not been indexed between 2016 and 2022. When the minimum wage is corrected for inflation, it becomes clear that on Sint Maarten it is lower in real terms in 2022 than it was in 2010 (Figure 8). This is not the case in other Dutch Caribbean countries or public entities.*

Figure 7 Minimum wages in the Dutch Caribbean since 2008. Source: Amsterdam Bureau for Economics (2022, updated 2023) based on Ecorys⁸ and various other sources for later years⁹

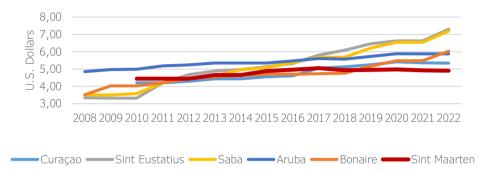
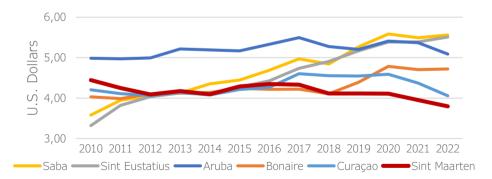


Figure 8 Minimum wages in the Dutch Caribbean since 2010, in 2010 prices. Source: Amsterdam Bureau for Economics (2022, updated 2023) based on Ecorys⁸ and various other sources for later years⁹



^{*} Since the first publication of this report, the minimum wage has been increased from ANG 8.84 to ANG 9.95 (AB 2023, no. 35).

Figure 9 Comparison of the minimum wage (2022) and the price level (2017). Source: Amsterdam Bureau for Economics (2022, updated 2023) based on national government websites, exchangerates.org.uk, and World $Bank^{10}$



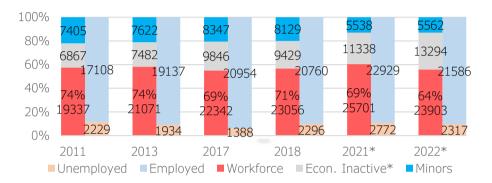
Figure 9 compares the 2022 minimum wage to the latest estimate of the cost of living. The cost of living is proxied by the price level in international terms (the global average price level is 100). Important to note is that the price level is not a reflection of the living wage. For example, the minimum wage in Aruba is above the price level in Figure 9. However, the minimum wage in Aruba is considered to be below the living wage.

Supply of Labor - Population

As of 2022, Sint Maarten had a population of about 43,000 of which 24,000 were in the workforce

STAT estimated the population in 2022 at 42,759 people and the workforce at 23,904 people of which 21,586 people were employed. The size of the population and the workforce is however highly uncertain. For example, the population estimate based on the Civil Registry Department (61,750 as of 2019) is much higher.¹¹

Figure 10 The composition of the population in terms of economic status (left bars) and composition of the workforce (right bars)¹². The percentages in the workforce labels denote the annual participation rates. Source: Amsterdam Bureau for Economics (2022, updated 2023) based on STAT



*The estimates for 2021 and 2022 are based on a press release by STAT. Contrary to previous years, the sizes of the workforce and the economically inactive population in the press release do not add up to the population of over 15. Therefore, the graph defines the economically inactive population as the difference between the population of over 15 and the workforce. These numbers deviate from the STAT publication.

Sint Maarten's participation rate has remained stable, and unemployment fell prior to the hurricanes

The labor force participation rate of Sint Maarten has remained roughly stable in the 2010s (Figure 10). Although the workforce increased in nominal terms, the economically inactive population increased as well until 2017. For that reason, the participation rate has fluctuated between 69 and 74 percent in the 2010s as a percentage of the population over 15 years old, or between 55 and 59 percent of the total population.

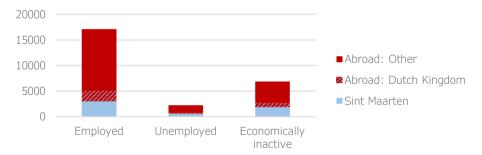
Before 2018, Sint Maarten experienced a significant decline in its unemployment rate, from 11.5 percent of the workforce in 2011 to 6.2 percent in (early) 2017. After

the hurricanes Irma and Maria, unemployment rose to 9.9 percent. The unemployment rate was 10.8 percent in 2021 and declined to 9.7 percent in 2022.

The labor market is dominated by residents born outside Sint Maarten

The majority of the residents of Sint Maarten and of the employed population are foreign-born (Figure 11). According to the 2011 Census, 20,753 of the 26,204 Sint Maarteners (80 percent) of 15 years and above are not born in Sint Maarten. Of these 20,753 foreign-born residents, 2,953 come from other parts of the Dutch Kingdom. Of the 17,108 employed residents in 2011, 14,106 (82 percent) were born outside Sint Maarten.

Figure 11 Economic position and place of birth of the population (2011). Source: Amsterdam Bureau for Economics (2022) based on $STAT^{13}$



Supply of Labor - Employees

Labor mobility is low at the high end of the labor market and high at the low end of the labor market

Employees in Sint Maarten do not tend to switch jobs easily and stay in jobs once they have a permanent contract. This is caused by a lack of job opportunities for (highly) educated people in Sint Maarten. Secondly, the Cessantia system provides an incentive to employees to hold on to their job. In addition, changing jobs implies that the accumulation of Cessantia is reduced, which hinders labor mobility. Temporary (immigrant) workers, due to the short duration of their contracts, tend to switch jobs a lot. This is especially the case for workers employed at private employment agencies. As such, foreign supply of labor serves as an important means for the economy of Sint Maarten to accommodate to economic shocks.

Labor mobility in the public sector

A difference should be made between labor mobility in the private and the public sector. Labor mobility for lower-skilled workers in the public sector seems to be much lower compared to the private sector, due to more job security and better primary and secondary working conditions in the public sector. For higher positions, there is an outflow from the government to government owned companies due to better working conditions. The 12.5% wage cost reduction that has been implemented for civil servants and in education reinforced the incentives for higher skilled civil servants to find work elsewhere (private sector or abroad).

In between 13 and 17 percent of employed workers is member of a union

It is estimated that approximately 3,000 to 4,000 employees in Sint Maarten are members of a labor union. This is equal to between 13 and 17 percent of the employed workers^{*}. This percentage is slightly lower than that of the Netherlands (2019: 18 percent¹⁴); no data are available for Curacao and Aruba. Larger organizations (government owned companies, hotel industry) are unionized, smaller companies (SME's) tend not be unionized. Immigrant workers, workers with a temporary contract and contract workers are underrepresented in the unions.

CLA's are not customized to specific sectors and to developments in the labor market Collective Labor Agreements (CLA's) are often copied from other sectors, although the dynamics in that sector might be completely different. When CLA's expire

^{*} Based on the labor force projections of STAT for 2021.

(mostly after five years), newly negotiated CLA's are often similar to the old one, without taking into account the developments in the labor market that might be a reason for adjustments in the newly negotiated CLA.

Supply of Labor - Unemployed

Most unemployed prefer permanent contracts and full-time jobs

Almost three quarters of the unemployed desire a permanent contract (Figure 12). As little as 7 percent of them prefers a temporary labor relation. 20 percent does not have a preference for either type of contract.

As to the hours worked, only a minor fraction of the unemployed prefers a part-time contract (Figure 13) while in reality, 19 percent of the employed have a part-time contract. However, that percentage is not higher than the proportion of the unemployed that either desires a part-time contract or has no preference.

Figure 12 Desired type of employment by unemployed (2018). Source: Amsterdam Bureau for Economics (2022) based on $STAT^{12}$

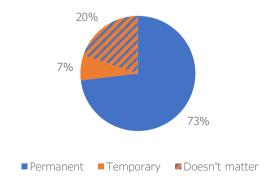
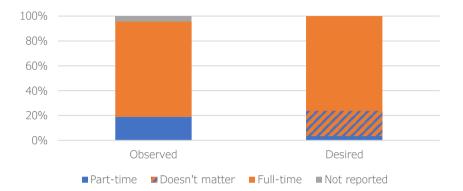


Figure 13 Observed and desired hours worked (2018). Source: Amsterdam Bureau for Economics (2022) based on STAT.¹² For comparison, see CBS Netherlands.¹⁵



Supply of Labor - Students

Most students go abroad for higher education causing significant brain drain

The Netherlands, the United States and Canada are the most popular countries for students from Sint Maarten to study. This causes brain drain as a significant number of students stay abroad as wages are higher, cost of living is lower and labor market opportunities are better. The limited number of jobs for highly educated people, particularly for those that are specialized in industries that are not present in Sint Maarten, is another important reason for working abroad. The highly educated people that do return to Sint Maarten, mostly come back for personal reasons.

Sint Maarten offers vocational education

Sint Maarten offers vocational education via the National Institute for Professional Advancement (NIPA). The majority of students at NIPA come from high school (VSBO), but there are also adult students that are trained by their employer. Most study programs are SBO level 1 and 2. The demand for programs that NIPA offers,

fluctuates with the demand on the labor market, but also with the subsidy obtained from Government and NRPB/SMTA.

Supply of Labor - Immigrants

The labor market is dominated by immigrant workers

All private sector industries in Sint Maarten are dominated by foreign labor (lowand high-skilled work). Jobs at the government and at government-owned companies are however mostly occupied by people born in Sint Maarten or having the Dutch nationality.

Immigrants residing and working on Sint Maarten can be classified into four categories:

- 1. <u>Dutch passport.</u> Have completed an integration course after 5-7 years on the island and thereby acquired Dutch nationality (until the year 2000 it was easy; nowadays the procedure is more difficult and integration by immigrants is seen as a major obstacle).
- 2. <u>Permanent residence status</u>. After having been a resident of Sint Maarten for five consecutive years (proven by unbroken consecutive residence permits), the immigrant can apply for a permanent residence status. This immigrant can then move freely on the labor market of Sint Maarten.
- 3. <u>Temporary residence status</u>. Through the employer, people can obtain a temporary residence permit on Sint Maarten for a maximum of 3 years. The residence permit can be extended at the employer's request.
- 4. <u>Not registered (undocumented)</u>. This category includes workers with no residence permit and workers whose residence permit has expired.

Approximately 4,400 new residence permits have been issued in 2021. This equals around 10 and 17 percent of respectively the population and the workforce. How many immigrants are in each category is unknown.

It appears that companies led by people outside of Sint Maarten, mostly apply for work permits for workers from their home country (Dutch companies mainly apply for work permits for Dutch people, American for Americans, Chinese for Chinese and Indian for Indians, etc.). The result is an overrepresentation in some sectors of people with the same cultural background, which may create a barrier to labor mobility if one does not belong to a certain population group. This applies mostly for higher-skilled foreign work. Overrepresentation of ethnicities is also skills-related in some sectors (e.g. South Africans in the marine sector) Most low-skilled workers come from within the Caribbean region.

There is a large informal economy in Sint Maarten due to the inflow of illegal immigrants and the large number of people having a second job 'off the radar'

Most undocumented workers are active in construction, hospitality, security and cleaning. Undocumented workers are present in the full width of the labor market (companies, private employment agencies and subcontractors). Most undocumented workers want to get documented. The size of the informal economy is unknown.

Not only undocumented workers contribute to the informal economy. There is also a large number of Sint Maarteners and legal foreigners contributing to the informal economy by means of a second job. Having a second job is common in Sint Maarten and for many people a necessity in order to make ends meet. Popular second jobs that are usually off the radar are catering, tutoring, care and construction & maintenance.

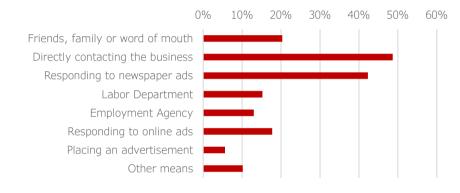
Supply of Labor - Search channels

The most common ways to look for work are to contact a business directly and to respond to newspaper ads

Figure 14 lists ways to look for work by the unemployed and the share of the unemployed that used those ways, in the month preceding their response to the survey. Each unemployed may have used multiple ways. Almost half of the unemployed Sint

Maarteners have directly contacted a business. The second most important channel for job searchers is newspaper ads, followed by word of mouth. Less than 20 percent of the unemployed in 2018 responded to an online ad.

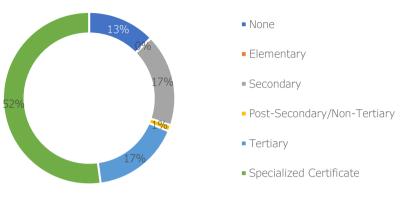
Figure 14 Ways in which unemployed look for work (2018). Source: Amsterdam Bureau for Economics (2022) based on $STAT^{12}$



Demand for Labor - Vacancies

Most vacancies registered at VSA in order to request a work permit, are meant for applicants with specialized certificates

Most vacancies request some specialized certificate according to the Vacancy Registration at the VSA (Figure 15). The other education categories show a different image than the population's education level (Figure 28). For instance, the proportion of vacancies allowing for only elementary-level education or no education is lower than the proportion of Sint Maarteners with that level of education. An important note is that not all vacancies are registered at VSA. The Vacancy Registration therefore does not necessarily provide a representative picture of the vacancies on the labor market of Sint Maarten. Figure 15 Registered vacancies at VSA for work permits by education level (2019-2021). Source: Amsterdam Bureau for Economics (2022) based on Ministry of VSA



Demand for Labor - Types of contracts

Temporary labor contracts are increasingly common in Sint Maarten

Temporary contracts are used for lower-skilled seasonal work in sectors such as tourism, trade, security and cleaning. Most common are the six-month contracts, which more or less corresponds to the duration of the high season on Sint Maarten. Temporary contracts are also common in many other sectors (public sector, financial services, government enterprises, professional-business services) where an employee is given a one-year contract first and then is (or not) offered a permanent contract on the basis of his or her performance.

Employers make use of short-term contracts because:

• Demand for work is seasonal;

- Employers are risk-averse and make use of the legal opportunity to give temporary contract(s) before hiring the employee permanently;
- Employers fear a decrease in working mentality when giving permanent contracts.

Although the majority of employment relationships in Sint Maarten are of a permanent nature, the second-largest group consisting of temporary relations is relatively large compared to other countries in the Dutch Kingdom. On Sint Maarten it comprises 19 percent of the labor relations, as opposed to 15 percent on Curaçao and 8 percent in the Netherlands (Figure 16). Of the three Dutch Caribbean countries, Sint Maarten is the one with the highest share of temporary contracts (Figure 17). The share of self-employed workers is comparable to Curacao. In Aruba, the share of self-employed workers is lower.

The number of temporary and casual labor relations has doubled in Sint Maarten between 2003 and 2018 (Figure 18). Due to a lack of datapoints for the period in between 2011 and 2017, it is unclear when the significant increase in temporary contracts took place, and what the driving factor is. Permanent relations and self-employment have only increased by roughly a quarter. This trend is comparable to that in the Netherlands, for example, although the Netherlands witnessed a simultaneous increase in self-employment (Figure 19).

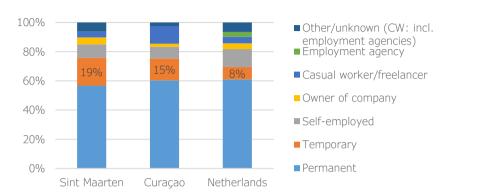
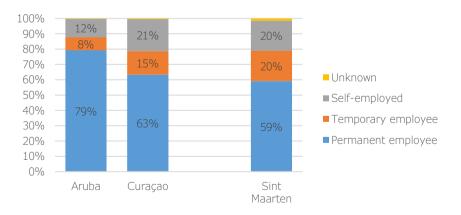


Figure 16 Sizes of types of employment on Sint Maarten and in the Netherlands in 2018. Source: Amsterdam Bureau for Economics (2022) based on STAT, CBS Netherlands and CBS Curacao¹⁶

Figure 17 Shares of types of employment in the Caribbean countries of the Dutch Kingdom (2016-2017). Source: Amsterdam Bureau for Economics (2022) based on CBS Netherlands¹⁷



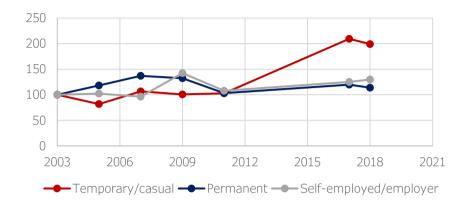
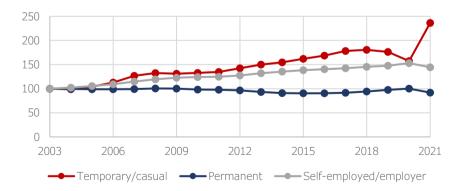


Figure 18 Sint Maarten labor relations over time (base year is 2003). Source: Amsterdam Bureau for Economics (2022, updated 2023) based on $STAT^{18}$

Figure 19 Dutch labor relations over time (base year is 2003). Source: Amsterdam Bureau for Economics (2022, updated 2023) based on CBS Netherlands¹⁶



Employers make frequent use of employment and contracting agencies for hiring temporary workers

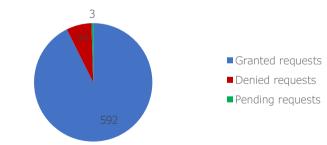
Employment- and contracting agencies are widely used for hiring temporary workers. The larger companies mainly for dealing with peaks, long-term illness or pregnancy. A number of SME's in the hospitality, security, retail and cleaning sectors hire workers through employment- and contracting agencies.

Demand for Labor – Attracting Foreign workers

Most registered permit requests are granted

The Ministry of VSA registered 639 requests for employment permits for foreign workers in 2021, of which 92.6 percent is granted and 6.9 precent is denied (Figure 20). A few applications were still pending at the time these data were retrieved (February 2022). With around one third of the total requests, adult entertainment was the industry that requested most employment permits in 2021.

Figure 20 Employment permit requests by decision (2021). Source: Amsterdam Bureau for Economics (2022) based on Ministry of VSA $\,$



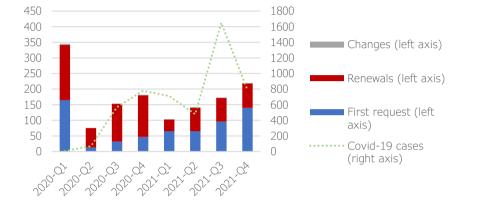


Figure 21 Types of requests per quarter. Source: Amsterdam Bureau for Economics (2022) based on Ministry of VSA and the WHO

The number of requests by type (first request, renewal or change) is displayed in Figure 21. It seems as if under normal circumstances, about half of the requests are first requests and the other half are renewals, but that the Covid-19 pandemic caused a drop in the number and share of first requests. The Covid-19 pandemic is likely to have skewed the data in the figure, so that it is unclear whether the graph shows any seasonal patterns.

Demand for Labor - Dismissals

The number of dismissal requests by employers is low and dismissals are more often granted than denied

The number of dismissal requests that the Ministry of VSA annually receives is in between 20 and 45 (based on the period 2019-2021). This is a relatively low number of dismissal requests.

Figure 22 shows the outcome of annual dismissal cases in 2019 (43 cases), 2020 (39 cases) and 2021 (21 cases). Overall, 39 percent of dismissals are granted, 34 percent are denied, 24 percent are settled with a mutual agreement and the rest were suspended. In 2021, however, far more dismissals were denied in relative terms than in 2019 and 2020, and less were granted. In 2021, the situation was different as companies received government support to save jobs because of the Covid-19 pandemic.

Figure 22 Dismissal cases by outcome. Source: Amsterdam Bureau for Economics (2022) based on Ministry of VSA $\,$

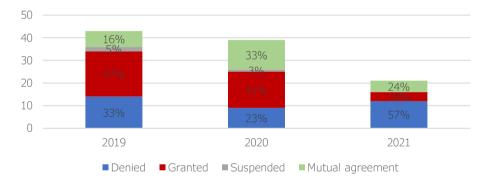


Figure 23 shows the number of incoming court cases at the Joint Court of Justice, related to labor affairs. The annual number of labor related court cases is in between 45 and 121 (based on the period 2018-2022). The number of labor related court cases going into higher appeal fluctuated between 5 and 25 cases in the same period.

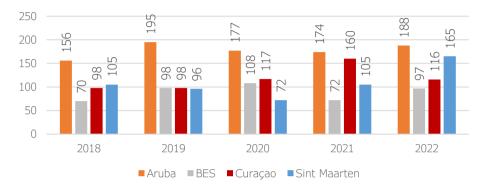
Figure 23 Number of incoming labor related court cases and number of labor related court cases going into higher appeal. Source: Amsterdam Bureau for Economics (2022, updated 2023) based on Joint Court of Justice¹⁹



Labor related court cases going into higher appeal

The average duration (in days) of labor related court cases is displayed in Figure 24. The average duration in Sint Maarten has varied from 72 to 165 days (over the period 2018-2022). The average is typically lower than in Aruba and comparable to Curaçao and the Caribbean Netherlands (BES islands).

Figure 24 Average duration of labor related court cases in days. Source: Amsterdam Bureau for Economics (2022, updated 2023) based on Joint Court of Justice¹⁹



Demand for Labor - Sectors

The wholesale & retail, hospitality and construction industries are the most prominent employers

The largest sector in terms of employment is the wholesale and retail sector, followed by the hospitality and construction sectors (26). The latter are comparable in their numbers of jobs. These three sectors, combined with the government, defense and compulsory social security employ half of the working population in Sint Maarten.

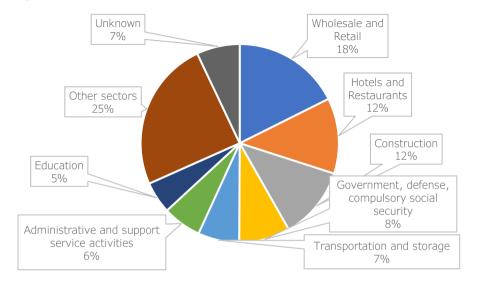
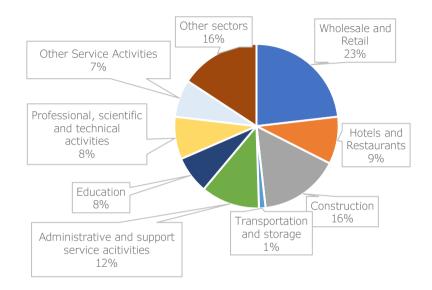


Figure 25 Employment by industry (2018) Source: Amsterdam Bureau for Economics (2022) based on STAT^{12*}

The number of vacancies by industry is in line with the number of employees by industry (Figure 26). Data on vacancies for the public sector are not included in this picture. The wholesale and retail as well as the construction sectors accounted for the largest numbers of vacancies.

Figure 26 Vacancies by industry (2018). Total number: 311. Source: Amsterdam Bureau for Economics (2022) based on $STAT^{20}$



Demand for Labor – Labor Conditions

Schooling of employees is not common in Sint Maarten

Schooling and training of employees is underdeveloped in Sint Maarten. The hotel chains and government companies, often with a CLA, provide some training and

^{*}The most prominent industries among the 'Other sectors' are Human health and social work; Other services; Arts, entertainment and recreation; Professional, scientific and technical activities; and Finance and insurance.

education opportunities for their staff. SME's generally do little or nothing to educate and train their staff.

Schooling and training of employees is affected by Covid-19, that disrupted training and schooling facilities and reduced the available funds for training and schooling at companies and government organizations. The lack of funding to invest in staff can negatively affect employees morale and working mentality.

The better the quality of work, the easier it is for employers to attract and retain staff. This refers to the terms of employment (money and time), labor conditions (safety, healthy working and well-being), the job content and labor relations (the relationship between the employer and the employees). Investments in the work itself are important, but so are investments in the competencies (knowledge and skills) of the employees.

Most registered complaints concern the Labor Regulation or Dismissal Law

The Ministry of VSA provided data on the number of registered complaints from 2019 to 2021. These are displayed in 28. 88 percent of complaints either concerned the Labor Regulation (*Arbeidsregeling*) (60 percent) or the dismissal law (28 percent). The labor regulation entails working hours, overtime and labor conducted by young workers, among other things. Another 5 and 4 percent of complaints concerned the minimum wage and the severance regulation, respectively.

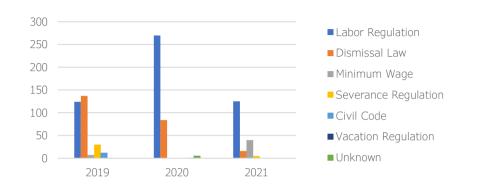
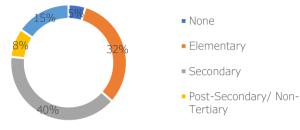


Figure 27 Complaints registered by VSA, by category. Source: Amsterdam Bureau for Economics (2022) based on Ministry of VSA.

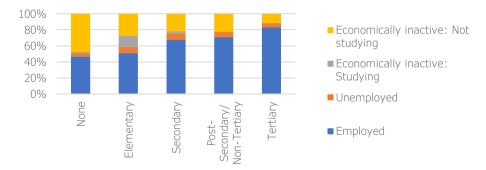
(Mis)match Between Supply and Demand

Employment and economic activity rate are both strongly related to education level One out of four Sint Maarteners has received post-secondary or tertiary education (Figure 28). The economic position of the population over 15 years is different per level of education (Figure 29). The employment rate is consistently higher, and the economically inactive proportion of the population is lower per additional level of education. A significant share of residents with only elementary education is still studying.

Figure 28 Highest level of education of Sint Maarteners (2018). Source: Amsterdam Bureau for Economics (2022) based on $STAT^{12}$

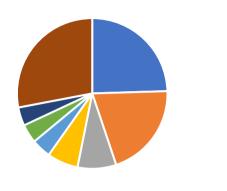






The absence of work in the desired industry, low season and the lack of a permit account for most unemployment spells

There are two main reasons for not finding work (Figure 30). These are the absence of work in the desired industry of the unemployed person, and low season. These two reasons account for almost half of the unemployment spells. The third and fourth most significant reasons are the lack of a permit and insufficient education.



• No work in desired industry

- Slow season
- No permit
- Insufficient education
- Want permanent work
- Age
- Insufficient experience
- Other reasons

Unemployment spells of more than two years are relatively scarce

Figure 31 shows the duration of unemployment spells on Sint Maarten and in the Netherlands. Although spells of less than a year are less frequent on Sint Maarten than in the Netherlands, relatively few unemployment spells in 2018 had been lasting more than two years.

Figure 30 Reasons for not having found a job (2018). Source: Amsterdam Bureau for Economics (2022)

Youth unemployment decreased after hurricane Irma

Unemployment for 15-24 years old decreased from 23.8 percent in 2017 to 17.9 percent in 2018. An explanation for this decline is that, due to economic downturn caused by hurricane Irma, families were forced to find work in order to make a living. This is reflected in the increased participation rate of 15-24 years old from 32 percent in 2017 to 39 percent in 2018. The youth unemployment in Sint Maarten is slightly higher than in Aruba (16.0 percent, 2019)²¹ and lower than Curacao (29.3 percent, 2018).²²

Economisch Bureau Amsterdam

based on STAT12

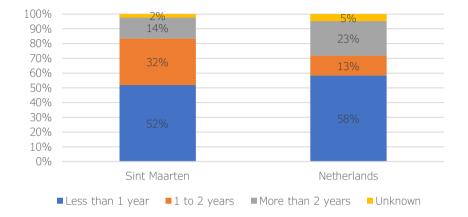


Figure 31 Duration of unemployment spells on Sint Maarten and in the Netherlands (2017). Source: Amsterdam Bureau for Economics (2022) based on STAT and CBS Netherlands²³

Notes

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Legal framework: overview of main regulations

Several legislations are relevant to understand the functioning of the labor market. These legislations regulate dismissal, temporary labor, private employment agencies, foreign labor, minimum wage, labor conditions, labor disputes and financial assistance.



This chapter contains an overview of the most important legislation that has been implemented to regulate the labor market. This includes legislation on the dismissal of employees, temporary and seasonal work, private employment agencies, foreign labor, minimum wage, financial assistance, labor conditions and labor disputes.

General framework

National Ordinance on Employment Contracts (in Dutch: Landsverordening arbeidsovereenkomst)

On October 1, 2022, the National Ordinance on Employment Contracts entered into force. The Ordinance replaces and recodifies the employment contract law included in the Civil Code (i.e. Book 7A). The changes are largely technical in nature. The issues of holidays, leave, and a review of the dismissal law have not been included in the revision. However, a number of material changes have been included, such as: regulation of the fixed-term employment contract (article 614a), pregnancy and childbirth (article 629a), section 4 on equal treatment (articles 646 through 653) and section 8 on employee rights in the event of a transfer of an undertaking (article 662 through 666).

The new Ordinance also integrates the regulation of the employment contract into the system of the new Civil Code. With a view to the principle of concordance and the practical advantages of equality, and with a view to consulting case law and literature, the Dutch classification of the employment contract title of the Civil Code as well as numbering has been followed. This system of Title 7.10 of the Dutch Civil Code, incidentally, represents a considerable improvement to the current structure in Book 7A of the Sint Maarten Civil Code.

Dismissal of employees

Involuntary dismissal of employees requires permission by the Ministry of VSA

Dismissal law is regulated in the Civil Code of Sint Maarten and in the National Ordinance on the Termination of Employment Contracts (*Landsverordening bee-indiging arbeidsovereenkomst*).

The right of dismissal has a (semi) dualistic character. On the one hand, according to the National Ordinance on the Termination of Employment Contracts, employers require prior permission from the Secretary General of the Ministry of VSA. While on the other hand, the Civil Code is based on the main rule that (subject to a few prohibitions on dismissal) both the employer and the employee can terminate the employment contract at any time. To do so, there are certain rules that must be observed, however, even in the event those rules are violated, it does not necessarily mean that the employment contract is still in force (i.e., that the dismissal does not hold up). The employment contract can, however, still be considered not to have ended in the event that the employee timely invokes the nullity of the termination due to lack of permission pursuant to the National Ordinance on the Termination of Employment Contracts.

The National Ordinance on termination of employment contracts only applies to the employment contract as referred to in Article 7A:1613a of the Civil Code. However, article 2 of the national ordinance excludes a number of employment contracts from the scheme. It is important to know that the Extraordinary Decree on Labor Relations 1945 ("BBA") applicable in the Netherlands until 2015 has served as a model for the

 Table 3 Applicability of voluntary dismissal, forced dismissal and dismissal on request

Voluntary dismissal based on Book 7A of the Civil Code	Forced dismissal based on Book 7A of the Civil Code	On request from the employer at the Ministry of VSA (Landsverordening beëindiging arbeidsovereenkomsten)
• During the legal trial period of two (2) months (see 7a: Art. 1615n CC)	• For urgent reasons (see 7A: Art. 1615o and 1615p CC)	Business or economic prob- lems (cuts)
 Upon termination of a temporary employment contract In mutual consultation and in agreement between employer and employee Upon the commencement of a resolutive condition agreed upon by the employer and the employee. 	 In case of bankruptcy As a result of a judg- ment of the Joint Court of Justice 	 Disrupted relationship be- tween employer and em- ployee Moderate to poor perfor- mance or production by the employee

national ordinance on the termination of employment contracts. Many of the principles contained in this legislation are therefore anchored and find their roots in Dutch (historical) practices. The national ordinance does not apply to the employment contract of the following categories of employees:

- 1. Employees of a public-law body (also persons who have been employed by the government on the basis of an employment contract under civil law);
- 2. Teaching and teaching staff working in educational establishments under the management of a natural or legal person (in view of the freedom of

education enshrined in the constitution for the Kingdom of the Netherlands, the legislator of the BBA wished to not touch upon the educational system with this exception);

- 3. Persons who hold a spiritual office (the Supreme Court assumes that the motive for including this exception was to exclude government interference in connection with freedom of religion);
- 4. Employees who exclusively or mainly perform domestic or personal services in the household of private persons;
- 5. Directors of a company or a target fund.

There are exceptions to the dismissal ban. If no notice is required for the termination of the employment contract by the employer and he does not have to observe a notice period, the prohibition of dismissal without prior permission does not apply. The employer therefore does not require permission for:

- 1. dismissal for an urgent reason;
- 2. dismissal by mutual consent;
- 3. dismissal during the probationary period;
- 4. termination of the employment contract for a definite period: if the parties have agreed that termination must be given, a dismissal permit is also not necessary, provided that the termination takes place on the end date stated in the agreement. Permission is required for early termination;
- 5. termination of the employment contract due to the commencement of a resolutive condition agreed by the parties;
- 6. dissolution of the agreement by the court for serious reasons or non-performance.

In 2016 a national decree containing the procedure for the termination of employment contracts entered into effect. While the national ordinance dictates that the permission of the Secretary-General is required, the national decree outlines the procedure and institutes a Dismissal Advisory Committee. This Committee advises the Secretary-General on whether permission should be granted for the dismissal. The Secretary-General decides on a request for permission after advice from the Committee has been received.

Termination through the Court intervention

During the term of the employment contract, both the employer and employee may request the Court of First Instance to dissolve the employment contract. The court may dissolve the employment contract on the grounds of:

- serious reasons (in Dutch: gewichtige redenen) as referred to in_article 7A:1615w of the Civil Code. The law states that serious reasons are: (a) the so-called "delayed urgency"; this refers to circumstances that would have provided an urgent reason if the employment relationship in this respect would have been terminated with immediate effect, and (b) changes in circumstances that are of such a nature that the employment should end immediately or after a short time; or
- 2. a shortcoming in the fulfillment of the employment agreement (article 7A:1615x Civil Code).

It is also possible to request conditional dissolution of the employment contract (in Dutch: voorwaardelijke ontbinding). An employer can do this after he has fired an employee on the spot but is not one hundred percent convinced whether he had an urgent reason to do so. In such a case, he can request the court to dissolve the employment contract "to the extent required by law". In order to limit the employee's wage claim in time, the employer can try in a dissolution procedure to get the court to conditionally dissolve the employment contract. In the proceedings, the employer takes the position that, in his opinion, the employment contract has been legally terminated as a result of the instant dismissal, but that, for the sake of certainty - in case the court in the proceedings initiated by the employee decides otherwise. - requests dissolution of the employment contract.

Cessantia provides a limited, one-off compensation in case of end of contract

Employees in Sint Maarten are entitled to a Cessantia benefit from the employer, provided that dismissal is not due to the employee's own fault. This means that the employee is entitled to Cessantia upon forced dismissal, upon expiration of a contract by operation of law (expiration of a fixed-term contract and upon reaching the agreed retirement date) and upon termination of employment by mutual consent. The position of employees with an employment contract without an agreed retirement date is unclear: the question is what rights these employees have when they themselves decide to stop working after reaching the AOV age. However, scholarly legal literature indicates that there is a right to Cessantia even in case of voluntary departure (see for example Dekker, F.M. (2010), *Ontslagrecht in het Koninkrijk der Nederlanden*).

Pursuant to the Cessantia Ordinance, the amount of Cessantia is calculated as follows:

- For the 1st to the 10th year of service: 1 week's salary per year of service;
- For the 11th to 20th year of service: 1 ¼ week's salary per year of service;
- For each year of service after the 20th year of service: 2 week's salary per year of service over 20 years.

There is a Cessantia fund at SZV that pays out in the event of bankruptcy and in the event of suspension of payment.

For employees who become entitled to a pension or general old-age pension after termination of their employment contract, they will only be entitled to a Cessantia if (i) the pension is less than the old-age pension applicable at that time and (ii) if the old-age pension, if deducted from the pension is not less than twice the amount of the old-age pension applicable at that time.

Temporary or seasonal work

The legislation provides flexibility to employers: three temporary contracts within three years. Planned amendment provides less flexibility to employers, increased security to employees

Little has been written in the law about the usage of temporary labor contracts. The only legislation that is in place, concerns the number of temporary labor contracts that can be issued before a contract becomes permanent. Article 1615fa of the Civil Code stipulates that if three temporary labor contracts have been issued within a period of 36 months, in which the period in between the contracts was at most three months, then the fourth labor contract becomes permanent.

The assumption is that Article 1615fa of the Civil Code only applies if several contracts are concluded. This would mean that on Sint Maarten it is possible to conclude a temporary employment contract for longer than 36 months, for example 4 or 5 years. Because this concerns one temporary contract, the chain arrangement plays no role in this. A second contract then automatically becomes a permanent, because the period of 36 months has been exceeded. There is one exception to this, namely Article 1615fa paragraph 3 of the Civil Code. If a temporary employment contract has been entered into for 3 years or longer, it may be continued once for a maximum of 3 months without conversion taking place.

If, for example, an initial temporary employment contract is concluded for 2 years, only a temporary contract for a maximum of 1 year can be provided afterwards in order for the contract not to turn permanent (i.e. the 36 month period is not exceeded). If a 2 year contract is followed by another 2 year contract, the second contract will automatically turn into a permanent contract after 1 year.

Amendment of the Title 7.10 Civil Code - temporary labor contracts

With the introduction of the new Title 7.10 of the Civil code, the number of temporary labor contracts that can be issued before the labor agreement becomes permanent will be reduced from three to two contracts. The period in which the temporary contracts can be issued before the labor agreement becomes permanent is reduced from 36 to 24 months. In the case of a CLA, the period in which a labor agreement becomes permanent can be extended to 48 months, and the number of temporary contracts can be increased from two to four contracts. This amendment is consistent with the recommendations by the Tripartite Committee in the consensus document of 2016.

Private employment agencies

Private employment agencies require a permit to which the government may attach conditions. Employing temporary workers with the same company is limited to 12 months

Unlike in the Netherlands and Aruba, the temporary employment contract (uitzendovereenkomst) is not regulated in the current Civil Code (this will change with the proposed amendment of the Civil code; see textbox). The only statutory regulation in Sint Maarten is the National Ordinance on the Provision of Workers *(landsverordening op het ter beschikking stellen van arbeidskrachten)*. The ordinance aims to protect the interests of the temporary worker by means of a permit system. Private employment agencies need a permit to operate, to which conditions may be attached. The temporary worker may not be employed by the same company for more than 12 months. Violation of the provisions of the national ordinance can lead to the withdrawal of the permit and to criminal prosecution of the private employment agency.

Amendment of the Title 7.10 Civil Code - private employment agencies

The temporary employment contract (uitzendovereenkomst) is currently not regulated in the Civil Code. This is expected to change when the new Title 7.10 of the Civil Code is introduced in the near future. The last section of that title contains special provisions on the temporary employment contract, namely articles 7:690 and 7:691. Article 7:691 paragraph 1 provides that article 7:668a of the Civil Code (currently article 7A:1615fa Civil Code) only applies as soon as the temporary agency worker has performed work for more than 26 weeks. Paragraph 2 of article 7:691 also regulates the so-called temporary employment clause, i.e. the stipulation that the employment contract (between the temporary employment agency and the temporary agency worker) ends by operation of law because the posting of the employee by the temporary employment agency to the hirer ends at the latter's request.

Foreign labor in Sint Maarten

For an employer to employ foreigners, a work permit by the Ministry of VSA is required. No permits are provided for low and unskilled occupations or in case local supply exceeds demand

Foreign labor is regulated in the National Ordinance on the Employment of Foreigners and the Implementation Decree on the Employment of Foreign Nationals (in Dutch: Uitvoeringsbesluit arbeid vreemdelingen).

A working permit and a residence permit are required in order to employ a foreign worker. The process is as follows:

- First the employer has to recruit on the local market and publish the vacancy for 5 weeks.
- If the employer does not find a suitable candidate, and he can demonstrate that he has a suitable foreign candidate (proof of application), the application for the work permit will start. This procedure takes a maximum of 6 weeks (if the files are correct/complete).

With the same proof of application, the employer can request for a residence permit (even before the work permit has been issued). There is a maximum legal term of 4 months for this, however in most cases (especially with larger companies that regularly apply for permits), the residence permit is often arranged within a month.

Work permits are provided for one year, with the possibility to renew the permit for one year at a time. The maximum duration of the permit, including renewals, is three years. The total validity period of up to three years does not apply to foreigners with an educational level that is equal to or higher than tertiary 1 (in Dutch: HBO).

There are several exemptions for foreigners who do not need a work permit to work in Sint Maarten. These exemptions are:

- Gardeners or domestic servants with an employment contract of less than 16 hours per week.
- Directors of a partnership, while being in possession of a related permit within the meaning of the establishment regulations (*vestig-ingsverordening*).
- Foreigners in possession of a permanent residence permit in Sint Maarten.
- Foreigners married to a person with a Dutch passport.
- Foreigners (not born in Sint Maarten) but in possession of a Dutch passport.

The Foreign Nationals Employment Decree contains a list of professions in sectors for which no work permit can be issued. This concerns low and unskilled occupations, and occupations for which supply exceeds demand on the local labor market. Also,

no work permit is granted for people below the age of 25 that have an educational level below tertiary 1 (in Dutch: HBO).^{*}

A decision on the application for a work permit and a residence permit must be made within 6 weeks and 4 months respectively

Article 5, paragraph 8 of the National Ordinance on the Employment of Foreigners (*in Dutch: Landsverordening arbeid vreemdelingen*) states that a decision on an application for a work permit will be made within 6 weeks after receipt. Subsequently, an objection period of 4 weeks applies to work permits on the basis of Article 12 of the LAV. Decision also includes failure to make a decision by the Minister within the period referred to in Article 5, paragraph 8. Any notice of appeal must be submitted within 6 weeks of the date on which the decision was made.

With regard to residence permits, guidelines from the Minister of Justice apply with regard to the national ordinance on admission and deportation (*in Dutch: Landsver-ordening Toelating en Uitzetting*) and the admission decision. With regard to the decision on an application for a residence permit, the following is stated:'The gov-ernment must make a decision within a reasonable period of time on applications that are being processed. The reasonable term is a maximum of 4 months after the date of submission'. Pursuant to Article 3, paragraph 2 of the National Ordinance on Administrative Jurispdiction (*in Dutch: Landsverordening administratieve rechtspraak*) a refusal to make a decision is equated with a decision if the statutory term has expired or if a decision is not issued within a reasonable time.

Pursuant to Article 7 of the National Ordinance on Administrative Jurisdiction, the interested party can appeal against a negative decision to the court within 6 weeks. In addition, pursuant to Article 55, the possibility is provided to of an objection within the same period to the same administrative authority that made the decision.

Minimum wage

The regulated minimum wage in Sint Maarten had not been indexed since 2016 (except for a 1 cent increase in 2020) and is low in comparison to other Caribbean Islands

The National Ordinance on Minimum Wages forms an exception to the general rule that the employee and employer are free to determine the height of the salary. The national ordinance determines which minimum wage the employer must in any case pay to his employee. Pursuant to Article 13, paragraph 1, the minister may decide to index the minimum wage on the basis of the price index of household consumption as determined by Central Bureau for Statistics. This was last done in 2016 on the basis of the price index figure for household consumption for the month of August 2015.[†] As a result, pursuant to Article 1 of the Minimum Hourly Wage Indexation Regulation, the minimum hourly wage in Sint Maarten was set at ANG 8.84 in 2022. This equals a monthly minimum wage of ANG 1,531. As described in chapter 2 of this report, the minimum wage is low in comparison to other Caribbean islands and to the cost of living in Sint Maarten.

Financial assistance (onderstand)

Periodic or one-off financial assistance can be provided to individuals unable to provide for the necessary costs of existence, while being registered as a jobseeker Financial assistance may be provided to households based on the National Ordinance on Financial Assistance and the Financial Implementation Decree. Article 2 paragraph 1 of the National Ordinance on Financial Assistance stipulates that assistance can be provided to a person who meets the following requirements:

a. He/she is in possession of Dutch nationality;

^{*} The legislation states that no work permit is granted for people above the age of 57 either. Based on jurisprudence however, this upper limit age is not enforced.

 $^{^{\}rm t}$ Since the first publication of this report, the minimum wage has been increased from ANG 8.84 to ANG 9.95 (AB 2023, no. 35).

- b. He/she is a resident for at least 3 months, immediately prior to the application; and
- c. He/she is or threatens to be in such circumstances that he/she is unable to provide for the necessary costs of existence.

Notwithstanding Article 2(1)(a), an interested party who does not have Dutch nationality is also eligible for assistance, provided that:

- a. He/she has been admitted to Sint Maarten temporarily or indefinitely;
- b. He/she has been a resident for at least 5 years, immediately prior to the application; and
- c. He/she financial assistance by the person who, in the event of admission to temporary residence on the basis of the National Ordinance, and who has acted as guarantor for the person concerned, cannot reasonably be expected to wait.

Assistance is only granted to an interested party who, in the opinion of the minister, is part of the labor reserve if he is registered as a jobseeker with the Labor Department and is looking for demonstrable work.

Assistance is in cash and can be provided as a periodic or one-off payment and is tailored to the circumstances and possibilities of the stakeholder, as well as to the demonstrated awareness of responsibility for the provision in existence. Assistance as a periodic benefit cannot exceed the minimum wage for employees determined by or pursuant to Article 9 of the National Ordinance on Minimum Wages as referred to in the first sentence of the first paragraph of the aforementioned article. The financial assistance (as a periodic benefit) is therefore capped at the monthly minimum wage (ANG 1,531 in 2022^{*}).

An application for assistance can be rejected in whole or in part only on the following grounds:

- a. The interested party does not meet one or more requirements that apply to him, stated in Article 2 of the National Ordinance;
- b. For the provision of the necessary costs of his living, the interested party can rely on a provision other than assistance under the national ordinance on financial assistance;
- c. The stakeholder has shown insufficient awareness of responsibility for the provision of his living expenses;
- d. The applicant refuses to provide the information deemed necessary for the assessment of the application; or
- e. There are reasonable grounds to believe that the applicant has provided incorrect information.

The Financial Assistance Implementing Decree lays down further rules regarding the amount of the benefits. The basic standard is taken as the basis for calculating the assistance to be provided as a periodic benefit. This is the amount in money that serves as the basis for the calculation of assistance to be provided to an interested party. In current legislation, the basic standard is a percentage of ANG 2 833.40. The breakdown is as follows:

- a. A single person or home sharer: 70 percent of the basic standard
- b. A single-parent family: 80 percent of the basic standard
- c. A family, not being a single-parent family: 90 percent of the basic standard

A percentage is added to the basic standard as a surcharge to the percentages mentioned above. The storage percentage is:

^{*} Since the first publication of this report, the minimum wage has been increased from ANG 8.84 to ANG 9.95 (AB 2023, no. 35).

- a. If the family includes a child: 5 percent
- b. If the family has two children: 10 percent
- c. If there are three or more children in the family: 15 percent

To calculate the financial capacity of the family, the single person or the home sharer, the applicable basic standard is deducted:

- a. The average enjoyed or expected total income per month of the family, the single person or the home sharer;
- b. The assets of the family, the single person or the home sharer, insofar as this exceeds ANG 5 000.

The assistance to be provided over a calendar month as a periodic payment for the provision of basic necessities amounts to one quarter of the carrying capacity calculated in accordance with Article 4 of the implementing decree and is rounded up to whole guilders. The assistance and monthly income cannot exceed the monthly minimum wage.

Chapter 3 of the Implementing Decree lists the maximum amounts for one-off payments.

Example of the calculation of periodic financial assistance

Suppose a single-parent family with two children requests for financial assistance. The monthly income of the family equals ANG 500 and the assets do not exceed ANG 5 000. Following the Financial Assistance Implementation Decree, the basic standard of the family equals ANG 2 833.40 x (80% + 10%) = ANG 2 550.06. The financial capacity of the family equals ANG 2 550.06 - ANG 500 = ANG 2 050.06 and the monthly financial assistance to be provided equals ANG 2 050.06 x (1/4) = ANG 512.52.

Labor regulations for working hours and overtime

Working hours, overtime, schedules and rest times are regulated for employees earning below the ZV and OV maximum wages (since 2019 equal to ANG 67,816 per year)

Employees who earn less than a gross salary of ANG 67,816 per year as determined by the national ordinance, fall under the scope of the Labor Regulation *(arbeidsregeling)*.* This means that they are not allowed to work more hours than the legal maximum work hours. If the salary of an employee is higher than the nationally determined gross salary per year, the employee can be regarded as an exempt employee, which means that the employee is in principle not entitled to overtime compensation, unless otherwise agreed upon between the parties. However, if the Labor Regulation applies, an employee is entitled to overtime compensation if, amongst others, the employee works during his break or if the employee works longer than the maximum working hours.

The Labor Regulation distinguishes between "schedule workers" and "non-schedule workers". Schedule workers are employees who work according to a periodic work schedule outside regular office hours.

Employer and employee may agree in writing that instead of paying out the overtime in money, the overtime shall be compensated completely or partially in days off (time-back). The Labor Regulation contains rules regarding:

- Working hours, rest times and work schedules;
- Maximum working hours per day;
- Maximum working hours per week (calculated over 4 weeks);
- Overtime;
- Night shifts;

health insurance. 260 times the daily income (ANG 260,83) is equal to ANG 67,816. This is based on the SZV 2019 Wage Limits & Premiums.

^{*} Article 3 (1) of the Labor Regulation states that the national ordinance is only applicable to employees who's gross yearly income is not more than 260 times the daily income as stated in the national ordinance

- Standby service (consignment service;
- Work on rest days, Sundays and public holidays.

With respect to the abovementioned subjects, the law stipulates what is and is not allowed, how long individuals may work, under what conditions overtime may be worked, etc.

In addition, the ordinance also contains rules regarding:

- Labor by children;
- Dangerous and nighttime work by young persons;
- Labor by live-in domestic workers.

The Labor Decree for Young Persons (in Dutch: Arbeidsbesluit jeugdige personen) is an elaboration of article 21 paragraph 2 of the Labor Regulation. Here it is determined which work must at least be regarded as dangerous work when determining what kind of dangerous work is prohibited for young people to perform.

The labor Decree Hotels, Restaurants and Casinos (in Dutch: Arbeidsbesluit hotels, restaurants and casino's) contains differing rules for these specific industries. For example, a higher maximum working hours per week is set for these industries. Provisions in the Labor Regulation are also declared inapplicable insofar as it concerns rest periods, holidays and overtime, just to name a few.

Every employee is entitled to a number of vacation days per year equal to at least 3 times the agreed number of working days per week, with a minimum of 15 days

Pursuant to the definition of the word "laborer" in article 1 of the Ordinance, the Vacation Ordinance only applies to those who work for wages in an employment relationship. This means that the scheme is only intended for those who work on the basis of an employment contract in accordance with article 7A:1613a of the Civil Code. Excluded from the Ordinance are persons employed by the government,

domestic workers and children living at home of an employer who perform work on this behalf.

The minimum number of vacation days to which an employee is entitled in regulated in the Vacation Ordinance. Every employee is entitled to a number of vacation days per year equal to at least 3 times the agreed number of working days per year, with a minimum of 15 days per year for employees who work 6 days a week.

During an employee's vacation, the employee retains the right to his salary. However, vacation pay is not mandatory. In addition, the employee also retains the right to his salary during (official) holidays.

It is also important to note that the Vacation Ordinance is a "minimum regulation". This means that it may be agreed upon in the employment contract or collective labor agreement that the employee is entitled to more vacation days than prescribed by the Vacation Ordinance.

Labor disputes

In case of a collective labor conflict potentially causing labor unrest, assistance by the mediator (in Dutch: landsbemiddelaar) is required

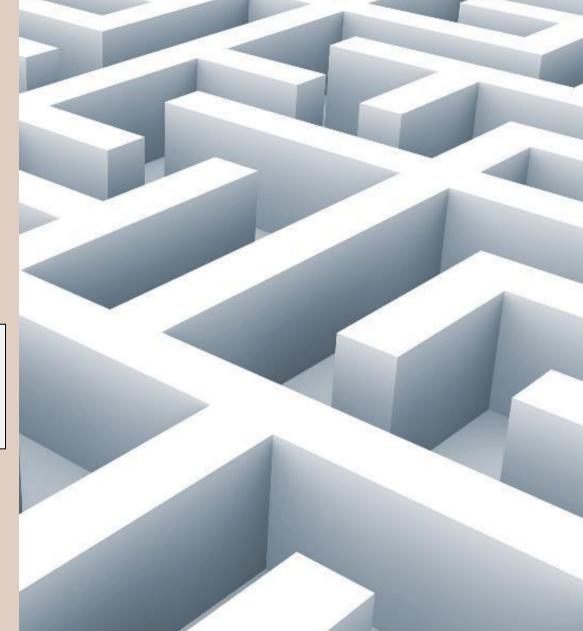
In the event that 25 or more employees are involved in a labor conflict and this conflict can lead to labor unrest, the employees and/or the employer in question are obliged to call in assistance of the mediator. In the event that there are less than 25 employees involved in a labor conflict, it is not obliged to request assistance of the mediator, nonetheless can assistance be requested by the concerned parties.

The mediator can offer mediation in a labor dispute by announcing a cooling-off period or have the dispute decided by the arbitration court. The recent number of labor disputes appears to be quite limited and focuses mainly on state-owned companies in connection with the announced 12.5 percent wage cost reduction, airport-related companies and in a number of cases on collective bargaining and the violation

of CLA's. The latter is mainly due to the limited flexibility that most collective labor agreements offer in the event of calamities (hurricane, COVID-19, etc.).

Employers experience long and bureaucratic procedures for hiring foreign workers. Labor unions complain about the violation of labor laws by some (particularly smaller) companies and the lack of enforcement by the government to this extent. No structural tripartite discussion takes place, which hampers effective policy development.

Essential building blocks are missing in the current policy framework, such as an unemployment benefit scheme, a decent minimum wage and a body that is responsible for matching the educational system with the demand for labor.



Dismissal of employees

The main obstacle for employers to dismiss employees is insufficient burden of proof Involuntary dismissal of employees requires permission by the Ministry of VSA. Employers indicate that the procedure is complex and that the Ministry of VSA often decides on the dismissal in favor of the employee. In the perspective of employers, the Ministry of VSA often denies dismissal requests due to insufficient evidence provided by the employer to dismiss an employee. As a result, the (former) employee can (successfully) challenge the dismissal. This is more common in SME's, where awareness of rights and obligations by employees and employers is sometimes lacking. The fact that many entrepreneurs have a foreign labor relations background and do not master the Dutch language contributes to this result. The role of the Ministry of VSA in this regard would be to make the dismissal procedure more transparent. This will be elaborated on in the next chapter.

Another part of the employers does not perceive the dismissal law as an obstacle. Modern personnel policy, human resource management, and education and training of employees ensure that work attitude and performance are positively influenced. If one of the parties wishes to terminate the employment contract, this usually takes place in close consultation between parties.

Currently, there is no pension clause regulated by law that standardises that employment contracts terminate automatically when the employee reaches the Government regulated retirement age (unless otherwise agreed). This implies that employees who have passed the retirement age will continue working. Employees that have reached the retirement age and who are dismissed, are entitled to Cessantia. A problem is that part of the employers (mostly small entrepreneurs with a few employees) have not reserved for Cessantia payments, which creates an additional barrier for dismissal of employees who have reached the retirement age. At the same time, several older workers prefer to continue working because of insufficient income. The results of all of this is that the influx of younger employees is inhibited.

Unemployment has major social consequences as there is no unemployment benefit scheme

Employment on Sint Maarten is seasonal and sensitive to shocks (economic and physical). Employment and unemployment therefore fluctuate strongly. In addition, there is substantial hidden unemployment in Sint Maarten: people who are under the radar. Youth unemployment is a seperate problem, partly caused by the limited educational opportunities of young school leavers. Since there is no unemployment scheme, the social consequences of unemployment extend to poverty, personal and family problems and crime.

In many reports and consultations, such as Flexicurity for Sint Maarten (2014) by the SER and the Consensus document (2016) by the Tripartite Committee, the need for an unemployment benefit after dismissal is stressed. The lack of an adequate social safety net in the event of (involuntary) unemployment is an additional reason for unions to stand up for the rights of the employee and help them to get a good redundancy payout as a compensation for lost income in case of unemployment. A role of the Ministry of VSA in this regard is to ensure transparency and provide information on the rights of employees and employers.

Even though labor unions and employers' organizations in Sint Maarten have been pushing for an unemployment benefit scheme for a long time, it has not materialized. This has to do with a complex of factors and opposing interests. The employers' organizations believe that funding for an unemployment benefit scheme should come from public resources (read: tax revenues). Labor unions believe that the contribution to unemployment benefits by the employee should be minimal. In addition, there are several complex steps and decisions to be made such as drafting the law, decision-making over the amount and duration of the compensation, implementation, control and enforcement. Issues that cannot be solved overnight and that require sufficient expertise, capacity and funding.

In 2014, the SER recommended to introduce an unemployment insurance that is paid for by employers for all their employees, and calculated that an unemployment

benefit for three months, based on 70 percent of the average salary with the ZVlimit as a maximum, would entail 3.35 percent premium. Although there is consensus in the Labor Tripartite Committee for an unemployment insurance, some employers are convinced that an unemployment insurance is unaffordable as long as unemployment does not decrease to pre-Covid levels.

Characteristics of the proposed unemployment insurance by the SER

The premium is a percentage of wages up till the same maximum that the ZV and OV use. This percentage is estimated at 3.35% on average. Due to experience rating, different industries will pay different percentages. This is particularly relevant for industries with high seasonal employment. The insurance has the following characteristics:

- Scope: All employees not responsible for their dismissal and who did not voluntarily quit. Exceptions are managing directors and major shareholders.
- Depth: 70 percent of the average wage of the last twelve months, up to 70 percent of the maximum premium base.
- Length: Three months at most.

Other considerations are that the unemployment benefit is equitable for seasonal workers and that the benefit should allow for a lump sum payment to repatriating immigrant workers.

Temporary or seasonal work

Some employers abuse temporary labor contracts

The use of temporary contracts is common in Sint Maarten, and the law allows employers to do so. There is a general perception however that some employers abuse this flexibility by offering temporary contracts when in fact the working relationship is permanent. In some industries it would be common that after the third continuous temporary contract within three years, the employee is sent home for a period of at least three months for the contract not to become permanent. After three months, the employer can hire the employee again with a 'first' contract. There is however a thin line between legitimate use of temporary contract for reasons of seasonality on the one hand, and on the other hand abuse of temporary contracts while labor relations are permanent. An example of the latter encountered in this study is a supermarket worker that has been employed with the same supermarket for over ten years but is still working on temporary contracts and is sent home for three months after every three consecutive contracts.

Abuse is to the detriment of the employee:

- Little career opportunities;
- Little or no education and training opportunities;
- No possibility to acquire a loan or mortgage;
- Less bond with the company;
- No or limited holiday pay, Christmas bonus and pension accrual;
- Uncertain and fluctuating income.

The employees in question are mostly lower-skilled, foreign workers who are not aware of their rights.

For businesses where the availability of work is seasonal, using three months interim periods between contracts is legitimate. Providing permanent contracts can be an economic risk as an employee must continue to be paid when revenues fall short. Many employers point to this as the reason for using temporary contracts. Others ensure that employees can also perform other activities in times of little work. Larger companies are better at this than smaller ones. Interviews indicate that there are also many companies that keep the employee on the payroll for social reasons and/or because the company considers the employee in question valuable to the company and therefore does not want to lose it.

Having a second job in Sint Maarten

Having a second (part-time) job is a necessity for many people in Sint Maarten. There are several reasons why a second job is common:

Regular work, especially for employees in a lower position, is low paid and often insufficient to be able to participate socially in life in Sint Maarten;

Seasonal and temporary contract work implies that people need income in the periods in between these employment contracts;

Second jobs are often 'off the radar'. Income is therefore usually 'net' which makes it attractive.

Employment

The impact of the public employment office on the labor market is limited

The National Ordinance on the establishment of a public employment office (*Landsverordening houdende de instelling van een arbeidsbureau*) stipulates that there is a public employment office, being responsible for supporting employers and job seekers by collecting and providing information about the labor market (article 1c), information about career and study choice (article 4b) and job placement (article 1 and article 4a).

With the National Employment Service Center (NESC), Sint Maarten has a public employment office to which these tasks have been assigned. The NESC organizes job fairs, information sessions and training programs. There also is a vacancy bank where vacancies are placed, and job seekers can register. It appears however that there is room for improvement in the effectiveness of the NESC. Stakeholders often are not familiar with the existence of an active public employment office in Sint Maarten. With regards to the vacancy bank, not every job seeker registers and not every company reports its vacancy. Unsubscribing is not automatic either. Insufficient execution capacity within the NESC hinders the organization to improve its effectiveness.

Legislation provides insufficient protection for private agency workers

The National Ordinance on the provision of workers mainly deals with permits for private employment agencies and does not provide sufficient protection for temporary agency workers. The national ordinance does not include restrictions on the duration of temporary contracts. As a result, working as a temporary agency worker (i.e. with no continuation of wage payment if there is no work) for five or ten years would be no exception. Moreover, temporary agency workers have little social protection in terms of social security.

Some private employment agencies violate the labor legislation as it relates to their placement of temporary workers within companies for periods longer than the legally allowed twelve months. This would also happen within the government. Some private employment agencies would work with undocumented migrants or recruit Venezue-lans from Saint Martin (with temporary residence status there) for work on the Dutch side. There is a lack of overview and insight into the size and functioning of this sector. This is partly the result of the absence of adequate monitoring of and oversight on the functioning of private employment agencies.

Foreign labor in Sint Maarten

Foreigners are attracted when skills that employers are looking for cannot be found on the local labor market

Employers across all industries indicate that the workers they are looking for are not available on the local labor market, because:

• There are not enough workers with the required skills and qualifications (both low and highly educated) in the local labor market;

- Local workers with the Dutch nationality or a permanent resident status are not willing to accept certain types of jobs (for example, housekeeping, jobs with irregular working hours and/or night shifts);
- Certain industries are not popular among the local population (for example the marine industry, hospitality, construction).

On the one hand, labor migration is seen as the solution to meet the (specific) demand for labor. On the other hand, the inflow of foreign workers reduces incentives for society to invest in its own labor force (vocational education and training) and in the quality of work (working conditions, labor relations and work content).

The procedure for hiring a foreign worker is bureaucratic, takes too long, with an uncertain outcome, and contributes to the employment of illegal immigrants

Employers perceive the procedures for attracting foreign workers as one of the main distortions in the labor market and in the business climate in general. The procedure is experienced as bureaucratic, non-transparent, lengthy and with uncertain outcomes.

For some vacancies it is known in advance that there is hardly a real chance of finding a suitable candidate on Sint Maarten. Nevertheless, the vacancy must be reported to the Department of Labor Affairs and a vacancy notice must be placed in the local newspaper. This procedure takes at least five weeks. After which, and once no suitable Sint Maarten resident has applied for the position, an employment permit can be requested.. With this proof application, a work permit and a residence permit for the foreign candidate can be applied for.

The application procedure for a work permit takes a (legally defined) maximum of six weeks. While the ministry of VSA often is able to provide the work permits within these six weeks, incomplete files submitted by the applicant may cause the procedure to take longer. Employers indicate that the ministry of VSA is not always clear in advance about what documents need to be submitted. Also, the procedure sometimes changes without employers being noticed.

Once the proof of application is received, the residence permits can be applied for simultaneous to the work permit. While a maximum period of four months is legally defined for the immigration office to decide upon the requested residence permits, the Immigration Office strives to decide within one month.

A bottleneck put forward by the unions is that the placement of a vacancy in the local newspaper is often just a formality. In practice, employers often have already found a suitable candidate from abroad before placing the vacancy. Some employers increase the job requirements in the vacancy as an additional hurdle for local applicants. The person recruited abroad is sometimes less skilled (has less education and experience) than required in the vacancy notification, works for a lower salary than is reasonable for such a position and that the employee concerned regularly performs work under the level for which he is recruited.

Another bottleneck in the (legal) procedure stems from the fictitious negative decision ('fictieve weigering') with respect to both the work permit and the residence permit, leaving the applicant employer (and employee) in a weak legal position visà-vis the granting authority. The National Ordinance on Administrative Proceedings / Landsverordening Administratieve rechtspraak (LAR) contains rules for administrative judicial proceedings after obtaining a negative decision from an administrative body (objection and appeal). The LAR does not contain provisions that define legal consequences if primary decisions are taken too slowly, or if primary decisions are not taken at all. If an administrative body such as the Ministry of VSA or the Immigration Office does not meet a reasonable or legal term, the interested (employer/employee) permit applicant must assume that the permit has been denied. For such fictitious refusals ('fictieve weigering'), a term of six weeks applies within which an objection must be lodged.

If the fictitious refusal does not apply in the event of failing primary decisions, the law does not attach any consequences for the government or the administrative body for the failure to take a decision or for not taking it in a timely manner (decision). The only option that permit applicants have in that situation is to go to a civil

court and request a decision about the reasonableness or unreasonableness of the time limits.

All this leads to a situation in which:

- entrepreneurs often await their applications resigned and with great uncertainty about the duration and outcome or even refrain from applying for permits altogether;
- government services and civil servants do not feel or are insufficiently accountable for an orderly permit granting process;
- employers sometimes work around existing procedures, rely on their relationships with (senior) officials and ministers to expedite processes, or operate without a permit;
- room is created for official arbitrariness, nepotism and corruption.

Saint Martin

There are persistent signals of significant illegal labor migration from French Saint Martin to Dutch Sint Maarten. This labor migration is the consequence of the poor economic performance and high unemployment in Saint Martin. Examples are mentioned of significant numbers of workers who reside on the French side while working in the construction and hospitality industry on the Dutch side of the island without having the required permits, while control and enforcement are hardly present. Residents of Saint Martin working in Sint Maarten require a working permit. Part of the labor migration are Venezuelan refugees to Saint Martin having a French refugee status and working illegally in Sint Maarten.

There is hardly any factual information available on this matter, while the relevance for the labor market may be significant. Structural exchange of information and cooperation in enforcement would be first steps towards getting a view on the problem and managing potential adverse effects on the labor markets of both parts of the island.

The rights and limitations of being an immigrant worker in Sint Maarten

The LMA, article 6 paragraph 1 sub b states that a civil servant may only be someone with Dutch nationality.

Tertiary education (HBO, WO) is only open to residents with a Dutch passport.Various government subsidized education and training courses are only open to residents of Sint Maarten with a permanent residence status.

In the event of early termination of the employment contract by the employer of a person with a temporary work permit (this could also be due to incapacity for work, for example), the person may remain on the island for the duration of the residence permit, but is prohibited from working.

Family reunification is often impossible for a temporary immigrant with a residence and work permit.

Education

There is a mismatch between the (vocational) education system and the labor market

Employers attract foreign workers because of a mismatch between the skills of the local labor force and the skills employer's demand. The educational system plays a crucial role in this, as the graduates and young people that are available on the labor market often do not have the required (technical / management) skills or do not want to work in certain sectors where demand for workers is high. An example is the marine industry, which is dependent on foreign workers as the local labor force has little affinity with the industry and does not have the right technical skills that the industry demands. The mismatch between the skills of the local labor force and the demand on the labor market is also stressed by the IMF.*

^{*} International Monetary Fund, IMF Country Report No. 16/276, August 2016 Kingdom of the Netherlands – Curacao and Sint Maarten.

First, the mismatch has to do with educational level. Many employers complain about the shortage of skilled labor on the island. Only one out of four Sint Maarteners received post-secondary education. This results from the many youngsters who go abroad for higher education, and afterwards often do not come back to Sint Maarten to work (brain drain). Also, there is a shortage of craftsmen that received post-secondary vocational education. Second, the industries where most work can be found, such as tourism and hospitality, are not popular among youngsters. As a result, students do not focus on studies that prepare them for a career in these industries and youngsters that go abroad for their education do not want to come back to work in Sint Maarten. Third, some employers demand unique skills that cannot be found on the island. This is for example the case for employers in the marine industry. The National Institute for Professional Advancement (NIPA) started providing maritime programs some years ago, but applications are minimal to these programs.

The Council of Education and Labor, that is responsible for the coordination between vocational education and the labor market, is not active

Pursuant to article 70, paragraph 2, of the National Ordinance Secondary Vocational Education and Education (*Landsverordening secundair beroepsonderwijs en educatie*) there should be a Council for Education and Labor. This Council has the task to advise on:

- the relationship between education and the labor market;
- vocational education programs;
- recognition of vocational training;
- promotion of suitable internships for students.

The Council is however not active, as there are no members appointed and attempts to do so have not materialized.

A study on the connection between the educational system and the labor market is part of the Country Package (G.1). It is important for this study to pay specific attention to the inactiveness of the Council for Education and Labor.

Minimum wage and wage policy

The inflow of migrants pushes down the wages on the lower end of the labor market Due to the openness of the economy and the influx of labor migrants, there is the special situation in Sint Maarten that the supply of labor is to a significant extent determined by demand. Recent decades have shown that with a growing economy, an increasing demand for labor is met by an influx of migrants, leading to an increase in labor supply, especially for unskilled work, and downward pressure on wages on the lower end of the labor market.

According to SZV, about 6 percent of the employees registered at SZV earn the minimum wage. It is suspected that this percentage is higher in practice, as a large number of unregistered workers (including undocumented workers from the French side) are not registered at SZV but do earn minimum wage (or less). Most minimum wage earners are unskilled immigrants. As the demand for unskilled labor is met by an inflow of migrants, there is no market pressure to pay these people more than the minimum wage. It happens that employees have to work more hours than they are paid for, which means that they in fact earn below the legally established minimum hourly wage. This may also hold for employees who earn above the minimum wage but are not paid for all hours worked. The Ministry of VSA has the task of verifying whether employers comply with the statutory minimum hourly wage. In practice, oversight and enforcement is largely absent.

In the high segment of the labor market there is a shortage in all kinds of highly educated and/or experienced employees. This concerns, for example, craftsmen, medical specialists, project managers and construction supervisors, lawyers, financial experts, IT specialists, etc. In general, these professional groups are well paid.

Rigidity in wage setting involves companies that have concluded a CLA, government and government-subsidized institutions. Wages are determined by wage scales and negotiations between employers and the union(s). In general, CLAs lead to

employment conditions that are – in comparison with the market - more favorable for the employee.

Collective labor agreements

All government entities have a CLA. In addition, casinos (6 out of 16) and the larger hotels (9 out of 11) have a collective agreement. In 2021, 33 companies, mostly the larger companies, have CLAs. CLAs ensure that the rights and obligations of employer and employee are better defined. For employees, this means that the primary and secondary employment conditions are better than at comparable companies without a CLA. All employees covered by a CLA are paid more than the minimum wage.

The minimum wage is insufficient to cover the costs of living in Sint Maarten

It is widely recognized that the 2022 minimum hourly wage level of ANG 8.84 is insufficient to cover for the high costs of living in Sint Maarten, and this recognition is supported by the facts. The minimum wage has not been indexed since 2016 (except for a 1 cent increase in 2020) due to the economic crises caused by hurricane Irma and Covid-19.* The reasoning behind this decision was that an increase in the minimum wage would have adverse economic effects on employers who were already suffering. At the political level, the discussion is ongoing whether the minimum wage can be raised, as the negative economic effects of Irma and Covid-19 on the economy are diminishing. The current minimum wage level was not mentioned by employers as a bottleneck on the labor market.

Labor conditions and the public sector

The government and public education take a special place in the labor market, as the labor rules have been laid down unilaterally by Sint Maarten in the National Ordinance substantive civil servants law (*in Dutch: Landsverordening materieel ambtenarenrecht*, '*LMA*') and various National Decrees.

The financial terms of employment for lower-skilled civil servants are generally more beneficial than for the private sector. For higher-skilled civil servants, the primary pay is generally below that of the private sector. On the other hand, the secondary terms of employment of civil servants are in most cases better than in the private sector. This concerns: full continued payment in the event of illness and incapacity for work (up to two years), pension, holiday pay, overtime scheme and redundancy pay in the event of involuntary honorable discharge up to two years.

One of the conditions for Sint Maarten for obtaining liquidity support from the Netherlands during the Covid-19 pandemic was to cut the labor costs in the public sector (including government owned companies) by 12.5 percent. In practice this usually came down to surrendering the holiday allowance and waiving wage indexation. These measures led to protests by employees and labor unions and caused demotivation among employees in the public sector. In some cases, especially in care and education, people moved abroad where the working conditions are more favourable. The need to take a second job to maintain the family income - as far as possible - has increased with these measures.

It is unclear in what form and for how long the 12.5 percent cut on labor costs in the public sector will continue.

^{*} Since the first publication of this report, the minimum wage has been increased from ANG 8.84 to ANG 9.95 (AB 2023, no. 35).

Labor regulations for working hours and overtime

A minority of employers does not comply to labor regulations, by having employees working more hours and not compensating overtime

The rules stated in the Labor Regulation (*arbeidsregeling*) about working hours, overtime, schedules and rest times are adhered to by the majority of employers in Sint Maarten. Some employers, however, do not comply to the labor regulations in the sense that overtime is not being paid, lunch breaks have to be skipped and work has to be done during public holidays. This concerns mostly employees in smaller companies.

The Labor Regulation allows different rules to apply for certain industries or types of work. In view of the importance of tourism for Sint Maarten, the regulations for hotels, restaurants and casinos have been relaxed in favor of the employer. There, for example, a working week of 48 hours instead of 40 hours applies before overtime has to be paid. The compensation for overtime is also lower. This shows that the Employment Regulation protects employees in certain industries better and compensate more than employees in other industries (e.g. in the tourism sector).

Non-compliance to labor regulations by employers is often not opposed to by employees for several reasons. First, workers are generally poorly informed about their rights, especially immigrant workers. As a result, employees do not know when employers go against the law and employers and employees sometimes make agreements that are in favor of the employer. Secondly, employees fear that if they draw attention to the rules in the labor contract, this can have negative consequences for the extension of a temporary contract and the chance of getting a permanent contract or a promotion.

Enforcement

Control and enforcement are insufficient and there is lack of compliance to labor market regulations

Several the bottlenecks in the functioning of the labor market relate to non-compliance to labor legislation and insufficient enforcement: abuse of temporary contracts, employment of foreigners without a working and/or residence permit, non-compliance with Labor Regulation, etc. Enforcement is lacking, providing room for some employers to ignore and/or abuse legislation and regulations. Non-compliance and abuse is persistently considered to take place with regard to temporary labor contracts, minimum wages, Labor Regulation, and work and residence permits. Compliant employers are disadvantaged by this in their competition with non-compliant employers.

In general, adequate oversight, control and enforcement is fundamental to effective labor market policies and reforms therein. Strengthening the enforcement function therefore serves as a precondition for successful reforms (see next chapters concerning recommendations and implementation).

Knowledge about legislation and regulation

Labor legislation is fragmented, complex and only available in the Dutch language The legal rights and obligations are usually not or hardly known by the employee. The lack of knowledge has to do with the fact that the legislation is not easily accessible, fragmented, complex and sometimes only available in the Dutch language. The other side of the story is that many employees are first generation immigrants and usually have not taken the time and effort to delve into the Sint Maarten legislation.

Union officials are well aware of the rights of their members. In practice however, the union only reaches a part of the employees as it is estimated that approximately 15 percent of the employees are affiliated with a union.

Employers are generally better informed about employment laws. The larger companies have HR managers and hire lawyers or consultants to acquire information on legislation or in case of labor disputes. Smaller companies share information with each other and information for employers is relatively easy to find on the websites of consultants and law firms. In the eyes of the labor unions and employers' associations, the government does little to provide information about the rights and obligations of employees and employers.

Tripartite dialogue

Structured dialogue between employer associations, labor unions and the government needs to improve

Tripartite discussion in Sint Maarten is organized in two ways. First, via the SER, which is an independent advisory organization to the government with three representatives each from employers' organizations, labor unions and independent experts. Second, via the Tripartite Committee for labor, with representatives from employers' organizations, labor unions and the government.

Over the last years, employer associations and labor unions have insufficiently been involved by the government in policy making that concerns the labor market. The SER has been without a board for some time as the previous term ended, and dialogue via the Tripartite Committee did not take place on a structural basis due to frequent changes in government and more recently due to Covid-19. Lately however, tripartite discussions restarted but because of the fact that social partners (i.e. employers' organizations and labor unions) do not confront government jointly as one unit, their position is seen as relatively weak. A strengthening of the position of the social partners is needed when labor market reforms take place in relation to the country package (measure E.1, E.4 of the country package). Chapter 5 will elaborate on this.

The reality in other SIDS

Most small island developing states have labor market policies that overly protect jobs

Latin American and Caribbean countries generally have high levels of informality combined with rigid labor markets.²⁴ There are a few Caribbean countries²⁵ that both allow for dismissal due to redundancy of the position without third-party approval, and meanwhile offer unemployment protection to workers after one year of employment.²⁶ These are the Bahamas, Barbados and Puerto Rico. These three countries are however no examples of flexible and well-performing labor markets: the Bahamas and Barbados impose high levels of severance pay, and Puerto Rico is characterized by high unemployment rates and exceptionally low participation rates. Not only Caribbean Small-Island Developing States (SIDS) have these characteristics. Pacific SIDS generally have inflexible labor markets as well.²⁷

Mauritius has institutions that largely correspond to the reforms that many parties have recommended for Sint Maarten

Mauritius is a Small-Island Developing State that possesses a number of characteristics that should increase labor mobility. No third-party approval is required for a dismissal, and it has an unemployment protection scheme.²⁶ Mauritius ranked 22nd in terms of labor flexibility in the Global Competitiveness Index 2017-2018 of the World Economic Forum, which makes it the highest scoring SIDS.

Moreover, no severance pay has to be paid for 'justified' dismissals.²⁸ Instead, Mauritius has a two-pillar unemployment system.²⁹ These pillars consist of a general social assistance benefit complemented by a premium-funded unemployment benefit, which is also available for workers who have not contributed.

Still, wage rigidity reduces the efficiency of the Mauritian labor market

A World Bank team has characterized wages in Mauritius to be rigid, because of its tight regulations for wage-setting and for the bargaining process.³⁰ The country's score regarding overall labor market efficiency according to the Global Competitiveness Index 2017-2018 is far lower than that regarding flexibility. The country ranks 52nd, so that it is no longer the best performing SIDS (which is Jamaica, at rank 46).

Table 4 Key figures Sint Maarten and Mauritius.

Characteristic	Sint Maarten	Mauritius	Source
Tourism as % of exports (2019)	64.9%	39.1%	World Bank
Life expectancy at birth (2021)	74	74	World Bank
Population (2022)	43,389	1,262,523	World Bank
GDP/capita (2022)	\$36,220	\$10,216	World Bank
Area	34 km²	2,030 km²	World Bank
Distance to mainland (country)	806 km (Venezuela)	1,851 km (Mozambique)	Google Maps

Notes

²⁴ See e.g. David, A., Pienknagura, S., & Roldos, J. (2020). Labor Market Dynamics, Informality, and Regulations in Latin America (IMF Working Paper 20/19). International Monetary Fund.

²⁵ From the set of countries consisting of Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, the Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Puerto Rico, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago

²⁶ World Bank. (2016). Doing Business 2016: Measuring Regulatory Quality and Efficiency.

²⁷ Chapter IV of: Economic and Social Commission for Asia and the Pacific. (2007). *Improving employment opportu*nities in Pacific island developing countries (Small Island Developing States Series No. 1). United Nations. ²⁸ Workers' Rights Act 2019.

²⁹ McClanahan, S., Hillson, D., & Chirchir, R. (2021). Global research on governance and social protection: Case studies on Mauritius and Fiji. United Nations.

³⁰ Chapter 7 of: World Bank. (2015). *Mauritius: Inclusiveness of Growth* and Shared Prosperity.

5. Recommendations for reforms

Bottlenecks in the dynamics of the labor market do not seem as much to stem from legislation and regulations, but are mainly related to: lack of compliance, lack of knowledge about laws and regulations and about rights and obligations (both with employers and employees), lack of control and enforcement, and inefficient procedures. At the same time, labor market policy lacks various components that contribute to greater security, to better social conditions and reduction of poverty, and to a more efficient functioning of the labor market. The proposed package of reforms is a structured and clear plan to modernize and improve the functioning of the labor market, largely based on existing legislation and regulations. The recommendations are divided into three phases: preconditions, labor market reforms, sand the role of the government.

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Existing legislation and regulations provide a regulatory framework that in principle offers sufficient room for dynamism in the labor market. This is reflected in the high use of temporary contracts and foreign labor. The proposed package of reforms does not lead to rigorous changes in labor market legislation and regulations. It is a structured plan to modernize and improve the functioning of the labor market, largely based on existing legislation and regulations, and taking the proposed reforms by the SER (2014) and the Tripartite consensus document (2016) as a starting point. The recommendations are divided into three phases. These phases are 1. Preconditions, 2. Labor market reforms, 3. Role of the government.

For labor market reforms to be effective, the necessary preconditions need to be in place. These concern strengthening of the role of the social partners and social dialogue, and strengthening the enforcement function. Without these preconditions, there is the risk that proposed reforms are not supported by social partners and new reforms do not materialize as they are not enforced. Following this phase, labor market reforms can be implemented. Several reforms are proposed, including the development of legislation aimed at temporary agency workers, policy aimed at investing in the quality of work and further research into the dismissal regulation. Several recommendations are made to improve the execution of labor market legislation and policy. This includes the strengthening of the public employment office and increasing legal certainty for employers when it comes to attracting foreign workers. Recommendations also relate to (additional) responsibilities for the government. This includes transparency in labor market legislation, increasing the minimum wage and gathering systematic information needed to monitor the labor market and assess policy and implementation.

The introduction of an unemployment benefit scheme is part of the recommendations; however this recommendation will be elaborated on in the social security project (E.4 of the country package). In addition, the social security project (E.4) will also take into consideration the access of self-employed workers to social security.

Phase 1: Preconditions

1. Strengthen the role of social partners and (re)start and structurally embed the social dialogue bi-partite and tri-partite

Tripartite consultation does not take place on a structural basis in Sint Maarten. As a result, the social partners (employers' organizations and labor unions) have insufficiently been involved in policy making over the last years. Moreover, social partners do not confront government jointly as one unit, which makes their position relatively weak. Strengthening of the position of the social partners is desirable:

- a. Social partners should consult each other more and portray a united front towards the government. This changes the balance of power, with more efficient decision-making and higher impact. The government can help to put the sector organizations and the labor unions in a position in which they can be more effective, by facilitating cooperation and knowledge exchange with Dutch/and or other international counterparts. This includes professionalizing the labor unions.
- b. Tripartite discussion can take place in a way that (new) topics are discussed directly with all three parties at the same time, whereby there is as yet no 'a priori' agreement between the social partners. Yet another way in which tripartite discussion can take place, is that the government offers the social partners room to reach agreement on certain socio-economic subjects. Consensus can then be sought in tripartite consultation between ministers and social partners. This tripartite consultation has a non-institutionalized character.
- c. In terms of content, the focus should be more on increasing the participation rate. This can be done by controlling labor migration, by investing in the labor force of Sint Maarten, and by investing in the quality of work (see recommendations 6 and 8).

Being a precondition for successful implementation, the strengthening of the role of the social partners should be started with prior to the start of the implementation process of integrated reforms of the labor market and the social security system.

2. Strengthen the enforcement function (in relation to part B of the country package) Insufficient enforcement and lack of compliance to labor legislation is central to several bottlenecks in the functioning of the labor market. Examples include the abuse of temporary contracts, hiring undocumented workers, long working days for employees without compensation and payment below the minimum wage. There is little to no control on the compliance to labor market legislation by the government, creating an unlevel playing field between employers that comply to legislation and those that do not.

Various checks and inspections on laws and regulations are carried out by the Inspectorate of VSA. However, checks on black and grey work are carried out by the Tax Office and SZV, among others, labor circumstances (including safety regulations) by the ARBO-office and having work done by undocumented workers is carried out by the Justice Department (Police Immigration Service). Employers who are compliant, complain about lack of supervision and enforcement and the unfair competition and an unlevel playing field that this implies. Fines and punishment are considered too low, and prosecution does not take place in all cases resulting in the offender going free.

Under theme B of the Implementation Agenda 'Cost and Effectiveness of the Public Sector' an audit of the government organization is planned, focused on quality, effectiveness, and execution power of the public sector.

The strengthening of the enforcement function should be part of theme B of the country package and it is strongly recommended to apply an integrated coherent approach to enforcement functions in different areas (labor, tax, healthcare, immigration, etc.). In fact, aligning procedures, methodologies, risk analysis, linking data, etc. in different areas of enforcement, may lead to significant improvements

in effectiveness and efficiency. In anticipation of such an integrated approach under theme B of the country package, the following directions for improvement can be taken into consideration:

- Ensure that investigating officers have effective instruments to address violations. For the Inspectorate of VSA, this means expanding its duties and powers and ensuring sufficient (quantitative and quantitative) capacity.
- Adapt and unify the laws and regulations in force with respect to supervisory, control and penalty functions.
- Make payment of fines easy by issuing a receipt that can be paid on the spot (cash or via internet banking), for the simple violations.
- Intensify cooperation between intelligence units of different inspectorates and agencies and set up a system of linking and analyzing data as an effective instrument for risk-based supervision and control.
- Organize cooperation with/assistance by inspectorates in other countries of the Dutch Kingdom aimed at training and knowledge sharing.

Adequate enforcement is a condition for effective labor market policy. For the proposed reforms to be effective, strengthening the enforcement function should be started with from the outset of the implementation process and executed as part theme B (effectiveness of the public sector) of the country package.

Phase 2: Labor market reforms

3. Design an unemployment benefit scheme and further investigate its feasibility as part of the E.4 research project

Sint Maarten is one of the more prosperous countries in the Caribbean region. GDP per capita is more than three times as high as the Caribbean average and one and a half times as high as that of Curaçao. For the past ten years, Sint Maarten has performed economically in line with the region. Real GDP growth was 0.9 percent between 2010 and 2019, which is in line with the Caribbean average. The development of real GDP per capita is much less favourable: it shrank by an average of 1.8

percent per year between 2010 and 2019, implying that the economic growth of Sint Maarten can only be attributed to population growth. In fact, the growth of the economy has not been able to keep up with population growth.

Table 5 Key figures Sint Maarten³¹

	Sint Maarten	Curaçao	Caribbean region
Per capita GDP, 2019 (US\$)	29.781	19.862	9.900
Real GDP-growth, average 2010-2019	0,9%	-0,9%	0,7%
Unemployment, 2019	7,9%	17,4%	9,7%
Debt-to-GDP ratio, 2019	44,2%	54,7%	80,0%

Despite the relatively high level of prosperity, Sint Maarten has substantial poverty resulting in severe social problems. In addition to the large number of undocumented migrants, the poverty problem is also directly related to the outdated and poorly functioning social security system and the skewed income distribution. There is no insurance against loss of income in the event of unemployment through an unemployment benefit scheme. The financial assistance, which one has to fall back on in case of unemployment, is insufficient to live on the minimum subsistence level. In the absence of an adequate social security system, labor unions and the government in Sint Maarten are focusing more strongly on protecting employees against job loss. The downside of this is that employers are reluctant to hire new staff, fewer jobs are created, employees are 'stuck' in jobs, there is no optimal match between supply and demand in the labor market, productivity gains remain untapped, and companies seek 'workarounds' such as informal labor and foreign workers with a temporary permit.

In a modern, prosperous economy, the social security system should protect workers from loss of income, and labor laws should protect jobs. In a modern social security system, risks and incentives are placed where they can best be controlled and are most effective. That is with employers and employees as primary actors in the labor market; where the market falls short, the government intervenes. Following the SER (2014) and the tripartite consensus document (2016), it is recommended that Sint Maarten designs and implements a simple, yet effective unemployment benefit scheme. An unemployment benefit scheme serves primarily to smooth consumption over time in the event of fluctuations in the economy and (un)employment. This prevents acute social problems in the event of unemployment, resulting in high social costs. At a macroeconomic level, an unemployment benefit scheme serves as an automatic stabilizer for the economy. By limiting the loss of income during economic crises, aggregate demand remains on track, and a self-reinforcing process of economic downturn and further rising unemployment is slowed down. The benefits of consumption smoothing and the stabilizing effect on the economy are of particular importance to Sint Maarten as the economy has a highly volatile character due to limited diversification. These benefits of an unemployment benefit scheme are greater if foreign employees are also covered by the unemployment benefit scheme.

In addition, an unemployment benefit scheme helps the unemployed to make a more well-considered choice for work during unemployment. Acute financial distress due to unemployment is prevented from forcing sub-optimal choices to be made, such as choosing for a job that does not fit well or for informal work out of necessity. An adequate unemployment benefit scheme contributes to a better match between supply and demand in the labor market.

To reap the economic benefits, perverse incentives and moral hazard must be avoided. An unemployment benefit scheme that is too generous does not provide sufficient incentives to look for work, provokes moral hazard on the part of employees and employers and has high costs, which will eventually have corresponding consequences for the wedge and/or for public finances. It is essential to design an unemployment benefit scheme with a balance between adequate insurance against loss of income and the associated favorable macroeconomic on the one hand, and sufficient incentives on the other. Research into a possible unemployment benefit scheme for Sint Maarten is part of E.4 (social security) of the country package. In the present report, it is recommended to design an unemployment benefit scheme and further investigate its feasibility as part of the E.4 research project. An unemployment benefit scheme fills an important gap in the policy framework for the labor market and social security in Sint Maarten and, if well designed and implemented, can contribute significantly to a better functioning labor market.

In designing the unemployment benefit scheme, attention should be paid to differentiation in the premium to reflect differences in 'contributions' to unemployment. Differentiation in premiums between temporary and permanent contracts should be taken into consideration.

Preparations (legislation, execution) for an unemployment benefit scheme can commence in the medium term, introduction is recommended when enforcement is in place, the public employment office is strengthened, and policy aimed at investing in the local labor force is developed.

4. Have further research carried out into the (adjustment of) various elements of dismissal legislation

Some employers see dismissal legislation as a bottleneck and would like to see further relaxation of the law. The SER has previously issued advice regarding amendments to the dismissal law.³² Central to this advice is the retrospective assessment of dismissals, carried out by a Dismissal Assessment and Arbitration Board (DAAB) that includes representatives of employers and employees. Caution must be exercised in this regard, because of the general principles of law such as the principle of prudence, the obligation to state reasons, the principle of legal certainty, the principle of legitimate expectations and the principle of equality.

Employers complain about the long duration of dismissal procedures. A faster dismissal procedure can be enforced by stricter application of the regulations (no decisions based on subjective arguments), more frequent meetings of the dismissal committee, having meetings always go ahead (appointing multiple substitutes) and more generally respecting formal response times.

Specific attention should be paid to the group of employees who have passed the retirement age or are about to pass this limit, of which the labor contract has no agreed retirement age. Their legal position is not entirely clear, although it is in the spirit of the law that there is a right to Cessantia when leaving after the AOV date. Consideration can be given to a transitional arrangement for this group of employees, for example in the form of an increase in the AOV (paid by the employer). Cessantia regulation will be elaborated on in the research into social security (E.4 of the country package).

The existing dismissal law of Sint Maarten may require adjustments to improve dismissal procedures. In general, no substantial bottlenecks have been observed in the dismissal legislation. However, there are several discussions at play. First, there are complaints by employers that the dismissal procedure is too complex. Second, the SER (2014) issued an advice that should be reviewed for legal tenability. And thirdly, integration of the Cessantia severance payment into the Civil Code seems desirable.

This requires an assessment by a legal expert in this field to examine the existing legislation and procedure with the central question of whether the dismissal procedure can be improved such that the legal positions of employers and employees remain balanced.

The recommended legal assessment should result in concrete legislative changes based on an analysis of the regulatory framework relevant to dismissal (dismissal law, Civil Code, etc.)

The central problem definition for the assessment is defined as follows: In what way can the dismissal law of Sint Maarten be strengthened, by synchronisation and tightening of regulations, such that legal positions of employees and employers are respected and balanced and that improves (legal certainty and speed of) dismissal procedures? This central problem definition is divided into the following research questions to be addressed in the legal assessment:

- 1. How can the Cessantia regulation legally be split into a dismissal part and an unemployment part? The former requires integration into the Civil Code and the latter requires integration into a new Landsverordening Werkloosheid. Drafting a new unemployment regulation is not part of the assignment.
- 2. When splitting up the Cessantia regulation, to what extent is it legally required to make a transitional arrangement for the group of employees without a retirement date in their employment contract? And if so, what could such a scheme look like (in legal terms)?
- 3. To what extent is it required to amend the Landsverordening beëindiging arbeidsovereenkomsten, or is it possible to integrate this Ordinance into the Civil Code?
- 4. To what extent is the advice of the SER (2014) to abolish the preventive dismissal test legally tenable?
- 5. To what extent is the advice by the SER (2014) to replace the dismissal committee by mediation legally tenable? What alternative would work better for Sint Maarten?
- 6. To what extent are legal adjustments required to speed up the process of dismissal?
- 7. To what extent is the dismissal law synchronous with the system of admission and expulsion (including settlement and employment permits)?

5. Make explicit and increase legal certainty for employers and accelerate the process of attracting foreign workers

The economy and the labor market of Sint Maarten are highly dependent on foreign labor. In 2011, approximately 83 percent of all workers in Sint Maarten were born outside the country. In 2021, a total of more than 600 applications were submitted for work permits for foreign workers; only 7 percent of these being rejected.^{*} The reasons for employers to attract foreign workers, include the lack of interest in certain jobs (such as cleaning, those with irregular working hours and night work) and the lack of interest in certain sectors (such as nautical, hospitality and construction) by Sint Maarten residents. Foreign labor is an important pool for absorbing shortages in the local labor supply and to cope with seasonal and annual fluctuations in the economy.

Despite the large number of applications for work permits and the limited number of rejected applications, employers perceive the procedures for attracting foreign workers as one of the main distortions in the labor market and in the business climate in general. The procedure is experienced as bureaucratic, non-transparent and lengthy with uncertain outcomes. On the one hand, the immigration office strives to decide upon residence permits no later than one months after application. On the other hand, employers complain that it can take months before the necessary permits are issued, and much longer if the application file is incomplete. It is not always clear to applicants what documents need to be submitted and the application procedure changes without (potential) applicants being noticed.

It is essential to strengthen the legal position of the employer/employee as a permit applicant on the one hand, and the accountability of the issuing authority on the other. A permit by operation of law, a fictitious positive decision, as a default as a result of a permit decision that was taken too late or not taken instead of a fictitious

^{*} Around half of the 639 applications were first requests and around half of the applications were requests for renewal. Adult workers accounted for half of the first requests. Whether the requests for renewal also included adult workers is not known.

negative decision, is considered a major step forward towards strengthening the position of the permit applicant and strengthening the accountability of the issuing authority.

Legal remedies that potentially strengthen the applicants' position with regard to permit applications are:

- 1. fatal terms, also known as 'lex silencio positivo', 'positive fictitious decision' or 'permit by operation of law'. After the expiry of the statutory decision period, the permit is deemed to have been granted by operation of law. A decision is no longer necessary.
- 2. assimilation with decision; in this case, after the expiry of the decision period, the application has not been granted, as under (1), but the applicant does have the right to object and appeal, as if a negative decision had been taken.
- 3. penalty in case of late decision, a financial incentive, included in the relevant statutory regulation, which is automatically granted without the intervention of the court, but after notice of default by the provider after the expiry of the decision period.

These remedies can help improving the procedure for both residence and work permits and contribute to speeding up the application and issuing of permits, increase legal certainty for employers and employees, and contribute to better government accountability.

Following the research into the business and investment climate in Sint Maarten (E.6), the immigration office is working together with the ministry of VSA and the ministry of TEATT on a one-stop shop for permits, including work- and residence permits. The process is to be set up in such a way that the residence permit (provided that the files are properly submitted on the basis of a clear checklist) is issued (or refused) within 30 days.

It is recommended to amend the applicable guidelines of the Minister of Justice and include a 30-day period as the reasonable period for deciding upon applications for residence permits. For complex cases, extension should be possible. In addition, it is recommended to change the fictitious negative decision into a fictitious positive decision: in case the immigration does not decide within the reasonable period of 30 days, and provided that the applicant has submitted an application that meets all requirements, the permit is granted.

One of the inefficiencies in the current procedure is that decisions on work- and resident permits are taken by ministers (VSA, Legal Affairs). Permit decisions often await approval (or disapproval) by the minister. It is advised to mandate SG's/directors to make these decisions in order to accelerate the permit process.

It is recommended that - in conjunction with other permits that entrepreneurs have to deal with on Sint Maarten - the procedures surrounding the work permit and the residence permit are integrated and optimized. The ultimate goal is to eventually place all permit applications behind one digital counter, with one well-functioning point of contact for questions or complaints, efficient information requests without duplication, with clearly motivated assessment criteria and decisions and maximum certainty regarding the deadlines and legal consequences in the event of failing primary (permit) decisions. A one-stop-shop solution requires substantial changes in the administrative and organizational field, especially for the implementing organizations and the ministries, directorates and executive bodies involved. However, the effects are correspondingly large. A one-stop-shop solution prevents unnecessary steps and costs and uncertainty and confusion for employees and employees. It prevents duplication of information and documents and prevents queues. It forces the government to come to clear and transparent rules and procedures behind the counter (the back office) about what information is necessary to be able to assess an application.

The procedures for applying for and granting of work permits and residence permits (by the VSA and by the Immigration Office) should be coordinated and integrated

where possible. To this end, conclusive agreements should be made between the departments responsible for implementing the relevant legislation, starting with the ministers responsible for the relevant areas of policy (labor market and immigration). Legislation also needs to be amended accordingly.

It is recommended to implement this recommendation in the medium term in conjunction with comparable legal and procedural amendments in the permit system as part of reforming the business climate (E.6).

6. Develop legislation and set up enforcement aimed at the temporary agency workers (uitzendwerk)

The market for private employment agencies does not function optimally. There are persistent signals of agencies that do not comply with the applicable regulations, which concerns exceedance of the maximum detachment period of twelve months, salary payment below the minimum wage and the employment of undocumented workers. There is also a lack of clarity about the working conditions of temporary agency workers.

The National Ordinance on the provision of workers mainly deals with permits for private employment agencies and does not provide sufficient protection for temporary agency workers. In order to prevent proliferation and exploitation, the regulations on temporary agency work should be revised.

Agency workers should be treated equally to other employees in terms of pay for comparable work, they should get access to social security and in addition, it is important that a temporary worker acquires the right to enter into permanent employment with the employment agency after a certain period of temporary employment (i.e. with continued payment of wages, even if there is no work).

On the other hand, not too many restrictions should be placed on temporary employment agencies that are functioning well at the moment. Ultimately, Sint Maarten benefits from a well-functioning and bona fide temporary employment agency sector.

Adjusting the regulations regarding temporary agency work is considered extremely complex. It is not possible to work according to the Dutch example, because the market for temporary agency work functions completely different in the Netherlands. A system will have to be developed based on the situation on Sint Maarten, which at the same time should not be too complex but yet effective. Simple adjustments should be made concern the sanctions: when do certain sanctions apply, when are administrative fines imposed, when are licenses revoked, etc. Investing in enforcing the temporary agency rules is a priority.

The recommendation is to start attracting new employees in the enforcement function, for example through horizontal mobility and retraining of civil servants. In addition, a thorough (legal) assessment must be carried out of adjustments to the required regulations. Subsequently, enforcers at all levels must be trained and familiarized with the new regulations. A system of monitoring must also be set up (number of temporary agency workers on an annual basis, background characteristics, sectors, salaries, transition to the labor market, flow to the user company, flow to the private employment agencies) and evaluation (how effective are the regulations).

The development of a regulatory framework for temporary agency workers is projected to take place in the medium term and taking the process of consultation and the legislative process into consideration, implementation is projected for the long term.

7. Develop policy aimed at investing in the working population and the quality of work Sint Maarten is highly dependent on foreign workers. On the one hand, labor migration is seen as the solution to match fluctuations in labor demand, and as a complement to the local force in particular where certain competencies cannot be found on the island. On the other hand, a high influx of labor migrants reduces the incentives for society to invest in the labor force of Sint Maarten. Policy aimed at activating the working population of Sint Maarten is under pressure if there is more competition from labor migrants.

The government has an important role in investing in (vocational) education. An extension of vocational education programs is recommended. This includes investing in practical vocational training (e.g. the Dutch BBL system of working four days a week and attending school one day a week). It has been proven that the benefits of practical vocational training outweigh the costs, for all parties involved. The focus of vocational education programs should be aligned to the demand for labor on the local labor market. In this regard, it is recommended to invest in the Council for Education and Labor that is currently inactive. In addition, employers carry responsibility for the development of their own employees by means of training. The government has a duty to train the unemployed, which should not only include refresher training, but especially retraining.

The development of policy aimed at investing in the local labor force in particular contributes to job opportunities for the young and to combating youth unemployment and brain drain.

This recommendation should be implemented in conjunction with the plan of action that will be developed following the screening of the educational system as part of theme G.1 of the country package. The final report of this screening is expected in July 2022.

In the short term, the recommendation is to introduce a light, legally required risk inventory and evaluation (RI&E), accompanied by government information and (a light form) of enforcement. The goal of RI&E is to create awareness among

employers and employees for the importance of proper working conditions. Investments in labor relations concern the development of good employment practices in general and good labor policy in particular.

Phase 3: Role government

8. Bring the minimum wage in line with the cost of living such that earnings at the low end of the labor market are protected

The purpose of a minimum wage is to provide a decent income for employees at the lowest end of the labor market. The minimum hourly wage in Sint Maarten equaled ANG 8.84 in 2022 and had not been increased since 2016, except for a 1 cent increase in 2020.* As a result, the minimum wage in Sint Maarten is the lowest of the Caribbean part of the Dutch Kingdom, while the cost of living is the highest. The minimum wage is widely acknowledged to be below what can be considered a living wage. Currently, the minimum wage does not serve its purpose of protecting earnings at the low end of the labor market, from corresponding adverse social consequences.

The reasons for the minimum wage not to have been indexed were the economic crises caused by hurricane Irma and Covid-19. In Aruba, Curacao, the Caribbean Netherlands and the Netherlands, indexation of the minimum wage did take place. In the Netherlands, the minimum wage is adjusted twice a year based on the development of CLA wages. In the Caribbean Netherlands, the minimum wage is indexed annually based on the consumer price index (CPI) of the previous year.[†] In Curacao, indexation also takes place based on the CPI.^{‡ 33}

As the economy of Sint Maarten is recovering, there is room to increase the minimum wage again. Moreover, the minimum wage does not seem to be a major

^{*} Since the first publication of this report, the minimum wage has been increased from ANG 8.84 to ANG 9.95 (AB 2023, no. 35).

 $^{^{\}scriptscriptstyle \dagger}$ In addition, the minimum wage in the Caribbean Netherlands has been increased several times, on top of the inflation rate.

 $^{^{\}ast}$ In Curacao, the minimum wage was last indexed in 2020. No indexation took place in 2021 and 2022 due to the negative economic impact of Covid-19.

bottleneck for employers. In many sectors, employers pay their lowest-paid employees above the minimum wage.

The recommendation concerning the minimum wage is as follows:

- To bring the minimum wage in line with the living wage, the cost of living should be taken into account. As data is outdated, a study needs to be conducted on the cost of living and price developments in Sint Maarten. The SER recently stressed the necessity for such a study.³⁴
- On the short term, consideration should be given to bringing the minimum wage to a level that it would have reached if the minimum wage was indexed (yearly) over the period 2017-2022. Indexation in Sint Maarten takes place based on the CPI. If the withheld indexation over the period 2017-2022 would be added to the minimum wage, the minimum wage would increase from ANG 8.84 to ANG 9.62 (an increase of 8.0 percent).* This would bring the minimum wage better in line with regional peers. It could be considered to gradually increase the minimum wage by adding the withheld indexation in two or three steps. Such a stepwise approach prevents sudden shocks and enables to monitor and evaluate the effects of steps of increases. Increasing the minimum wage for example has an effect on government finances, as the height of financial assistance is pegged to the minimum wage.
- In addition to catching up for foregone indexation in the past years, it is important to bring the minimum wage in line with the cost of living and to apply annual indexation. It is recommended to impose a standard annual indexation based on the CPI. This can be deviated from in the case of severe economic circumstances. Moreover, an advice from the SER precedes any adjustment of the minimum wage.

One of the concerns of the SER (2013) is that increasing the minimum wage without adjusting the wage tax scale, could imply that minimum wage earners pay relatively

more tax and could lose out on a net basis.³⁵ This is however not possible. On the contrary, an increase in the minimum wage means that the tax-free threshold for both income tax and payroll tax is also increased, meaning that low income groups that are currently taxed are not taxed if their incomes fall at or below that increased threshold. As a result, net income increases. This is described in the articles below:

- Article 8, paragraph 8, National Ordinance on Wage Tax: If the amount of the full-year wage, referred to in Article 7, paragraph 4, is equal to or less than the annual amount of the minimum wage, no tax is levied on that full-year wage. Minimum wage is understood to mean the minimum wage referred to in the National Ordinance on Minimum Wages.
- Article 24, paragraph 6, National Ordinance on Income Tax: If the amount of taxable income is equal to or less than the annual amount of the applicable minimum wage, no tax is levied on that taxable income. Minimum wage is understood to mean the minimum wage referred to in the National Ordinance on Minimum Wages.

The amount of financial assistance that people are entitled to in Sint Maarten is related to the minimum wage. This relation will be elaborated on in the research into social security in Sint Maarten (E.4 of the country package).

Considering the urgency of this matter, as well as the recent advice by the SER, it is recommended to implement the stepwise increase of this minimum wage in the short term.

^{*} The recommended increase has already been implemented (AB 2022, no. 57; AB 2023, no. 35).

Recommendations for reforms



Figure 32 Comparison of the current minimum wage and the minimum wage if indexed with the CPI over the period 2016-2022.* 36

9. Activating labor market policy: strengthen the public employment office (arbeidsbureau)

The National Ordinance on the Establishment of a Public Employment Office stipulates that there should be an active public employment office in Sint Maarten, responsible for job placement, supporting employers and job seekers by means of collecting and providing information about the labor market and providing information concerning proficiency and study choice. Formally, the NESC is the public employment office on Sint Maarten. However, the impact of the NESC appears to be limited, as many stakeholders are not familiar with the existence of an active public employment office in Sint Maarten, and the organization lacks sufficient capacity.

 * For the purpose of comparison, the minimum wage of Aruba is converted from AWG to ANG using an exchange rate of 1 AWG = 1 ANG.

Given the proposed reforms (and in anticipation of measures E.4 and G), a strengthening of the public employment office is highly recommended.

The added value of a strong active public employment office is multifold. First, it has a function in activating social benefit claimants. The second function of activation is therefore to control the volume of social benefit consumption, which, ceteris paribus, leads to savings. This is done by activating when applying for benefits (inflow restriction): during the application the public employment office assesses to what extent someone is suitable for work and where necessary helps to find work. After social assistance has been awarded, support is also offered to look for and find work (promoting outflow). Third, strengthening the public employment office ensures that the labor market will function better, people have better job opportunities and employers have an additional recruitment channel.

The public employment office should strengthen itself with regard to gathering and providing information, especially to job seekers. This includes, in particular, study choice advice and career guidance. To do this, however, the public employment office must obtain and provide more insight into future labor demand in combination with the development of supply. This presupposes monitoring of the labor market, based on reliable data and research (register research and surveys among companies and the working population) and information from vocational training.

The second strengthening of the public employment office concerns matching supply and demand on the labor market. The effectiveness of mediation is demonstrably higher the more personal commitment is made by the professional. Relying solely on self-reliance (of job seekers) does not lead to the desired result. Automated applicant and job boards (such as the job portal that is currently under development at the NESC) can be complementary, especially for employers and job seekers across the country - who are able to search and find each other. The development of an automated, online job board should be combined with improvements in vacancy registrations, as not all vacancies are currently registered at the Ministry of VSA.

A third function of the public employment office is to train job seekers. These are short courses to give people "a push in the right direction". This requires sufficient budget.

The recommendation is to recruit an expert change manager who can properly manage the strengthening of the public employment office, i.e. the realization of a wellfunctioning public employment office, without tasks related to licensing and enforcement. The latter must set up one or more small-scale branches spread across the island.

10. Make labor market legislation transparent and increase knowledge about rights and obligations among employers and employees

Employees in Sint Maarten are often not aware of their legal rights and obligations. The lack of knowledge has to do with information that is not easily accessible, fragmented, complex and sometimes only available in the Dutch language. Employers (especially the larger companies) are generally better informed about employment laws. However, according to both labor unions and employers' associations, the government does little to provide information about the rights and obligations of employees and employers.

Government should improve the provision of information to labor unions and employers' organizations as well as to individual companies and employees through, among others:

• Having an easily accessible help desk/information center in place for employees (physically and online) at the Chamber of Labor Unions (WIFOL) and at the Council of Employers/Chamber of Commerce for all labor related issues.

- Utilizing digital social media platforms such as Facebook, Instagram, Youtube, Whatsapp and Telegram. Sharing accessible educational videos about the rights and obligations of employers and employees creates awareness. These platforms can also be used to announce amendments in legislation that influence the rights and obligations.
- Providing clear and understandable information drawn up from the point of view of the employee and the employer. This information should be available in English.
- Educate companies (in particular SME's) and employees through employers' organizations, labor unions and the Chamber of Commerce about labor laws and regulations and the associated rights and obligations through online seminars and physical meetings.
- 11. Gather systematic information to monitor the labor market and to assess policy and implementation (monitoring and evaluation)

Sint Maarten lacks adequate quantitative and qualitative information that is needed to monitor and evaluate the functioning of the labor market. This includes information (per sector) on the number of job vacancies, the inflow and outflow; the number of permanent, temporary and temporary agency contracts; and salaries.

The recommendation is to start a project aimed at systematically collecting information/data on the labor market and ensure that this information is used to monitor the labor market and evaluate policy. While essential for developing and monitoring labor market policy, this recommendation should be implemented in conjunction with the broader project of improving statistical information for policy development as part of theme A.2 of the country package.

It is recommended that for policy purposes, the following information be recorded annually, so that (annual) time series arise by industry, occupation, education, age, country of origin:

- 1. Employment is portrayed by the CBS. This should be done in terms of volume of labor (hours worked), number of employees and number of jobs. The Labor Force Survey is a good source for this and should be adjusted accordingly.
- 2. Ideally, the number of job vacancies at a given moment (open job vacancies), the job vacancies that have arisen (inflow) and the job vacancies that have been filled should also be visible (outflow). This could be done by means of an annual job vacancy survey. However, this is expensive. As an alternative, the SZV employment database can be used. The start of an employment contract is the equivalent of a filled job vacancy. Using the SZV data has advantages: it is reliable, valid, relatively cost-efficient, real time available and contains valuable breakdowns. Moreover, other indicators can be constructed with these data: the average duration of (completed and uncompleted) employment contracts, the mobility (number of employment contracts in a certain period, for example one year). In addition, use could be made of so-called online job scrapers, but this has several methodolog-ical disadvantages (selectivity, not suitable for time series analysis).
- 3. The supply of labor is illustrated by the LFS. In addition, the registration file of NESC and information on financial assistance can be used as a supplement. It is also important to use data from the immigration office and on vocational training (number of school leavers by education and level).
- 4. Bottlenecks in the labor market are identified by gaining insight into outstanding job vacancies (see above). This is a first indicator. Subsequently, supply and demand can be confronted and compared on the basis of background characteristics by asking companies about bottlenecks during vacancy surveys and by calculating the average duration of job vacancies (vacancy duration). The latter is possible when the number of open job vacancies is known, and this can then be compared to the inflow of new employment.

- 5. Qualitative information on the labor market can be obtained via sector organizations on the island, large companies, the tourist office and the Chamber of Commerce.
- 6. It is recommended to only start with labor market forecasts when the aforementioned basic data are in order.
- 7. It is recommended to appoint a dedicated labor market researcher in Sint Maarten to set up the system to collect, register and analyze the abovementioned data in a structured way.

Notes

³¹ Caribbean Analytics and Statistics (2022)

³² Sociaal Economische Raad (2014). Flexicurity for Sint Maarten.

³³ Van der Ende, M., Van den Bergh, R., & Peeters, R. (2020). *Loonruimte minimumloon CN – Eindrapport*. Ecorys
 ³⁴ Sociaal economische Raad (2021). Re: letter of advice concerning research request "Cost of Living on St. Maarten". Retrieved from SER website.

³⁵ Sociaal Economische Raad (2013). Re: Letter of advice concerning "Position paper met betrekking tot de noodzaak en wenselijkheid van de indexering van de minimumlonen per 1 januari 2013." Retrieved from https://ser.sx/wp-content/uploads/2019/08/Letter-of-Advice-with-regard-to-the-indexation-of-the-mini-mum-wages-as-of-January-1st-2013.pdf

³⁶ Van der Ende, M., Van den Bergh, R., & Peeters, R. (2020). *Loonruimte minimumloon CN – Eindrapport*. Ecorys Sociaal Economische Raad (2022). *Letter of Advice concerning a 'one-time increase of the minimum hourly wage'*. Retrieved from http://ser.sx/wp-content/uploads/2022/05/20220318-Letter-of-advice-one-time-minimum-hourly-wage-increase.pdf

Department of Statistics (2022). *Press release: Third quarter 2021 prices up from second quarter (0.47%)* and up from the year before (2.82%). Retrieved from: <u>http://stats.sintmaartengov.org/press_re-lease/CPI/2021/CPI_03_2021.pdf</u>

Minimum wage data are from national government websites.

6. Implementation and governance

There are several risks that could hinder the successful implementation of the reforms. These include resistance from within the government, resistance from social partners, the burden of the implementation process on Sint Maarten's civil service and insufficient external capacity, knowledge, and resources. Implementation requires external support and a governance structure that makes the implementation process, roles and responsibilities clear to all parties involved.



Risks

There are several risks that could hinder the successful implementation of the reforms.

First, there is the risk of resistance from within the government. This risk can a priori manifest itself for example with reforms where existing responsibilities, structures and positions change, and more intensive cooperation will be required. In order to manage this risk, it is important that there is political commitment at the level of the Council of Ministers of Sint Maarten for the entire package of reforms to the labor market (and the social security system) and that the Minister of VSA is mandated on behalf of the Council of Ministers as the principal of the entire reform program. As such, when it concerns the implementation of reforms, all government officials from all departments and agencies involved in the implementation process, work on behalf of the Minister of VSA.

A second risk stems from resistance among social partners to the proposed reforms. This risk manifests itself to a large extent when the proposed reforms in the area of the labor market and in the area of social security are inconsistent and insufficiently balanced. Or when the implementation of both reforms does not take place simultaneously. It is essential that social acceptance among stakeholders for reforms in both areas is tested as one coherent package and that implementation, takes place simultaneously. In addition, during the entire process of implementation, consensus should continuously be sought, tested and monitored (see also Implementation).

A third risk concerns the burden of the implementation process on Sint Maarten's civil service. The phasing of the reform proposals as presented in this chapter should make implementation feasible. Essential conditions however are that: (i) there is commitment at the political and top-official level so that resistance can be limited, and that scarce capacity and manpower is not wasted on non-productive and delay-ing processes; and (ii) capacity, knowledge and resources become available to support implementation. It is also important that the implementation procedure for

other aspects of the country packages be considered as this may lead to further phasing.

A fourth risk is that the required external capacity, knowledge and resources will not become available on time or may be insufficient. This can lead to the entire package not being implemented, or can lead to cherry-picking, which will take away the balance in the reform package.

The aforementioned risks largely fall within the sphere of influence of Sint Maarten and the Netherlands and can be managed with clear agreements at the political level in Sint Maarten and between Sint Maarten and the Netherlands. Through this there can be clear agreements within the Council of Ministers and between Sint Maarten and the Netherlands to ensure there is sufficient technical expertise, human capacity and other needed resources.

Implementation

Planning and relationship with other themes of the country package

Implementation of the recommended reforms requires careful tuning with several other themes of the country package, in particular with reforms of the social security system (E.4). A distinction is made between reforms that need to, or can be, implemented in the short term (0-1 year), medium term (1-2 years) and long term (2-5 years).

Being a precondition for successful implementation, strengthening the role of the social partners (recommendation 1) should be started with prior to the start of the implementation process of integrated reforms of the labor market and the social security system. It is also recommended to start with the strengthening of the enforcement function (recommendation 2) from the outset of the implementation process and organize the implementation as part of theme B (effectiveness of the public sector) of the country package. Realization however is foreseen for the long term.

The design of unemployment benefit scheme for Sint Maarten (recommendation 3) will be part of the social security project (E.4). Preparations (legislation, execution) for an unemployment benefit scheme can commence in the medium term, introduction is recommended when effective enforcement is in place, the public employment office is strengthened, and policy aimed at investing in the local labor force is developed.

Additional legal research is required on the dismissal procedure (recommendation 4). Conclusions and recommendations on this matter are expected in the medium term.

Acceleration of the process of attracting foreign workers (recommendation 5) ties in with initiatives in this direction undertaken by the immigration office, the Ministry of VSA and the Ministry of TEATT. It is recommended to implement these amendments in the medium term in conjunction with comparable legal and procedural amendments in the permit system as part of reforming the business climate (E.6).

The development of legislation for temporary agency workers (recommendation 6) requires a diligent policy development, consultation, and legislative process. This can be done in the medium term, while introduction of new legislation in the area of temporary agency work is foreseen for the long term. The same holds for developing policy aimed at investing in the local labor force (recommendation 7), which should be aligned with the plan of action that is being prepared as part of theme G.1 (Education).

Considering the social urgency of the matter, as well as the recent advice by the SER, it is recommended to increase the minimum wage in the short term (recommendation 8).^{*} Further steps to bring the minimum wage in line with the cost of

* Since the first publication of this report, the minimum wage has been increased from ANG 8.84 to ANG 9.95 (AB 2023, no. 35).

living requires the development of accurate data. This is foreseen for the medium and long term.

The public employment office, as part of the government organization of Sint Maarten, carries out an essential public task. The strengthening of the organization (recommendation 9) should be part of theme B of the country packaged (effectiveness of the public sector) and is projected for the medium term. Implementation of recommendation 10 (increase knowledge of right and obligations of employees and employers) is foreseen for the long run.

While essential for developing and monitoring labor market policy, setting up a system of structured labor market information (recommendation 11) should be implemented in conjunction with the broader project of improving statistical information for policy development as part of theme A.2 of the country package. To monitor the impact of reforms, it is important to start this project in the short term, while realization is foreseen for the long term.

Political adoption of reforms, preparation of implementation and consensus building Based on political and administrative adoption of the proposed reforms and the implementation plan, a preparation period applies. During this preparation period, the process of communication, education and consultation takes place and agreements are made between Sint Maarten and the Netherlands in the required support. In this preparatory phase, work is being done on building consensus in broad terms (common ground for employers and employees) for the package of reforms. During the entire implementation process, there should be regular tripartite consultations in order to safeguard the consensus.

Phase	Recommendation	Planning*	Relation with other themes
Phase 1: Preconditions	 Strengthen the role of social partners 	Short term	E.4
	2. Strengthen the enforcement function	Short term (reali- zation long term)	B.4, B.6, B.11
Phase 2: Labor market reforms	 Design an unemployment ben- efit benefit scheme 	Medium term (in- troduction long term)	E.4
	4. Accelerate dismissal procedures	Medium term	E.4, E.6
	5. Accelerate the process of at- tracting foreign workers	Medium term	E.4, E.6
	6. Develop legislation for tempo- rary agency workers	Medium term (im- plementation long term)	-
	 Develop policy aimed at invest- ing in the working population 	Medium term (im- plementation long term)	G.1
Phase 3: Role govern- ment	8. Bring the minimum wage in line with the cost of living	Short, medium and long term	-
	9. Strengthen the public employ- ment office	Medium term	B.4, B.6
	 Increase knowledge about rights and obligations 	Long term	-
	11. Set up system of structured in- formation to monitor labor mar- ket	Short term (reali- zation long term)	A.2

 Table 6
 Timelines of proposed reforms and relationship with other themes of the country package

With regard to the proposed phasing, these reflect achievable lead times for the three phases of reform, but their final adoption must take into account the available capacity within Sint Maarten's civil service and the implementation of other parts of

the country package. Further phasing in the planning of the proposed reforms may be necessary.

Required external support

The implementation requires external support. Due to the political, administrative, stakeholder and substantive complexity of these reforms, it is recommended that the steering committee (see below) is led by an independent chair who, with authority, knowledge and experience with (social) dialogue and/or negotiations between social partners, can lead the reform process. In order to safeguard the (perceived) independence, consideration may be given to recruiting an expert from outside Sint Maarten for this position.

The reforms will make significant demands on the execution capacity of the departments and agencies concerned, for several years to come. It is recommended that an external project manager be recruited to support the steering committee. The role of the project manager is to prepare agendas, meetings and decision making of the steering committee, to monitor performance of the project teams, monitor overall planning, prepare reporting to the Minister of VSA, etc. This requires a full-time position of the project manager.

Substantial external capacity, expertise and funding is required to strengthen the enforcement function in phase 1. This concerns expanding capacity, education and training, writing procedures, introducing ICT solutions, etc. What exactly is required depends on the activities and proposals in other parts of the country package (B.4); it is urgently recommended to carry out an integral assessment of the required capacity, expertise and funding aimed at strengthening the enforcement function for all relevant policy areas as soon as possible. Adequate enforcement is a precondition for almost all of the planned policy reforms in the country package.

^{*} Short term = 0-1 year; medium term = 1-2 years; long term = 2-5 years.

Phases 2 and 3 require different sorts of capacity and expertise: legislative capacity to develop new, and adjust existing legislation, external expertise in the field of temporary agency labor (uitzendwerk), external education and training in the execution of unemployment benefit schemes (UWV), expertise, capacity and funding to set up the executive function (enforcement temporary agency labor, unemployment benefit scheme). In addition, communication, translation and legal experts are required to carry out the project aimed at increasing transparency of labor market legislation. In addition, a technical expert in the field of labor market research and evaluation is required to design a system of labor market data, data-collection methods and data-analysis tools.

Implementation and governance structure

The three phases described in this report are the starting point for the implementation of proposed reforms. Prior to this, it is essential that the reform proposals in this area (labor market) and those in the area of the social security system have been brought together into an integral, coherent program. This step should be taken first after completion of both research projects.

The three phases of labor market reform can be implemented as soon as the necessary capacity and knowledge become available. It is essential that an implementation and governance structure is established that makes it clear to all organizations and persons involved in the implementation process how responsibilities for implementation, support, management, monitoring, reporting, commissioning, escalation and ultimate responsibility are organized and who is responsible and accountable for what. Without such an implementation and governance structure, the proposed phases will diverge, sub-goals will become leading instead of the main goal, accountability will fall short and the chances of successful implementation will be small. Social dialogue and communication with the social partners should be given a central place in this governance structure. With the implementation and governance structure proposed for this purpose, a link has been sought with the structure that has been developed for other parts of the country package.

Political responsibility and escalation

Labor market reform is part of the Sint Maarten country package and of the implementation agendas that Sint Maarten and the Netherlands agree in that regard. The ultimate political responsibility therefore rests with the Prime Minister of Sint Maarten and the State Secretary for the Interior and Kingdom Relations of the Netherlands. They must remain informed about the progress of the reforms and the fulfilment of agreements made in the country package and the implementation agendas, so that they can be accountable to the parliaments of Sint Maarten and the Netherlands. In case of problems in the progress of the program, they serve as the highest escalation platform.

Implementation under responsibility of the Minister of VSA

The Council of Ministers of Sint Maarten adopts the reform proposals and mandates the Minister of VSA as the politically responsible minister of the implementation of the program. This implies that all departments, agencies and officials involved in the implementation process work on behalf of the Minister of VSA. Other ministers do not intervene in the management or implementation of the projects. This requires a specified, clear formulation of the mandate that has been established in the Council of Ministers of Sint Maarten and to which the full Council commits itself.

Involvement of employers and employees

Employers and employees should have a central place in the implementation and governance structure for reforms in the labor market and the social security system. It is essential to work on broad consensus with the employers' organizations and the labor unions in advance of the start of the implementation program. During the implementation process, regular tripartite consultations should take place in order to monitor and reach consensus on various decisions that still have to be made. Because it concerns the implementation of proposals that have already been

discussed with employers' organizations and labor unions and which have been adopted by the Council of Ministers - and for the sake of an effective and efficient approach - it is proposed that employers' organizations and labor unions both appoint one expert who will be part of the governance structure on behalf of the organizations and who can provide solicited and unsolicited advice to the Minister of VSA and to the steering committee during the implementation process. In addition, regular tripartite consultations should take place in order to safeguard the consensus.

Steering committee to control the program

The steering committee of the program falls under the commissioning Minister of VSA. The steering committee consists of the secretary generals and directors of departments and agencies involved in the implementation. The steering committee is led by an external chair and is supported by an external project manager. The steering committee directs project teams, establishes project plans and reports to the Minister of VSA. In the event of problems in progress, the steering committee will direct or, if the result is insufficient, escalate to the Minister of VSA.

With the implementation of this program, the secretary generals and directors of the services involved will be given a heavy task for a period of several years. It is important that the (chairman of) steering committee - as with other themes in the country package - receives adequate organizational support. This includes preparing agendas, organizing meetings, ensuring information flows between the steering committee and project teams and between the steering committee and minister(s).

Execution

The implementation is organized in project teams. The project teams are led by top officials or internal experts of the departments and agencies involved. For example, the legislative part of phases 2 and 3 is headed by the director of JZ&W; while the preparation of the execution of the unemployment benefit scheme is led by the director of the SZV.

The project teams are staffed by expert employees of the departments/services involved (including lawyers).

TWO-BZK

TWO-BZK will provide the necessary capacity and expertise for the implementation, which Sint Maarten itself does not have available.

In the proposed implementation and governance structure, TWO-BZK's role is to facilitate implementation by making capacity and expertise available, monitoring progress and providing information and advice to the State Council of Ministers (Rijksministerraad), and it serves as an escalation platform in the event of problems encountered in implementation.

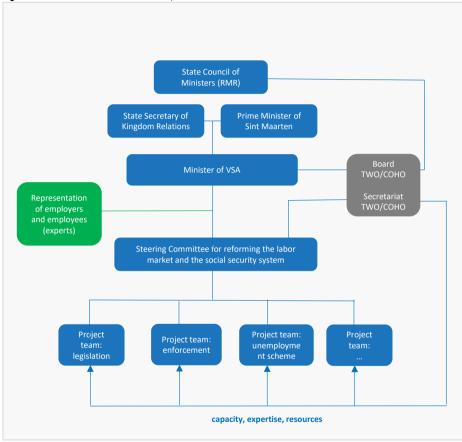
With regard to the monitoring role, it is essential that TWO-BZK has access to adequate and up-to-date progress information. In view of the commissioning role of the Minister of VSA, it is logical that TWO/COHO receives the steering committee's progress reports, after approval of the Minister of VSA.

Labor market reforms in coherence with reforms in social security and other areas, and with involvement of social partners

For seeking and maintaining consensus, for decision-making and for successful implementation, labor market reforms (E.1) should be aligned with reforms of the social security system (E.4) and with reforms in other areas - tackling the informal economy (E.2) and combating illegal labor (E.3) – such that a coherent and balanced package of reforms is designed. In addition, involvement of the social partners – employers' organizations and unions – is key for successful implementation.

Implementation and governance

Figure 33 Governance structure for implementation of labor market reforms



7. Annex



Annex 1: Answers to research questions

1. Which existing policies, laws and regulations involved in the current labor market should and can be adapted/ modernized, in order to address the current challenges effectively?

One of the main conclusions of this research is that no rigorous changes need to be made in terms of existing legislation. A number of recommendations include the (possible) adjustment of existing regulation and legislation. These are:

- Recommendation 4: Accelerate dismissal procedures and have further legal research carried out into the (adjustment of) various elements of dismissal legislation. It is recommended to have a legal expert specialized in dismissal law to assess the existing legislation and procedure.
- Recommendation 5: Make explicit and increase legal certainty for employers and accelerate the process of attracting foreign workers. Recommendations for adjusting existing legislation include the introduction of a fictious positive decision with regard to the work permit and the residence permit, and the reduction of the legally defined four-month procedural period with regard to the residence permit.
- Recommendation 6: Develop legislation for temporary agency workers. A new regulatory framework for temporary agency workers needs to be established and implemented.

2. Which policies and plans are already in development and can be accelerated?

Several of the proposed recommendations in this report are already in development:

- Recommendation 8 is to increase the minimum wage.* This recommendation is in line with a SER advise from March 2022, in which a one-time increase of the minimum hourly wage is proposed.³⁷
- Recommendation 5 is to optimize and improve the procedures surrounding the work permit and the residence permit in line with the recommendations that

follow from the research into the business and investment climate in Sint Maarten (E.6). In response to these recommendations on E.6, the immigration office, the ministry of VSA and the ministry of TEATT have initiated steps to improve procedures and to develop a one-stop shop for permits, including work and residence permits, in order to accelerate the permit process.

- Recommendation 9 is to strengthen the public employment office in order to train unemployed workers and match them with vacancies. Over the last years, the NESC put effort into the organization of job fairs, training programs and information sessions. Moreover, a job portal is being developed that should make the existing vacancy bank more efficient.
- Recommendation 11 is to gather labor market information systematically in order to monitor the labor market and assess policy implementation. Several initiates to gather more labor market information have been put into force already, such as the labor market assessment by the National Recovery Plan Bureau (NRPB), and the updated labor force survey and national census survey by STAT.

3. What are best practices from other countries that have proven to be effective in a context similar to Sint Maarten? What are alternatives for dismissal procedures, for example mediation and arbitration and the feasibility of implementing of alternative procedures?

Practices in other countries are used as reference; however specific characteristics of the labor market of Sint Maarten (most open economy of the region, highly volatile, high dependency on foreign labor, strong seasonality, etc.) warrant for duplication of policies from other countries and call for reforms and policy customed to the Sint Maarten labor market.

4. What are alternatives for dismissal procedures, for example mediation and arbitration and the feasibility of implementing of alternative procedures?

^{*} In fact, the minimum wage has already been increased from ANG 8.84 to ANG 9.95 (AB 2023, no. 35).

The existing dismissal law of Sint Maarten may require adjustments to improve dismissal procedures. In general, no substantial bottlenecks have been observed in the dismissal legislation, there are several discussions at play, concerning the complexity and duration of dismissal procedures. At the same time, amending dismissal law requires utmost caution of balancing legal positions of employees and employers. It is therefore recommended to have a legal expert specialized in dismissal law to assess the existing legislation and procedure with the central question of whether the dismissal procedure can be improved such that the legal positions of employers and employees remain balanced. Specific research questions that need to be addressed in the assessment, are defined in this report.

5. What policy options are not yet reflected in reports and studies but can improve the current labor market (blind spots)?

The recommendations proposed in this study build upon existing reports and studies, such as the SER (2014) and the Tripartite consensus document (2016). However, a number of additional recommendations are done. These are:

- Recommendation 2: Strengthen the enforcement function.
- Recommendation 6: Develop legislation for temporary agency workers.
- Recommendation 7: Develop policy aimed at investing in the working population.
- Recommendation 9: Strengthen the public employment office.
- Recommendation 11: Set up a system of structured information to monitor the labor market.
- 6. What are gaps in resources, exhibited over time, related to (scenarios of) categories (immediate, midterm and long-term projects)?

The implementation plan (chapter 6) includes required resources for the successful implementation of the proposed package of reforms. This includes a steering committee led by an independent chair, an external project manager to support the

steering committee. For the implementation, substantial external capacity, expertise, and funding is needed, such as: execution capacity; specific expertise to execute the different labor market reforms; communication, translation and legal experts; a technical expert in the field of labor market research and evaluation.

7. What are effective labor market reform measures that can be implemented bearing in mind the current and future labor market dynamics?

Voluntary labor mobility is low in Sint Maarten. This has to do with the Cessentia regulation and the absence of an unemployment scheme providing insurance against loss of income in the event of unemployment. The report includes recommendation to introduce an unemployment benefit scheme in Sint Maarten and to reform the Cessantia regulation.

Sint Maarten has an open economy that relies heavily on tourism. Foreign workers are important to accommodate the seasonal economy. The process of attracting foreign workers can however be lengthy and bureaucratic. This report includes the recommendation to accelerate the process of attracting foreign workers.

Facilitating the inflow of (skilled) foreign labor decreases incentives for employers to invest in the labor force of Sint Maarten in terms of schooling and training. Therefore, accelerating the process of attracting foreign workers should be combined with policy aimed at investing in the local labor force.

There is an increase of temporary contracts over the last decade. Some temporary workers are prone to proliferation and exploitation. This report includes the recommendation to develop legislation for temporary agency workers.

8. What overlap exists with other policy recommendations (E4, E6, G1) from the country package / what is needed from these other policy recommendations (E4, E6, G1) to make the modernization of labor market policies a success?

Table 6 in chapter 6 shows which recommendations overlap with other country package measures. The specific relation of each recommendation with other parts of the country package is elaborated on in chapter 5 and 6.

9. How do several policy options to improve the labor market, interact with potential (future) improvements in social security?

There is a strong interrelation between the recommendation to introduce an employment benefit scheme, the recommendation to accelerate dismissal procedures, the recommendation to develop policy aimed at investing in the local labor force and the recommendation to strengthen the public employment office. These recommendations contribute to a dynamic labor market, while providing a sufficient social safety net, and an activating environment aimed at improving participation. In the social security project, the unemployment benefit scheme will be designed and further improvements (security and incentives) in the social security system will be recommended.

In the invitation to tender, it was mentioned that the research should pay explicit attention to implementation:

i. Provide recommendations for the successful implementation of proposed measures (beyond noting, listing and prioritizing: how to make them happen). Include recommendations on how to overcome the gap between existing and needed capacity, knowledge and resources. In doing so, keep in mind specific challenges in the context of Sint Maarten.

An implementation plan is provided in chapter 6, including required capacity and expertise.

ii. Categorize policy recommendations: - Short-term: Feasible within current mandate ('quick wins'), without extensive additional capacity or legislative changes. Pay

specific attention to ensuring active participation of social partners. - Medium-term: Achievable within two years, with an indication of resources needed, potential bottlenecks and risks. - Long-term: Issues to be addressed later. Provide a system to check their urgency.

Chapters 5 and 6 include a categorization of the recommendations into short-term (0-1 year), medium-term (1-2 years) and long-term planning (2-5 years).

iii. Provide recommendations on how Sint Maarten, the Netherlands (and other Kingdom partners) can work together to support and stimulate the ambitions of, and actions in, Sint Maarten.

Chapter 6 elaborates on the cooperation between Sint Maarten and the Netherlands in order to successfully implement the proposed package of reforms.

Annex 2: Calculation of minimum wage indexation

In chapter 5 the recommendation was made to increase the minimum wage with the (withheld) indexation over the period 2017-2022, based on the CPI. Data on the CPI is derived from the quarterly CPI updates from STAT. Table 7 shows the calculation of the minimum wage including the withheld indexation over the period 2017-2021.

 Table 7: calculation of the minimum wage indexation³⁷

	Minimum wage SXM	CPI SXM	Indexation	Minimum wage + indexation
2017	8.83	0.47%	0.04	8.87
2018	8.83	1.96%	0.17	9.04
2019	8.83	2.71%	0.25	9.29
2020*	8.84	0.09%	0.01	9.30
2021	8.84	0.60%	0.06	9.35
2022	8.84	2.82%	0.26	9.62
2023	9.95	3.45%	0.33	9.95

Notes

³⁷ Sociaal Economische Raad (2022). *Letter of Advice concerning a 'one-time increase of the minimum hourly wage'*. Retrieved from SER website.

Department of Statistics (2022). *Press release: Third quarter 2021 prices up from second quarter (0.47%) and up from the year before (2.82%)*. Retrieved from: <u>http://stats.sintmaartengov.org/press release/CPI/2021/CPI Q3 2021.pdf</u>

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^{*} Indexation took place this year.