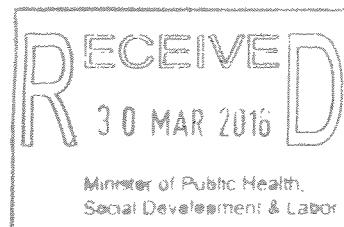


**CONFIDENTIAL**

Government of Sint Maarten  
Ministry of Public Health, Social Development and Labour  
The Honorable Minister, Mr. E. Lee  
Government Administration Building  
Clem Labega Square  
P.O. Box 943  
Philipsburg  
Sint Maarten



Date: 22 / 03 / 2016

Subject: Report Supervisory Council SZV

Your Excellency,

- **The Investment**

The Supervisory Council of SZV (the "SC") took notice of the letter of Mr. Carty (the "Director") to the Minister of Finance dated 5 February 2016, in which the envisaged investment is summarized as follows (the "Investment"):

- SZV will purchase the new administration building (the "NAB") from Sint Maarten for ANG 45 million (the "Purchase Price");
- SZV (or a newly incorporated subsidiary) shall, at the expense of SZV, finalize construction of the NAB, and, in consultation with Sint Maarten, arrange and pay for the interior design, furniture and computer hardware, for which SZV shall reserve and amount of ANG 15 million;
- SZA shall lease the NAB and computer hardware to Sint Maarten in such a manner that the net return on investment for SZV shall be 6% per annum;
- the Purchase Price shall be paid by ANG 20 million in cash and by setoff of ANG 25 million in debt that Sint Maarten has to SZV; and
- Sint Maarten will get the option to buy back the NAB (including furniture and computer hardware).

It is the SC's understanding that the Director intends to finance the Purchase Price (exclusively) with surpluses in the AOV fund.

The SC also took note of your Excellency's letter dated 15 February 2016 in which your Excellency, *inter alia*, states:

- to, in principle, not object to the Investment;
- that the final contracts with respect to the Investment require your Excellency's approval;
- your Excellency agrees to continue with the project to get the NAB ready for use by the tenant (i.e. Sint Maarten);
- that the acquisition of the NAB by SZV is *one* of SZV's business opportunities;
- that SZV will use a business approach to professionally manage these large investments;
- that SZV will incorporate a 100% subsidiary, i.e. an investment holding company (the

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“**Holding**”);

- that the Holding will incorporate a 100% subsidiary which will own the NAB;
- that other investment opportunities (e.g. a possible investment in the SMMC) will be structured via a separate (investment) company, which will be 100% subsidiary of the Holding as well; and
- having separate companies will create greater flexibility to invite future investors (e.g. APS, Vidanova other private/government companies etc.) to participate in an individual investment, and to create an easy exit if SZV wants out in such a way that no expensive additional directors and/or Supervisory Board is needed.

Based on article 15 of the *Landsverordening Uitvoeringsorgaan Sociale en Ziektekosten Verzekeringen* (the “**SZV Ordinance**”), the SC has advisory and supervisory role, and the SC reports to your Excellency. While the Director’s decision with respect to the Investment is not specifically subject to SC approval, the SC can request the Director to report to the SC regarding the developments pertaining to the Insurances and the policies followed and management tasks performed by the Director. That includes the Director’s investment task. The SC reports to the your Excellency. When informed of the Investment, the SC identified a couple of issues it considers necessary to report to your Excellency.

Unlike the ZV, OV and Cessantia Decrees, no national decree has been enacted setting out the investment parameters of the AOV Fund. While it does not have statutory basis or status, SZV’s Investment Committee adopted an Investment Charter on 6 June 2013, which document is meant as an advice to the Director. With respect to investments in general, and investments of AOV funds specifically, it states, amongst other things, the following (the “**Investment Guidelines**”):

- safeguarding the (future) available funds is SZV’s primary investment task;
- investments have a risk and revenue dimension, risk must continually be managed;
- investments must be solid and prudent;
- investments should carry limited risks while yielding desired results; and
- investments should have an investment horizon of 10 years and investments in real estate must reflect a strategic maximum of 15% and a tactical maximum of 10% of all investments.

Some might argue that because the Investment Charter lacks statutory basis or qualification, the Director is not bound by the Investment Charter and he has full discretion on how to invest AOV funds. The SC would disagree with that position. With any investment, the Director must always keep the objective of the SZV - safeguarding (future) funds so payment under the insurances can be made when needed - at the center of his decision-making. Unlike a private funds, management of public funds brings with it a higher standard of prudence. It, *inter alia*, means that directors of pension funds, social insurance banks and the like, when exercising proper business judgment and an adequate duty of care, must make investments with much more moderate risk profile, than if they were investing private money. When making investments they must apply the so-called prudent person standard. In short that standards entails:

- the fund must be managed by persons with the required expertise;
- the assets must be invested in a manner that is in the interest of the participants (the loyalty principle); and
- investments must make in such a way that the safety, quality, liquidity and rate of return

*SSMS*  
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of an investment portfolio as a whole, is safeguarded (the entire portfolio test). This means that the risk/return ratio of an individual investment is less relevant, the impact on the entire portfolio is relevant.

The Investment Charter was adopted to give a framework of what prudent investing is in the context of the objective of SZV. If the Director and Investment Committee decide to make an investment that deviates from the Investment Guidelines, they should be able to substantiate that such an investment is still in line with the objective of the SZV. I.e., they must substantiate that any investment meets the prudent person test.

So far, the Director and Investment Committee have not given the SC a clarification as to whether the Investment is in line with the Investment Guidelines. And if it does not, if and how the Investment meets the objective of SZV and why it is an appropriate investment. I.e., that it meets the prudent person test. When making that determination, the SC would expect that the Director and Investment Committee at least analyze the following risk factors, and explain what the conclusions are and how they came to those conclusions:

- Does the Investment qualify as a low risk investment that will generate the required rate of return? Is a 6% rate of return acceptable in light of the (scope of) the Investment?
- The Investment Guidelines allow for a total investment asset mix in various categories, with maximums of 15% (strategic) and 10% (tactical) for real estate investments. Does the Investment exceed those thresholds?
- What is the risk profile of the Investment? E.g., the envisaged 6% net rate of return, how will that be realized and how likely is it that it will be realized?
- What are the other investment opportunities SZV has? Has SZV researched those opportunities? If there are other opportunities and they are not being pursued, why are they less attractive than the Investment (in light of possible risk associated with the Investment)?
- Does the Purchase Price reflect fair market value? Is it too high, taking into consideration possibly limited market for the NAB?
- Do the AOV surpluses allow for payment of the Purchase Price (cash and (partial) debt set-off) while safeguarding that the (payment and ratio) AOV obligations are met?
- **The Director**

The SC has noted that the Director has been in office since 1 December 2014. The appointment was not formalized via national decree based on article 6 section 3 of the SZV Ordinance. It is clear that the Director is for all intents and purposes acting as the director of SZV. It is the SC's view that anybody who substantively holds that position and acts accordingly (regardless of the basis for holding the position), is bound by the responsibilities and obligations that come with that position. The fact that there may not be a formal appointment does not mean that the substantive responsibilities and obligation do not apply to that person. If that were the case, the SC would consider the risk considerable that obligations, standards, and check and balances that are associated with certain positions could be circumvented by not formally appointing that person (and giving them meaningless discretionary titles such as 'deputy' and 'interim'). Meaning, in the SC's view, the Director is substantively governed by the rules and regulations that apply to the director of SZV, regardless of the absence of a formal appointment by national



decree. It also means the Director has to be screened based on the 'Landsbesluit, Houdende Algemene Maatregelen van 21 februari 2012, ter aanwijzing van vertrouwensfuncties en ter vaststelling van regels ten aanzien van de wijze waarop veiligheidsonderzoeken worden gehouden' (the "Decree") and the National Ordinance Security Service (*Landsverordening Veiligheidsdienst*, "NOSS").

- **Recommendations**

Based on the aforementioned, the SC takes the liberty of making the following recommendations to your Excellency:

- Request the Director (and Investment Committee) to explain whether the Investment is in line with the Investment Guidelines. And if it is not, to explain and substantiate if and how the Investment meets the objective of SZV and why it is a (risk) appropriate investment. I.e., does the Investment meet the prudent-person test.
- Ensure that a national decree is enacted (based on article 25 of the AOV Ordinance) setting out the permissible investment parameters of the AOV funds.
- Enter into a performance contract with the Director based on article 19 of the SZV Ordinance.
- Inform the Director that he must to act (or cause the relevant SZV personnel to act) in line with the Investment Charter and to adhere to the Investment Guidelines. And to inform the Director that when the Director takes decisions that deviate from the Investment Charter, that the Director (and Investment Committee) is required to substantiate why such a deviation is justified and if and how the decision safeguards the objective of SZV. E.e., investments must always meet the prudent person standard.
- Request a screening of the Director based on the Decree and NOSS.
- Formalize the appointment of the Director via national decree based on article 6 section 3 of the SZV Ordinance.

The SC welcomes the opportunity to answer any questions your Excellency may have with respect to this report and the recommendations.

Yours sincerely,



Michel Petit

Chairman of the supervisory Board of USZV  
And on behalf of the Board





ST. MAARTEN

Minister of  
Public Health, Social Development  
and Labor

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Minister

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RECEIVED

By \_\_\_\_\_ Date \_\_\_\_\_

To: USZV Supervisory Board  
Attn: Michel Petit, Chairman  
Sparrow Rd. #4  
Philipsburg, Sint Maarten  
By hand and by email

Philipsburg, 27 May 2016  
Subject: Investment New Government Building

Dis: 6130

Dear USZV Supervisory Board,

I have received your report dated 22/03/2016 on March 20, 2016. Let me begin by thanking you for the advice rendered. This advice is indeed a proper function of the Board. Please rest assured that most of the topics you raise in your letter have been addressed already.

Rather than addressing all of the points raised in your letter, I will limit my comments at this time to the recommendations you made for the sake of the immediate concerns of the functional integrity of the USZV and the integrity of the Social funds for which it is responsible. These points will be addressed in the order in which they were presented:

1. Indeed I have requested the Director to demonstrate the relevance of the investment in the New Government Building to the Investment Guidelines adopted by the Board, and more importantly as the guidelines are more in the nature of an advice, the relevance and security of the investment to the legal requirements of the funds in the USZV's care. I am more than satisfied that these conditions have been met and that the investment meets or exceeds any "prudent-person" test. I suggest that if you have any doubts as to this requirement that you contact Glen Carty for detailed information.
2. I agree with your advice that the national ordinance regulating the investment parameters of the AOV funds needs to be done. I wish to point out to you that the USZV already provided the Ministry with a draft AOV Investment Decree. It will be channeled into the legislative procedure and then has to take its course. This has been added to the list of ordinances which need to be drafted.
3. Indeed the performance contract with the Director (Interim or otherwise) is necessary. VSA staff have been working on a draft of this contract, which ultimately cannot be concluded without a budget. As per the law on the USZV this contract is based also upon the budget. While we have only recently received the draft budgets both for 2016 and 2017, which was approved by your audit committee, I am not satisfied with the lack of detail in the operational

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Sint Maarten

budget of the body. Before I can approve the budget and incorporate it in the draft we have received a full GL of the budgets. I have requested further clarifications on the this and expect to receive this shortly.

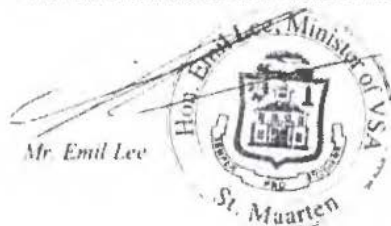
4. This point has been covered in the responses to points 1, 2, and 3 above.
5. The screening of Glen Carty is being done. This information I encourage you to verify with him.
6. On this point there is possibly some confusion. As explained in a meeting with Chairman Petit; in the absence of a proposal from the Board for a Director and Deputy Director, and in the interest of the welfare of the USZV in that continuity of operations cannot be endangered in the public interest. I have extended the appointment of Glen Carty for another year in order to allow you more time to fulfill this critical function of the board.

While we must recognize that compliance with the law by the USZV and previous Ministers of VSA has been below an acceptable standard, this situation cannot remain static. I count on your continued efforts and a renewed commitment to excellence along with me to bring the USZV to a state that we can all be proud of. In the event you would like to have a meeting with me and discuss these matters, please feel free to contact the Ministry for an appointment.

Looking forward to your response;

Sincerely,

Minister of Public Health, Social Development, and Labor (VSA)



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