

PERFORMANCE AUDIT: SXM INVESTMENT AGENCY (SMIA)

NOVEMBER
2023



COSTS, RESULTS AND FUTURE PERSPECTIVE



General Audit Chamber
Algemene Rekenkamer

This document is the English translation of the original Dutch report entitled: "*Doelmatigheidsonderzoek naar de SXM Investment Agency*". In the event of textual contradictions or other differences, the original Dutch text prevails.



November 2023

General Audit Chamber, Juancho Yrausquin Blvd #10, unit 4 & 5

PREFACE

This report highlights findings and recommendations after conducting an in-depth analysis of the St. Maarten Investment Agency (SMIA).

Our critical review includes examining strategic, financial, and governance aspects, emphasizing the importance of clarity and effectiveness. Our recommendations focus on strengthening the structure, ensuring financial accountability, and promoting sustainable growth.

The Chamber has always been critical of how local investments were managed. Promised progress, for various reasons, still needs to be fulfilled.

In that context, this report should be read as an evaluation and a guide for optimizing SMIA's contribution to the future growth of the St. Maarten General Pension Fund.

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SUMMARY

The Sint Maarten Investment Agency (hereinafter: SMIA) is a company established in April 2020 by the Sint Maarten General Pension Fund (APS) with the aim of identifying investment opportunities for sustainable development and capital growth in St. Maarten. Initially, an investment bank vehicle was considered. Based on various studies, alternatives were examined, and the decision was ultimately made for SMIA. The SMIB project was initiated in December 2017 and was one of APS's larger projects. Due to complications that have been identified during the process, the board decided in January 2019 to establish SMIA.

SMIA's changing objectives and organizational structure raise concerns about the consistency and effectiveness of its overall business strategy. These uncertainties suggest a possible lack of clarity and direction, posing a risk to the company's ability to fulfill its mission.

It is unclear what role the Central Bank of Curaçao and St. Maarten (CBCS) has in overseeing SMIA, which raises questions about governance. Additionally, the absence of financial statements for SMIA is cause for concern.

Since 2018, APS has invested ANG 1.8 million in SMIA and received three advisory opinions on possible investments, however, no actual investments were made. The operational costs of ANG 1.4 million, which did not include any local investments, raise concerns about the efficiency of SMIA.

SMIA will be transformed into Sint Maarten Investment Company (SMIC) with Curaçao Financial Group (CFG) as fiduciary manager.

We conclude that SMIA, so far, has not been effective in achieving desired objectives.

RECOMMENDATIONS

Based on our review, we offer the following recommendations to APS:

- 1. Strategy Stabilization:** Strive for a stable and consistent business strategy at SMIA to minimize continuous shifts in objectives and structure, thereby increasing effectiveness. Adjust the articles of incorporation accordingly.
- 2. Improve Governance and Transparency:** Review and document SMIA/SMIC's governance structure and ensure transparency, including the role of CFG, to reduce ambiguities and risks.
- 3. Define CBCS' role:** Work with the Central Bank of Curaçao and Sint Maarten (CBCS) to clarify their role and oversight of SMIA/SMIC to ensure financial sustainability.
- 4. Prioritize Financial Statements in the interest of transparency:** Arrange for timely delivery of SMIA's financial statements and ensure transparency in financial reporting, enabling enhanced review and accountability. The SMIA's Articles of Incorporation require that financial statements should have already been prepared. SMIA's Financial statements would provide insight into financial performance, promote transparency, and facilitate effective assessment and accountability.

1 OUR AUDIT

1.1 Basis for the audit

The General Pension Fund Sint Maarten (hereinafter: APS) is, based on article 26 of the [National Ordinance General Pension Fund Sint Maarten](#) (hereinafter: Lv APS), subject to the audit of ARSXM. Accordingly, we annually audit the financial statements and report thereon based on article 18, tenth paragraph of the Lv APS. The General Audit Chamber also checks the legal entities under civil law in which the fund directly or indirectly holds more than half of the issued capital; in this case, the Sint Maarten Investment Agency (hereafter: SMIA).

1.2 The objectives and audit questions

This audit's objective is to understand better the function, utility, and performance of SMIA. We then aim to inform Parliament, the Minister of Finance, and other stakeholders about the results of our inquiry. To this end, we have formulated the following audit questions:

1. How did APS arrive at its decision to enlist SMIA?
2. What has SMIA cost or delivered to date?
3. Were resources deployed optimally to achieve the desired results?

The audit period concerns the start of SMIA (including SMIB) until November 2023.

1.3 Methodology

As part of ARSXM's review of APS' 2022 financial statements, we conducted an audit using a format-free approach. This involved using interviews, questionnaires, document requests, and desk analysis to gather relevant information.

Throughout the audit process, we followed due process and provided APS with the chance to respond to our findings, conclusions, and recommendations.

1.4 Reading Guide

This report addresses in sequence:

Chapter 2: the structure and organization of SMIA

Chapter 3: a financial analysis: costs and benefits

Chapter 4: the situation in 2023

2 SMIA'S STRUCTURE AND ORGANIZATION

2.1 What is SMIA?

The Sint Maarten Investment Agency (SMIA) was established in 2020 and became operational at the end of that year. SMIA's primary mission is to identify investment opportunities that will benefit the future growth of Sint Maarten.¹ SMIA was established to facilitate loans, equity participation, and other investment opportunities to improve the Sint Maarten financial market. However, APS intended to expand SMIA's shareholder base and convert the fund's investment in SMIA into a mix of equity and fixed-income (loan) investments. Nonetheless, as of December 31, 2020, APS was the sole owner of SMIA, which also financed the start-up costs.² The main activities are shown in Figure 1.

Figure 1: SMIA's main activities



2.2 Evolution from inception

In 2017, APS identified the need for an investment vehicle partly because of the limitations of the local capital market; the urgency was heightened in the aftermath of Hurricane Irma. APS board approved a project proposal and began the preparatory phase toward establishing "Sint Maarten Investment Bank (SMIB)," intending to leverage investment opportunities for sustainable development and improve the alignment between capital market supply and demand.³ By January 2019, the APS Board decided to establish SMIB but not as a bank.

APS becomes the largest (but not sole) shareholder. The option of later developing the entity into a full-fledged bank was left open. Subsequently, SMIB was changed into SMIA.⁴ Establishing a full-fledged investment bank would be financially and operationally challenging.

APS engaged consultants to develop a business plan and promote SMIA to stakeholders in the Netherlands and St. Maarten. However, this did not lead to investment in SMIA by stakeholders. Ultimately, the board decided to continue SMIA with APS as the sole shareholder, during which time APS recruited an interim management team.⁵ Effective May 1, 2023, an agreement was signed with Curaçao Financial Group (hereafter CFG) to act as the fiduciary manager for APS' local investments.⁶ APS intends to transform SMIA into SMIC. We address this in more detail in Chapter 4. Figure 2 depicts the timeline.

Figure 2: Evolution from SMIB to SMIA to SMIC



¹ Articles of Incorporation SMIA of April 28, 2020.

² Financial Statements 2020, 2021 and 2022 of APS.

³ Memorandum to management dated June 14, 2021: "Treatment of SMIA related cost in the Financial Statement 2020".

⁴ Idem.

⁵ Idem. This concerns the board decision dated September 12, 2019.

⁶ In response to the Memorandum of Findings (dated November 20, 2023), APS management indicated that the legal agreement has not yet been finalized. The General Meeting of Shareholders formally appointed CFG as fiduciary manager of SMIA.

2.2.1 Organizational Structure

APS' Supervisory Board of that time initiated creating an entity to promote investment opportunities. The former chairman of the Board of APS was appointed as a member of SMIA's Supervisory Board immediately after its establishment.⁷ There was no waiting period between his APS chairmanship and his role as a board member of the subsidiary (SMIA) he co-founded. The other member also served as the director ad interim in 2022.⁸ These individuals were appointed after a careful selection process, according to APS. As of May 1, 2023, representatives of CFG filled the positions; the Supervisory Board was dissolved on the same date.⁹

2.3 Accountability

2.3.1 Accountability SMIA and APS

As of September 1, 2022, SMIA operates on behalf of APS, and APS is a (100%) shareholder. This requires SMIA to act within the guidelines applicable to APS. According to SMIA's Articles of Incorporation, financial statements are prepared at the end of each calendar year. The financial statements require the shareholder's approval (in this case, APS).¹⁰ Approval of the financial statements by the shareholder (APS) implies that they approve the financial management and work of the Director and Supervisory Board for the previous year. SMIA does not yet have its financial statements at the time of our audit. APS informed us of its intention to prepare SMIA's financial statements for 2020, 2021, and 2022.¹¹

2.3.2 Accountability SMIA and the Central Bank of Curaçao and Sint Maarten

As reported in section 1.1. of this report, both APS and SMIA are under the supervision of the General Audit Chamber. However, there is some ambiguity regarding the Central Bank's role vis-à-vis SMIA. From its inception in April 2020 until the drafting of this report, there has been no (direct) supervision of SMIA by the Central Bank of Curaçao and Sint Maarten (hereafter: CBCS).¹²

Before SMIA was established, oversight should have been apparent. While SMIA initially intended to have a different objective involving multiple shareholders, APS is now the sole shareholder.

This lack of clear supervision by the Central Bank of Curaçao and St. Maarten (CBCS) is troubling.

The central bank should supervise SMIA.

First, the CBCS is fundamentally allowed to supervise institutions of importance to the financial stability of Sint Maarten. Secondly, because by law, specifically Article 21 of the National Ordinance Pension Fund Sint Maarten (LV APS), provides the CBCS with the right to demand information from companies in which APS invests, which therefore also applies to SMIA (and possibly in the future: SMIC). The reason for this uncertainty is unknown to us, and we do not know whether CBCS has previously requested information regarding SMIA.

Figure 3: Is SMIA under CBCS supervision?



⁷ Extract from the Chamber of Commerce regarding the Sint Maarten Investment Agency dated September 2, 2022.

⁸ Source: extract from Chamber of Commerce dated September 2, 2022. However, APS' responses to our questions (dated Aug. 24, 2023) reveal that different individuals held different positions between April 28, 2021, and the end of 2022. Such changes, if accurate, were either not transmitted or not processed in the records of the Chamber of Commerce. APS management proved in its response to the Memorandum of Findings (dated November 20, 2023) that the changes are correct; however, they still need to be processed in the Chamber of Commerce database.

⁹ Chamber of Commerce extract regarding SMIA, dated November 6, 2023. These are the positions of Managing Director (2) and Director (1).

¹⁰ Article 23 of the Articles of Incorporation on SMIA, dated April 28, 2020.

¹¹ Interview with the chairman of the board and the director of APS, dated Oct. 26, 2023.

¹² Idem.

2.4 Our Opinion

Through SMIB/SMIA, APS wanted to create a market in which it would invest, potentially not directly in alignment with the pension fund's core mission. SMIA's sole shareholder is APS, and despite its ambition to expand its shareholder base, it failed to attract outside investors.

The process of changes in the entity's purpose and structure indicates an insufficiently well-thought-out business case; from (initially the idea in 2017 of) SMIB¹³ and from January 2019 converted into an entity called SMIA, to in the future SMIC, in less than 4 years.

We consistently reported on the lack of progress in local investment during the tenure of the former chairman of APS. Therefore, it is difficult for us to understand why APS chose the same person who was involved in conceptualizing SMIA as the best candidate for the Supervisory Board immediately after serving as the APS chairman.

There is currently a significant amount of uncertainty surrounding the role of CBCS, which is concerning. In our opinion, the role of CBCS should have been clearly defined from the outset of SMIA's conception, especially considering its materiality (a portfolio of around ANG400 million).¹⁴

The lack of clarity regarding the involvement and responsibilities of the CBCS presents significant risks, in our view, including the risk of loss of assets (value), legal compliance issues, and reputational damage. It is our opinion that effective oversight must be in place to protect the interests of participants and APS and to ensure that participants' pensions are not jeopardized under any circumstances.

¹³ Initially, an investment bank vehicle was considered. Based on various studies, alternatives were examined and the decision was ultimately made for SMIA (APS's answers to our questions dated August 24, 2023). The SMIB project was initiated in December 2017 and was one of APS's larger projects. Due to complications that have been identified during the process, the board decided in January 2019 to establish an entity called SMIA.

¹⁴ Interview with the chairman of the board and the director of APS, dated Oct. 26, 2023.

3. FINANCIAL

Chapter 3 discusses SMIA's establishment and operating costs and evaluates the effectiveness of financial resources in achieving intended objectives.

3.1 What did SMIA cost through the end of 2022, and what did it achieve?

3.1.1 Costs Sint Maarten Investment Bank

As mentioned in Section 2.1, APS pursued creating an investment bank called SMIB from the outset. APS abandoned this idea for a variety of reasons. However, costs were incurred.

In its response to the Memorandum of Findings, APS' management points out that there were no distinct costs for SMIB; after all, there were never two entities and/or two different cost streams. APS submitted a cost summary in a memo that lists costs for SMIA/SMIB from January 1, 2018, through January 29, 2019.¹⁵ The total cost was ANG 174,554.

3.1.2 Sint Maarten Investment Company (SMIC)

APS paid ANG 0.4 million in start-up costs to SMIA from 2018 through the end of 2022 and ANG 1.4 million in operational costs. ANG 1.8 million in funding was provided to SMIA through the end of 2022.¹⁶ At the time of this audit, SMIA has not provided financial statements for 2020, 2021, and 2022 to APS, which is required (by law). Figure 4 illustrates the costs.

Figure 4: costs SMIA for 2018 – 2022

Period	Type	Amount in ANG (x million)
2018 – end 2022	Startup costs	0.4
2018 – end 2022	Operational costs	1.4
2018 – end 2022	Total	1.8
2018 – November 2023	Financial Statement	Not available

According to APS¹⁷, costs in the start-up phase and, thus, preparation costs for SMIA of ANG 0.4 million included:

- a. *recruitment of a managing director,*
- b. *installation of a supervisory board,*
- c. *preparation of a business plan,*
- d. *setting up operations and processes,*
- e. *preparation of standard reports and*
- f. *seeking potential investment opportunities*

SMIA did not make any investments. It did, however, provide advice on three possible projects for APS. However, none resulted in actual investments.

It may reasonably be assumed that SMIA (under its current name) will no longer perform activities for APS and, therefore, will no longer generate revenue for the pension fund. Consequently, it is possible to conclude that APS' investment/cost of ANG 1.8 million in SMIA was unprofitable. Based on the end of 2021 evaluation, the board of APS has concluded that the SMIA structure has not achieved the desired results.¹⁸

According to APS, SMIA (under a different name, i.e., SMIC) will continue to conduct activities and may be given a different tax/legal structure with the objective of generating revenue. This review is ongoing.¹⁹

¹⁵ Treatment of SMIA related costs in the Financial Statement 2021, dated June 29, 2022.

¹⁶ APS responses to our questions (dated August 24, 2023).

¹⁷ Idem.

¹⁸ APS 2021 Financial Statements, and APS responses to our questions (dated August 24, 2023).

¹⁹ Response to the Memorandum of Findings (November 20, 2023).

3.2 SMIA's Operational Costs

Operating costs in the period 2020-2023 totaled ANG 1.4 million.²⁰ In 2020 and 2021, costs for SMIA and for its organization were structurally ANG 0.6 million per year (total ANG 1.2 million). Costs include board and director fees, rent, and consultancy. For 2022, virtually no operational costs were paid. In 2023 (through May), operational costs amounted to ANG 0.1 million.²¹

From September 1st, until the end of December 2022, APS paid SMIA for all activities based on a fixed monthly amount.²² The amount is based on an hourly rate and a commitment of 25 hours per month. In addition, an hourly rate is charged by SMIA, for consulting work, among other things. A total of ANG 1.4 million was spent on overhead, fees, and salaries, but no investments were made.

3.3 Our Opinion

SMIA has cost nearly ANG 2 million and has realized no local investments on balance. Three pieces of advice were prepared. However, they did not lead to investments. We do not find APS' financial statements transparent in this regard. In our opinion, the scope, use, and utility of SMIA are not sufficiently reflected. We conclude that SMIA has not effectively achieved the intended results for APS and its participants. It is difficult to justify spending almost ANG 2 million without any accountability, especially when there have been no adjustments for inflation since the pension reform and the pension accrual has been reduced from 2% to 1.75%.

²⁰ APS responses to our questions (dated August 24, 2023).

²¹ For clarification, APS indicates in its response to the Memorandum of Findings (dated November 20, 2023) that ANG 135,000 is part of the 2023 transfer to SMIC based on the approved SMIC 2023 budget.

²² In its response to the Memorandum of Findings (dated November 20, 2023), the Management indicates that it is for a monthly total amount to SMIA. In the response to the draft report, dated November 29, 2023, the board indicates that the payments have been made in accordance with the agreement concluded on September 1. According to APS, no payments were made to SMIA in the period from January 2022 to August 2022.

4 SITUATION IN 2023

APS has used various investment tools to invest locally. Previously, APS has tried to invest through SMIB and SMIA, but it decided to take different approaches in both cases.²³ This chapter reviews the current situation and looks at the past to gain insights into the future.

4.1 SMIA becomes SMIC

In May 2023, APS partnered with Curaçao Financial Group (CFG) to secure a continuation through the legal entity SMIA, renamed Sint Maarten Investment Company (SMIC).²⁴ In the process, CFG is retained as fiduciary manager. During our audit, the Articles of Incorporation continue to specify SMIA; SMIC does not formally exist by law (yet).²⁵

However, CFG is active and has met with various stakeholders, representing SMIC. This warrants a clarification of the legal and operational status of SMIA and the extent of CFG's involvement.

4.2 Setup of the governance

Governance includes the system of rules, processes, and responsibilities by which SMIA (probably SMIC in the future) is managed and supervised. The lack of a defined structure can lead to confusion and risk.

APS is currently in the process of establishing the governance structure. There is no agreement and lack of documentation regarding the structure, except the content of the agreements and board decision-making.²⁶

In addition, the Articles of Incorporation need to provide clear guidelines, considering that APS intends to change them.²⁷ We believe that governance should have been fully established and documented before the operational launch of the organization, including the final version of the Articles of Incorporation and complete agreement on the governance structure.

APS indicated that it is currently still in a transition/transformation phase regarding SMIA/SMIC.²⁸

4.3 Compensation Curaçao Financial Group

In this section, we specify CFG's compensation structure. There is a monthly fixed fee (retainer fee) The retainer fee refers to the compensation for the transition period. The retainer fee consists of the components shown in Figure 5.

Figure 5: components of the retainer fee Curaçao Financial Group 2023

Component retainer fee	USD (\$)	Component retainer fee	USD (\$)
Fixed retainer fee	160.000	Travel & Lodging (estimation)	14.600
Fees for deep-dive analyses diepgaande analyses (estimation)	50.000	IT-costs	900
Fees for incidental projects projecten (estimation)	15.000	D&O Insurance	5.250
Monthly fee for development projects (\$1.500)	9.000	Office Expenses	500
50% compensation closing fee (estimation)	37.500	Unforeseen (estimation)	2.500
Total			295.250

It also includes costs for investment advisory services and the use of other CFG employees. This budget applies until APS and CFG jointly decide otherwise and move to a *percentage of assets under management fee structure*.

²³ In its response to the Memorandum of Findings (dated Nov. 20, 2023), the Management indicates that the Board backs the approach through SMIA, but in a different way than has been accomplished so far. SMIB, according to APS, was only a concept which was converted to SMIA in January 2019. SMIB was never established, only SMIA.

²⁴ In its response to the Notice of Findings (dated Nov. 20, 2023), APS indicates that "the legal agreement has not yet been finalized".

²⁵ Extract from Chamber of Commerce dated November 6, 2023.

²⁶ In its response to the Memorandum of Findings (dated November 20, 2023), APS indicates that the governance outline was established through formal decision-making by the General Shareholder Meeting.

²⁷ Report of meeting APS and CFG of Oct. 26, 2023.

²⁸ Idem.

A fee structure that charges a percentage on the assets under management is different. As soon as SMIC starts managing assets (in whatever form), the management costs (including managing assets, preparing reports, carrying out investment administration, carrying out debtor administration for the local investments, etc.) will be reimbursed from that percentage and the current retainer fee will be eliminated. There will also be an annual budget for operational costs such as travel and accommodation, accountant, and insurance costs).

Inquiries show that CFG is expected to employ about 0.4 - 0.5 FTE for SMIA/SMIC activities.²⁹ For four people together the total is almost 2 FTE. In addition, CFG has expressed the expectation that the number of FTE will continue to grow to at least 4 FTE.³⁰

4.4 Was the decision to establish a subsidiary efficient?

CFG, as fiduciary manager and managing director of SMIA (probably SMIC in the future) will, in addition to advising, actively invest assets locally on behalf of APS. SMIA/SMIC will require office space outside APS.³¹ Historically, APS (until the formation of SMIA) recognized all costs and revenues of all its investments annually in its own APS financial statements. By using a subsidiary:

1. a subsidiary appears as an asset on the balance sheet;
2. are listed generally under costs and revenues effects of local investments incorporated into APS financial statements;
3. should thereafter be separate financial statements of the subsidiary, reflecting its costs and revenues.

To calculate the actual return on local investments (because of hypothetical advice from that subsidiary), the two financial statements would then have to be compared side by side. Currently, that situation does not exist.

APS indicated in a response that the specific accounting in the APS financial statements will become clear once SMIA completes its 2021 and 2022 financial statements and the external auditor advises on the valuation and inclusion of SMIA/SMIC in APS' own 2023 financial statements and onwards. The options are consolidating the subsidiary in APS' financial statements or classifying SMIA/SMIC as a local investment. In either case, according to APS, SMIA/SMIC's earnings become part of APS' earnings.³²

4.5 Commitment and projections

For an effective transition to SMIC and to ensure the long-term financial stability of this entity, it is necessary to understand the expected revenues (net return), the required staffing expressed in full-time positions, and a clear structure for compensation in 2024. The absence of this information may complicate the planning and implementation of the transition.³³

4.6 Missing Financial Statements from SMIA

The fact that, according to the current Articles of Incorporation, SMIA's financial statements should have already been available is an issue separate from the stated transition by APS. It is disappointing that these financial statements are still not available, especially since:

1. there is little turnover, and the extent of the financial situation should be relatively easy to determine
2. besides 3 opinions on investment opportunities, we have little knowledge of SMIA's other activities.³⁴

This lack of transparency and documentation means that financial accountability has not (yet) taken place. Under the watchful eye of APS, ANG 1.8 million has been spent, and APS has approved several payments to SMIA, while financial accountability in the form of financial statements is lacking.³⁵

²⁹ Interview report APS and CFG of meeting date Oct. 26, 2023.

³⁰ Response of the board of APS dated November 29th, 2023, to the draft report.

³¹ Idem. SMIA is currently housed within the professional office park owned by APS.

³² Response to the Memorandum of Findings, dated November 20, 2023.

³³ In its response to the Memorandum of Findings dated Nov. 20, 2023, and the response by the board of APS dated November 29th, 2023, on the draft report, APS indicates that the 2023 budget has been adopted, that monthly statements of actual costs will be submitted, and that the 2024 budget of SMIA/SMIC has been broadly determined as part of the APS budget for 2024.

³⁴ In its response to the Memorandum of Findings dated November 20, 2023, APS indicates that it received quarterly reports from SMIA through the third quarter of 2021 on costs and revenues.

³⁵ Response of the Management of APS to the Memorandum of Findings dated November 20, 2023.

4.7 Our Opinion

It appears that important aspects, such as governance, the role of CFG, financial projections, staffing, financial statements, and the role of the CBCS, are currently not adequately regulated. These issues should have been settled before the SMIA/SMIC discussions to ensure effectiveness and risk management. The lack of clarity and documentation in these areas has not helped the transformation process. In its response to the draft report, the APS board indicates that it intends to discuss this with CBCS in the short term, with the intention of making agreements on how supervision can be further implemented.³⁶

Given CFG's intended role in SMIC and the significant financial resources involved, along with the inefficient and ineffective expenditure of ANG 1.8 million in the recent past with SMIA, and considering the participants' interest, APS would have been well advised to minimize the risks. We believe this was not done.

We recommend prioritizing and proactively working on the issues mentioned in Chapter 4 to maximize returns in the local market.

³⁶ Response of the board of APS dated November 29, 2023, on the draft report.



General Audit Chamber

Algemene Rekenkamer