ST. MAARTEN

Minister of Public Health, Social Development and Labor

Emil Lee
Minister

Soualiga Road #1
P.O. Box 943
Pond Island, Philipsburg
St. Maarten

T: +1721 520-2767
E: emil.lee@sintmaartengov.org
W: http://www.sintmaartengov.org

To: President of Parliament
Chairperson Sarah Wescot-Williams
Wilhelminastraat #1
Philipsburg, Sint Maarten

STATEN VAN SINT MAARTEN
Ingek. 21 JUN 2017
Volgnr. IS 18.46/16-17
Par. LB VB HRG

Philipsburg,

Subject: Copy of translated National Ordinance – Civil Code

DIV: 8331

Honorable President of Parliament,

In anticipation of the upcoming Parliament meeting scheduled for June 27th, 2017, I hereby submit a translated version of the National Ordinance to amend the Civil Code and a few other National Ordinances in relation to the replacement of the seventh Title A of Book 7A by a new title 10 of Book 7, establishing rules for labour agreements (National Ordinance Labour Agreement) for the members of Parliament perusal.

Hope to have informed you sufficiently.

Sincerely,

Minister of Public Health, Social Development, and Labor (VSA)
Mr. Emil Lee

PARLIAMENT OF SINT MAARTEN
Session 2015-2016-082
No. 2

National Ordinance, of the
to amend the Civil Code and a few
other National Ordinances in relation
to the replacement of the seventh
Title A of Book 7A by a new title 10
of Book 7, establishing rules for labour agreements
(National Ordinance Labour Agreement)

BILL

IN THE NAME OF THE KING!

The Governor of Sint Maarten,

Having taken into consideration:

That it is advisable to establish new rules with regard to labour agreements and to this end to replace the seventh Title A of Book 7A of the Civil Code, by a new title 10, entitled Labour Agreement, in Book 7 of that Code;

After having heard the Council of Advice and in general consultation with Parliament, has established the following National Ordinance:

Article 1

After title 9 of Book 7 of the Civil Code, a title is inserted, reading as follows:

Title 10 Labour Agreement

Section 1 General Provisions

Article 610

1. The Labour Agreement is the agreement in which the one party, the employee, commits himself to perform labour, in the employment of the other party, the employer, at a wage for a certain period of time.
2. If an agreement is in compliance with the description of the first paragraph as well as with that of another special sort of agreement established by the law, the provisions of this title and the provisions given for the other sort of agreement are applicable alongside each other.

Article 610a

The person who works for another against payment by that other party, for three consecutive months, weekly at least eight hours or who performs labour for at least thirty five hours per month, is presumed to perform this labour in accordance with a labour agreement.

Article 610b

If a labour agreement has lasted for at least three months, the agreed upon labour in a given month is presumed to be of a scope equal to the average scope of the labour per month during the three preceding months.

Article 611

The employer and the employee are obliged to conduct themselves as a good employer and a good employee.

Article 612

1. A minor who has reached the age of sixteen, is capable of entering into a labour agreement. In everything related to that labour agreement he is equal to an adult and may appear in court without the assistance of his legal representative.
2. If a minor who is not competent to do so has entered into a labour agreement and has subsequently performed labour in the service of the employer for four weeks, without his legal representative having lodged an appeal on the grounds of annulment of the incompetence, he shall be considered as having obtained the permission from that representative to enter into this labour agreement.
3. An incompetent minor who has entered into a labour agreement with the permission of the legal representative, is equal to an adult in everything that he does, which is related to that labour agreement, with the exception of the provision in the fourth paragraph.
4. An incompetent minor cannot appear in court without being assisted by his legal representative, except if it has been proven to the judge that the legal representative is not in a position to declare himself.

Article 613

The employer may only appeal to a written stipulation which gives him the authority to amend a labour condition appearing in the labour agreement, if he has such an important interest in the amendment, that the interest of the employee that would be injured must give way, according to the standards of reasonableness and fairness.

Article 614

The term, meant in article 52, first paragraph, section d, of Book 3, with regard to the grounds for annulment resulting from this title, shall start on the day following that on which an appeal was made on a stipulation to that effect.

Article 614a

1. Employing employees on a temporary basis is solely possible on the basis of a written labour agreement for a definite period of time.
2. A labour agreement for a definite period of time may only be entered into if:
   a. There is a need for temporary workers for only a part of the year;
   b. This is a question of replacing one or more temporarily absent workers;
   c. The work is related to the execution of carefully described work or a project; or,
   d. For casual, unregulated work.
3. If a labour agreement has been entered into, without taking into consideration the first and second paragraph, the provisions with regard to the termination of labour agreements for an indefinite period of time are applicable, under which is also understood, what is established by or by virtue of the National Ordinance termination of labour agreements.
4. The provision in the first, up to and including the third paragraph, does not stand in the way of the validity of a stipulation, implying that the labour agreement terminates legally at the time that the employee reaches the pensionable age, except if the right to old age pension has been put on hold based on article 8a, first paragraph, of the National Ordinance General Old Age Pension, in which case the pensionable age shall only be deemed to have been reached starting on the day on which the suspension of the right to old age pension has ended.
5. The provision in the first, up to and including the third paragraph, does not stand in the way of the validity of a labour agreement for a definite period of time which has been entered into after the employee has reached a pensionable age.

Article 615

1. The provisions of this title are not applicable to the labour agreement between the shipping company and the skipper and to that between the skipper and the ship's officers and ship's mates.
2. Furthermore, they are not applicable with regard to persons in the employment of the Government, unless they have been declared applicable, either before the start of the employment by or on behalf of parties, or by legal regulation.

Section 2 Wages

Article 616

The employer is obliged to pay the wages of the employee at a specific time.

Article 617

1. The established form of the wages may not be otherwise than:
   a. Money;
   b. If that form of wages is customary or desirable due to the nature of the business of the employer, affairs suitable for the personal use of the employee and his housemates, with the exception of alcoholic drinks and other stimulants which are damaging to the health;

d. Services, facilities and activities to be performed by or for the account of the employer, including instruction, board and lodging;
e. Stocks, claims, other rights and items of evidence of these and coupons;

2. No higher value may be allotted to the items, services and facilities meant in the first paragraph, sections b, c and d, than that which corresponds with the actual value of these.

Article 618

If no wage has been determined, the employee is entitled to the wage which was customary at the time that the labour agreement was concluded, as agreed upon, in the absence of such a criterion, to a wage which is determined taking into account the circumstances of the case, in all fairness.

Article 618a

The wage per day is calculated as follows:

a. For the employee who has a five-day workweek:
1° by multiplying the wage agreed upon between the employer and the employee with the average number of working hours per week of the employee in question for the last three months and to divide the product obtained by five;
2° by dividing the weekly wage agreed upon between the employer and the employee by five;
3° by multiplying the monthly wage agreed upon between the employer and the employee by three and dividing the product obtained by sixty five.

b. For the employee who has a six-day workweek:
1° by multiplying the wage agreed upon between the employer and the employee with the average number of working hours per week of the employee in question for the last three months and to divide the product obtained by six;
2° by dividing the weekly wage agreed upon between the employer and the employee by six;
3° by multiplying the monthly wage agreed upon between the employer and the employee by three and dividing the product obtained by seventy eight.

Article 619

1. If the wage consists in full or in part of an amount which has been made dependent on some information which one must be able to prove from the books, documents or other information carriers of the employer, the employee has the right to request submission of such items of evidence, as he needs to be able to determine this information.
2. Parties may agree in a written agreement, to whom, in deviation of the first paragraph, submission of mentioned items of evidence shall be effectuated. As such, may not be appointed employees, who are in the service of the employer, who are charged with the bookkeeping.
3. Only the employee shall be authorized, for the purpose of the annulment of a stipulation which deviates from the first paragraph, or the second paragraph, second sentence, to make an appeal on the grounds of annulment.
4. The submission of the items of evidence by or on behalf of the employer is effectuated if so desired under the express obligation to secrecy by the employee and the person who replaces him in agreement with the second paragraph; the latter can however never be obligated towards the employee, except to the extent it concerns the profit made in the business of the employer or in a part thereof.

Article 620

1. The payment of the wage established in currency is made in the legal currency of this country or by transfer payment in accordance with article 114 of Book 6.
2. The payment of the wage established in currency, may be made in foreign currency, if this has been agreed upon. The employee is however authorized to request payment of currency used in this country, starting on the second coming payday. If conversion is necessary, this shall be done according to the exchange rate, meant in articles 124 and 126 of Book 6.
3. The payment of the wage established in other elements than in currency, is effectuated in accordance with the agreement made or, if nothing has been agreed upon, according to what is customary.

Article 621

1. Payment of the wage, other than established in article 620, or established in forms other than allowed by article 617, is not liberating. The employee retains the right to request the payment of the outstanding wage, or if this has been determined in a form other than currency, the value of the outstanding accomplishment of the employer legally without being obligated to refund the non-liberated payment.
2. Nevertheless the judge, upon granting the request of the employee, may limit the sentence to such an amount as he shall consider reasonable in view of the circumstances, but at the most the sum of which the damage suffered by the employee shall be established.
3. A legal claim of the employee on the basis of this article shall become prescribed after the passing of six months after the day on which the non-liberating payment has taken place.

Article 622

The payment of the wage established in currency, which does not take place with the application of article 114, of Book 6, is done either at the place where the work is performed as a rule, or at the office of the employer, or at the home of the employee, at the choice of the employer.

Article 623

1. The employer is obliged to pay the wage established per pay period, each time after the end of the time period over which the wage must be calculated, based on the agreement, on the understanding that the time period for payment is not less than one week and not more than one month.
2. The time period, after which the wage must be paid, may be extended by written agreement, but not longer than up to a month if the time period on which the wage must be calculated based on the agreement, is shorter than a month.
3. Only the employee is authorized to make an appeal to the grounds of annulment for the annulment of a stipulation which deviates from this article.

Article 624

1. If the wage established in currency is dependent on the results of labour to be performed, the employer shall stick to the terms of payment, which are in effect for the wage established per

pay period for comparable labour unless, taking into consideration article 623, other terms have been agreed upon.

2. If on payday, the amount of the wage as mentioned in the first paragraph cannot yet be determined, the employer is obliged to pay an advance in the amount of the wage to which the employee would have been entitled on average per payment term, for the three months preceding the payment date, or if that is not possible, the amount of the usual loan for comparable work.
3. A written agreement may be made that the advance is set at a lower amount, but not less than three fourths of the average wage for the three months preceding the pay date respectively the usual wage for comparable labour.
4. To the extent the wage established in currency consists of an amount which has been made dependent on some information, which must be evident from the books, documents or other information carriers of the employer, the employer is obliged to make payment each time that the amount of that wage can be determined, on the understanding that at least once a year payment must take place.
5. Only the employee has the authority to make an appeal to the annulment grounds to annul a provision which deviates from this article.

Article 625

1. To the extent that the wage established in currency or the portion which remains after deduction of the amount by the employer in accordance with article 628 may be adjusted and after deduction of the amount to which third parties assert their rights, in accordance with article 633, is not paid at the latest on the third working day after the one on which, pursuant to articles 623 and 624, first paragraph, the payment should have been made, the employee, if this non-compliance is to be blamed on the employer, has the right to an increase due to delay. This increase, from the fourth up to and including the eighth working day, amounts to five percent per day and for every following working day, one percent, on the understanding that the increase, in no event shall exceed half of the amount due. Nevertheless, the judge may restrict the increase to such an amount which, in view of the circumstances, shall appear to be fair.
2. This article may not be deviated from to the detriment of the employee.

Article 626

1. The employer is obliged to provide the employee with a written specification of the wage amount, at the time of each payment of the wage established in currency, of the amounts from which this is composed, of the amounts which have been retained from the wage amount, as well as the applicable minimum wage pursuant to the provision by or by virtue of the National Ordinance Minimum wages, to the extent applicable.
2. The specification shall mention furthermore, the name of the employer and of the employee, the date of employment, the term for which the wage has been calculated, as well as the agreed upon term of employment.
3. This article may not be deviated from to the detriment of the employee.

Article 627

No wage is due for the time during which the employee has not performed the agreed upon work.

Article 628

1. The employee retains the right to the wage established according to the time sheet, if he has not performed the agreed upon labour because of a reason which in all fairness should be for the account of the employer.
2. If he is due to a monetary payment, pursuant to some legally prescribed insurance or pursuant to some insurance or from some fund in which the participation has been agreed upon in or results from a labour agreement, the wage shall be reduced by the amount of that payment.
3. If the wage in currency has been established in another manner than per time sheet, the provisions of this article are applicable, on the understanding that as wage is considered, the average wage which the employee, had he not been prevented , could have earned during that time.
4. The wage is however reduced by the amount of the expenses which the employee has saved by not performing the labour.
5. The first up to and including the fourth paragraph may only be deviated from during the first six months of the labour agreement by written agreement to the detriment of the employee.
6. In the event of successive labour agreements in the sense of article 668a, a deviation as meant in the fifth paragraph, may be agreed upon for at the most six months.
7. After the passing of the term, meant in the fifth paragraph, this article may only be deviated from to the detriment of the employee by collective labour agreement.

Article 628a

1. If a period of the work of fewer than fifteen hours per week has been agreed upon and the points in time on which the work must be performed have not been laid down, or if the period of the work has not been laid down or has not been laid down univocally, the employee is entitled to the wage to which he would have been entitled, if he would have performed three hours of work, for each period of fewer than three hours, in which he performed labour.
2. This article may not be deviated from to the detriment of the employee.

Article 629

1. If the employee has not performed the agreed upon labour, because he was prevented from doing so, in connection with disability as a result of illness or accident, he shall retain his right to the wage established per time sheet, for a relatively short time, however for at least a period of six weeks.
2. The employee does not have the right meant in the first paragraph:
   a. If the illness or the accident has been caused through his fault or is the result of an ailment, of which he has provided the employer deliberately with false information upon entering the agreement;
   b. For the time, during which, through his fault, his recovery is hampered or delayed;
   c. For the time, during which, even though able to do so, without proper grounds, he has not performed suitable work as meant in article 658a, second paragraph, for the employer;
   d. For the time, during which, without proper grounds, he refuses to cooperate with reasonable regulations given by the employer or by an expert appointed by him or measures taken which are aimed at enabling the employee to perform suitable work as meant in article 658a, second paragraph.

3. For the application of the first paragraph, periods in which the employee, as a result of illness or accident has been prevented from performing the agreed upon labour, are added together, if they succeed each other with an interruption of fewer than four weeks, unless the disability cannot reasonably be considered to result from the same cause.
4. In addition, the employee retains the right to the wage established according to the time schedule, for a short time to be established in all fairness, if either as a result of the performance of an obligation imposed by the law or the Government, without monetary compensation, which performance could not be done in his leisure time, or as a result of very special personal circumstances, has been prevented from performing the agreed upon work.
5. Under very special circumstances, for the application of this article, is understood in any event: delivery of the wife of the employee and the death and the burial of one of the members of his family or one of his blood relatives or in-laws in the direct line and in the second degree in the collateral line. By the performance of an obligation imposed by the law or the Government is understood the exercising of the right to vote.
6. Article 628, second, third and fourth paragraph is applicable accordingly.
7. This article may only be deviated from to the detriment of the employee to such an extent, that it may be stipulated that the employee for the first two days of the time frame meant in the first paragraph is not entitled to wages.

Article 629a

1. Notwithstanding the provision in article 629, the female employee, in the event of non performance of the agreed upon labour due to pregnancy and delivery, is entitled to continued payment of the complete wage for at least fourteen weeks.
2. The female employee determines the starting date of the pregnancy leave, based on the supposed delivery date established by the family doctor, the obstetrician or medical specialist and taking into consideration the provision in the first paragraph.
3. The pregnancy leave shall start not earlier than seven weeks and no later than prior to two weeks before the expected delivery date.
4. Notwithstanding the actual delivery date the maternity leave shall be at least six weeks.
5. This article may not be deviated from to the detriment of the female employee.

Article 629b

1. In the event of the death of the mother before the maternity leave has ended, the employee who as parent is in a legal family relationship to the child has the right, with retention of wages, to take leave for a period which is equal to the not yet expired part of the maternity leave.
2. In the event of hospital admission or illness of the mother after the delivery and prior to the passing of the maternity leave, the employee, who as parent is in a legal family relationship to the child is entitled to leave with retention of wages for a period which is equal to the not yet expired part of the maternity leave, in order to be able to comply with his care tasks for the chid and the family.

Article 630

1. The employer who is temporarily prevented from paying the wage, to the extent that this has been established in a form other than in currency, without this prevention being the result of

the fault of the employee, he shall owe him a compensation, of which the amount has been established in an agreement, or in the absence of an agreement, is determined by the judge in accordance with custom or fairness.
2. This article may not be deviated from to the detriment of the employee.

Article 631

1. A stipulation, in which the employer obtains the right to retain some amount of the wage on payday, is null and void, notwithstanding the competence of the employee to give the employer a written mandate to make payments in his name from the wage to be paid out. This mandate is at all times revocable.
2. Stipulations in which the employee commits himself to the employer to spend the wage received or his other income or a part thereof in a certain manner and stipulations, in which the employee commits himself to the employer to purchase his necessities at a certain place or from a certain person, are null and void.
3. The first and second paragraphs are not applicable to the stipulation in which the employee commits himself to participate in the medical expenses regulation, accident-, pension or savings regulation which is under Government supervision or is accommodated at an institution under Government supervision.
4. For the compliance of a stipulation as meant in the third paragraph, the employer may withhold the necessary amounts from the wage of the employee; he is then obliged to pay these amounts in accordance with the stipulation on behalf of the employee.
5. Article 612 is applicable accordingly to the participation by a minor in the regulation as meant in the third paragraph.
6. If the employee, pursuant to an invalid stipulation as meant in the second paragraph, has entered into an agreement with the employer or a third party, he may legally request that what he has paid in that respect shall be compensated by the employer. If he has entered into the agreement with the employer, he moreover has the authority to annul the agreement.
7. The judge, upon granting a request of the employee on the basis of the sixth paragraph, may limit the obligation to pay of the employer, to such an amount as appears reasonable, in view of the circumstances, but at the most to the sum on which he has set the damage suffered by the employee.
8. A legal claim of the employee on the basis of this article shall become prescribed by the passing of six months after the date of the creation of the claim right.

Article 632

1. With the exception at the end of the labour agreement, adjustment by the employer of his debt with regard to the wage to be paid is only allowed with the following claims on the employee:
   a. The compensation due by the employee to the employer;
   b. The fines, due by the employee to the employer, according to article 650, provided that a written receipt is issued, which mentions the amount of each fine as well as the time on which and the reason why it was imposed, with a listing of the violated provision of an agreement entered into in writing;
   c. The advances on the wage, provided by the employer in cash to the employee, provided that this is backed up in writing;

e. The rent of a home or another premises, a piece of land or of implements, machines and equipment, used by the employee in his own company and which have been rented by the employer to the employee in a written agreement.

2. Adjustment shall not take place on the part of the wage on which attachment by the employer cannot be valid. With regard to the portion that the employer could claim pursuant to the first paragraph, section b, no more may be adjusted upon each payment of the wage than a tenth part of the wage established in currency which should then be paid.
3. The amount that the employer withholds, by reason of an attachment laid on the wage, shall be deducted from the maximum allowed for adjustment.
4. A provision which could afford the employer a more ample authority to adjust, is reversible, on the understanding that the employee is authorized to reverse, with regard to each separate adjustment statement of the employer which uses as point of departure the validity of the provision.

Article 632a

Attachment under the employer of the wage due by the latter to the employee is only valid up to the third part of the wage established in currency. There is no restriction, if the attachment is to recover maintenance, to which, on whose behalf the attachment has been laid, he has a claim by law.

Article 633

1. Transfer, pawning or any other transaction by which the employee allots some right to his wage to third parties, is only valid to the extent that an attachment on his wage would be valid.
2. A mandate to the claim of his wage is granted in writing. This mandate is at all times revocable.
3. This article may not be deviated from.

Section 4 Equal treatment

Article 646

1. The employer may not make a distinction between men and women when entering into a labour agreement, giving instruction to the employee, in the labour conditions, in the labour circumstances, upon promotion and upon terminating the labour agreement.
2. The first paragraph, to the extent it concerns entering into the labour agreement and giving instruction, may be deviated from, if the distinction made is based on a feature which is related to the gender and that feature due to the nature of the specific professional activities in question or the context in which these are executed, is an essential and qualifying professional requirement, provided that the objective is legitimate and the requirement is in proportion to that objective.
3. The first paragraph may be deviated from, if it concerns stipulations which are related to the protection of the woman, in particular in connection with pregnancy or motherhood.
4. The first paragraph may be deviated from if it concerns stipulations which are aimed at placing female employees in a privileged position, in order to cancel out or reduce disadvantages and the distinction is in a reasonable proportion to the aimed at objective.
5. In this article is understood by distinction: direct and indirect distinction as well as the order to make a distinction. By direct distinction is understood: distinction between men and women. By direct distinction is also understood: distinction on the basis of pregnancy, delivery and

motherhood. By indirect distinction is understood: distinction on the basis of other qualities than the gender, for example marital status or family circumstances, which has as a consequence distinction on the basis of gender.

6. The prohibition laid down in this article of direct distinction also entails a prohibition on intimidation and a prohibition on sexual intimidation.
7. By intimidation as meant in the sixth paragraph is understood: conduct which is related to the gender of a person and of which the objective or the consequence is that the dignity of a person is affected and that a threatening, hostile, abusive, humiliating or harmful environment is created.
8. By sexual intimidation as meant in the sixth paragraph is understood:
   Any form of verbal, non-verbal of physical conduct with a sexual connotation which has as its objective or consequence that the dignity of the person is affected, in particular if a threatening, hostile, abusive, humiliating or harmful situation is created.
9. The employer may not treat the employee unfairly, who rejects or passively suffers the conduct meant in the seventh and eighth paragraph.
10. The prohibition of distinction laid down in the first paragraph does not apply with regard to indirect distinction if that distinction is objectively justified by a legitimate objective and the means to attain that objective are fitting and necessary.
11. A stipulation in conflict with the first paragraph is invalid.
12. If the person who is of the opinion that a distinction is or has been made to his disadvantage as meant in this article, brings forward facts legally, which could lead one to suspect that distinction, must prove to the opposing party that there was no action in conflict with this article.
13. The second and third paragraphs are not applicable to the prohibition of intimidation and sexual intimidation, meant in the sixth paragraph.

Article 646a

1. Requiring a pregnancy test or a statement to this effect upon application for employment is in conflict with article 646, first paragraph, unless this is required by regulations with regard to the work, which are related to a recognized or substantial risk for the health and the safety of the woman or the child.
2. The refusal to enter into a labour agreement with a women because of her obvious pregnancy during the application procedure is in conflict with article 646, first paragraph.

Article 647

1. The termination of the labour agreement by the employer in conflict with article 646, first paragraph, or due to the circumstance that the employee has made an appeal to article 646, first paragraph, legally or otherwise, or has provided assistance in this regard, may be annulled. .
2. If the employee has not made an appeal to these annulment grounds, within two months after the termination, his competence to do so shall expire. Article 55 Book 3 is not applicable.
3. A legal claim in connection with the annulment shall become prescribed after six months has passed after the day the termination has taken place.
4. The termination, meant in article 646, first paragraph, does not make the employer liable for

5. The employer may not treat the employee unfairly because of the circumstance that the employee, legally or otherwise has made an appeal to article 646, first paragraph or has provided assistance in this respect.

Article 648

1. The employer may not make a distinction between employees on the basis of a difference in working hours in the conditions under which the labour agreement has been concluded, continued or terminated, unless such a distinction has been justified objectively. The termination of the labour agreement by the employer in conflict with the first sentence or due to the circumstance that the employee has made an appeal to the provisions in the first sentence or assistance has been granted in this respect, legally or otherwise. Articles 647, second and third paragraph, is applicable.
2. A stipulation in conflict with the first paragraph is null and void.
3. The termination, meant in the first sentence of the first paragraph, does not make the employer liable for damages.
4. The employer may not treat the employee unfairly because of the circumstance that the employee, legally or otherwise, has made an appeal to the provision in the first paragraph or has given assistance in this case.

Article 649

1. The employer may not make a distinction between employees in the labour conditions on the basis of whether or not the labour agreement is of a temporary nature, unless such a distinction it has been objectively justified.
2. The termination of the labour agreement by the employer because of the circumstance that the employer, legally or otherwise, has made an appeal to the provision in the first paragraph or has given assistance in this regard, may be annulled. Article 647, second and third paragraph, is applicable.
3. A stipulation in conflict with the first paragraph is null and void.
4. The employer may not treat the employee unfairly, because of the circumstance that the employee, legally or otherwise has made an appeal to the provision in the first paragraph or has given assistance in this case.
5. The provision in the first, up to and including the fourth paragraph is not applicable to a temp agreement as meant in article 690.

Article 649a

1. The employer may not treat the employee unfairly on the basis of membership or involvement in an employees' association, which pursuant to its articles of association, has as its objective to protect the interests of the member as an employee. The employer may not get involved either in the formation or the policy of such an association or give financial or other sorts of support to such an association for the purpose of domination.
2. Notwithstanding article 670, fourth paragraph, the termination of the labour agreement by the employer due to the circumstance that the employee, legally or otherwise, has made an appeal to the provision in the first paragraph or has given assistance in this case, may be annulled. Article 647, second and third paragraph is applicable accordingly.
3. A stipulation in conflict with the first paragraph is null and void.

4. The employer may not treat the employee unfairly, because of the circumstance that the employee, legally or otherwise, has made an appeal to the provision in the first paragraph or has given assistance in this case.

Section 5 A few special stipulations in the labour agreement

Article 650

1. The employer may only attach a penalty to the violation of the regulations of the labour agreement, if in the labour agreement is mentioned the regulations on the violation to which the penalty is attached and the amount of the penalty.
2. The labour agreement, in which a penalty is stipulated, is entered into in writing.
3. The agreement in which a penalty is stipulated, mentions accurately the allocation of the penalty. These may not, directly or indirectly be used for the personal benefit of the employer himself or to the person to whom the employer has given the authority to impose a penalty on employees.
4. Every penalty, stipulated in an agreement, has been set at a certain amount, expressed in the currency in which the monetary wage has been established.
5. Within one week, no amount in combined penalties may be imposed on the employee, which is higher than his cash wage established for one day. No separate penalty may be set at a higher sum than this amount.
6. Every stipulation in conflict with some provision of this article is null and void. However, but only with regard to employees whose cash wage amounts to more than the minimum wage in effect for them, in the event of a written agreement, may the provisions of the third up to and including the fifth paragraph be deviated from. If this happens, then the judge shall always be authorized to set the penalty at a smaller sum, if the imposed penalty appears to be excessive.
7. If the amount of the wage, mentioned in the sixth paragraph, undergoes a change, then the functioning of stipulations in which a deviation has been made from the third up to and including the fifth paragraph, shall be suspended towards the employee, whose wage established in monetary amounts to no more than the amended amount of the minimum wage.
8. By setting and stipulating penalty in the sense of this article is understood stipulation by the employer of penalty as meant in articles 91 up to an including 94 of Book 6.

Article 651

1. The possibility of imposing a penalty leaves intact the right to damage compensation on the basis of the law. However, with regard to a same act the employer may not impose a penalty and at the same time make a claim for damage compensation.
2. Every stipulation in conflict with the second sentence of the first paragraph is null and void.

Article 652

A probationary period, during which each of the parties is authorized to terminate the employment without giving notice or without taking into account the provisions in effect for the termination, may be agreed upon, solely by written agreement, upon penalty of nullity. Every stipulation in which the probationary period has not been set equally for both parties or has been set for more than two months, as well as any stipulation, in which because of entering into a new probationary period the

Article 653

Every stipulation in which the employee, whether or not for a certain time, is restricted in his competence to be employed in a certain manner, after the end of the employment, is null and void.

Section 6 A few special obligations of the employer

Article 654

1. If a labour agreement is entered into or amended in writing, the costs of the document and other additional costs are for the account of the employer.
2. The employer is obliged to provide, free of charge, a complete copy, signed by him of the document in which the labour agreement was entered into or amended, to the employee.

Article 655

1. The employer is obliged to provide to the employee, upon request of the employee, a written specification with at least the following information;
   a. Name and address of parties;
   b. The location or locations where labour is performed;
   c. The function of the employee or the nature of the work;
   d. The time of employment;
   e. If the agreement has been entered into for a definite period of time, the duration of the agreement;
   f. The claim to vacation or the manner of calculation of the claim;
   g. The term of the period of notice to be taken into account by parties or the manner of calculation of these periods;
   h. The wage and the term of payment as well as, if the wage is dependent on the results of the work to be performed, the amount of work to be offered per day or per week, the price for each and the time which is reasonably involved with the execution.;
   i. The customary working hours per day or per week;
   j. whether or not the employee shall participate in a pension plan;
   k. if the employee shall be working outside of Sint Maarten for a period longer than a month, also the duration of that work, the accommodations, the applicability of the Sint Maarten social insurance legislation or the specification of the organ responsible for the execution of that legislation, the currency in which payment shall be made, the reimbursements to which the employee is entitled and the manner in which the return has been arranged;
   l. the applicable Collective Labour Agreement.
   m. Whether or not the labour agreement is a temp agreement as meant in article 690.
2. The employer who refuses to provide the specification, or has included erroneous statements, is liable towards the employee for any damage caused.
3. The first up to and including the third paragraph are applicable accordingly to an agreement which regulates the conditions of one or more labour agreements which parties shall enter into, if after summons, labour is performed and upon entering another agreement other than a labour agreement, whether or not followed by other similar agreements, in which the one party, natural person, binds himself for the other party, to perform labour for payment, unless this

agreement is entered into in business or operation. Article 654 is applicable accordingly to the agreements meant in this paragraph.
4. If the fourth paragraph is applicable, in the written account, meant in the first paragraph, shall also be mentioned the agreement which has been entered into.
5. A stipulation in conflict with this article is null and void.

Article 656

1. The employer is obliged, upon his request to provide the employee with a reference letter, at the termination of the labour agreement.
2. The reference letter shall mention:
   a. The nature of the work performed and the working hours per day or per week;
   b. The starting date and the date of termination of the employment;
   c. An account of the manner in which the employee complied with his obligations;
   d. An account of the manner in which the labour agreement was terminated;
   e. If the employer terminated the labour agreement, the reason for this.
3. The information mentioned in the second paragraph, sections c, d and e, is only mentioned in the reference letter upon request of the employee.
4. If the employee has terminated the labour agreement and he has therefore become liable for damages, the employer is authorized to mention this in the reference letter
5. The employer who refuses to issue the requested reference letter, neglects to comply with a request as meant in the third paragraph, includes in the reference letter incorrect statements, intentionally or by fault or provides the reference letter with a feature or sets it up in a certain manner in order to make some statement with regard to the employee, which is not contained in the wording of the reference letter, is liable towards the employee as well as to third parties for the damage caused thereby.
6. This article may not be deviated from to the detriment of the employee.

Article 657

1. The employer is obliged to inform the employee with a labour agreement for a definite period of time, on a timely basis and in a clear manner, of a vacancy with regard to a labour agreement for an indefinite period of time.
2. The provision in the first paragraph is not applicable to a temp agreement as meant in article 690.

Article 657a

The employer is obliged to regulate the labour in such a manner that the employee does not have to perform labour on Sundays and those days which are equated with Sundays, by or by virtue of legal regulation with regard to the agreed upon work, except to the extent the contrary has been agreed upon or results from the nature of the work or the law.'

Article 657b

1. The employer is obliged to give resident employees, without a cut in pay, the opportunity to perform their religious duties, as well as to enjoy relaxation from the work, in both cases in the

2. This article may not be deviated from to the detriment of the employee.

Article 657c

1. The employer may not compel a pregnant employee to perform night work for eight weeks preceding the probable date of delivery. Upon submission of a medical statement, the employee may also refuse to perform night work during other periods during the pregnancy and for a maximum of four weeks immediately following the pregnancy leave.
2. For twelve weeks before the probable date of delivery, the pregnant employee may not be compelled to perform work standing up, for an uninterrupted period of time of more than sixty minutes. If the pregnant employee submits a medical statement which shows that she may not perform work standing up at all, the employer may not compel her to do so.
3. The employee who breast feeds her child, after consultation with the employer, for the first nine months of life of that child, has the right to interrupt the work, in order to be able to breastfeed her child in seclusion or to express the milk. The employer shall give her the opportunity to do so, and if necessary make available to her a suitable closed off area.
4. The interruptions, meant in the first paragraph, shall take place as often and as long as necessary, however these shall jointly amount to at the most one fourth of the working hours per shift. The establishment of the time and the duration of the interruptions are determined by the female employee in question in consultation with the employer.
5. The duration of the interruptions, meant in this article, are in effect for the application of this title and the provisions based thereon, as working hours for which the female employee retains her claim to the wage established according to working hours.
6. Every stipulation in which a deviation is made to the detriment of the female employee in this article is null and void.

Article 658

1. The employer is obliged to set up and maintain the areas, tools and equipment, in which or with which he has the work performed, in such a manner, for the performance of the work and to take such measures and to provide instructions, which are reasonably necessary to prevent the employee from suffering damages during the performance of his work.
2. The employer is liable towards the employee for the damage which the employee suffers during the performance of his work, unless he shows that he has complied with the obligations mentioned in the first paragraph or that the damage to an important extent is the result of intent or conscious recklessness of the employee.
3. The provision in the first and second paragraph and the provision in title 3 of Book 6 as regards the liability of the employer may not be deviated from to the detriment of the employee.
4. The person who, while running his business or operation has labour performed by a person with whom he has no labour agreement, is liable in accordance with the first, up to and including the third paragraph for the damage which this person suffers in the performance of his work.

Article 658a

1. The employer is obliged to take such measures as timely as possible and to give regulations as reasonably necessary, so that the employee, who, in connection with disability as a result of

illness is prevented from performing the agreed upon labour, is given the opportunity to perform his own or other suitable work.

2. By suitable work as meant in the first paragraph is understood: all work which has been computed for the ability and skills of the employee, unless acceptance for reasons of physical, mental or social nature cannot be required of him.

Section 7 Some special obligations of the employee

Article 659

1. The employee is obliged to perform the labour himself; he may only be replaced by a third person with the permission of the employer.
2. The legal procedure to comply with the labour obligation of the employee on condition of a penalty or imprisonment is not allowed.

Article 660

1. The employee is obliged to comply with the regulations as regards the performance of the work as well as with those which serve to promote the good order in the company of the employer, given by or on behalf of the employer within the boundaries of generally binding regulations or agreement to him, whether or not simultaneously with other employees.
2. The employee, who lives in with the employer, is obliged to conduct himself in accordance with the house rules.

Article 660a

The employee who, in connection with the disability as a result of illness, is prevented from performing the agreed upon work, is obliged:

a. To carry out the reasonable regulations given by the employer or an expert appointed by him and to cooperate with measures, as meant in article 658a, first paragraph, taken by the employer or an expert appointed by him.
b. To perform suitable work as meant in article 658a, second paragraph, for which the employer gives him the opportunity.

Article 661

1. The employee who causes damage to the employer during the execution of the agreement or to a third party to whom the employer is obliged to compensate that damage, in this case is not liable towards the employer, unless the damage is a result of his intent or conscious recklessness. The result of the circumstances of the case, partly in view of the nature of the agreement, may be otherwise determined in the first sentence.
2. Deviation of the first paragraph and of article 170, third paragraph, of Book 6 to the detriment of the employee is only possible by written agreement and only to the extent that the employee in this case is insured.

Section 8 Rights of the employee in the event of transfer of a company

1. For the application of this section is understood by:
   a. Transfer: transfer, as result of an agreement, a merger or a splitting, of an economic entity which retains its identity;
   b. Economic entity: entirety of organized means, intended for the execution of an economic activity, whether or not a principal one.
2. For the application of this section, a branch or a section of a company or branch is considered as a company.

Article 663

Upon the transfer of a company the rights and obligations, which result at that time for the employer in that company from a labour agreement between him and an employee working there, are passed on legally to the acquirer. Nevertheless that employer is still severally obligated for a year after the transfer, along with the acquirer, for the compliance with the obligations of the labour agreement, which were in effect before that time.

Article 664

1. Article 663, first sentence, is not applicable to rights and obligations of the employer which result from a pension agreement with regard to old age pension, disability pension, or surviving relatives' pension, if:
   a. The acquirer makes a same offer to the employee, meant in article 663, to enter into a pension agreement, such as he already made to his employees prior to the time of the transfer;
   b. By collective labour agreement, a deviation has been made from the pension agreement, meant in the heading.
2. Article 663, first sentence, is not applicable to rights and obligations of the employer which are the result of a savings plan, if the acquirer includes the employee, meant in article 663 in the savings plan which was already in effect for his employees before the time of the transfer.
3. Upon the transfer of a company, in which the transferor has not entered into a pension agreement with the employees attached to that company, if the acquirer has entered into a pension agreement with his employees, prior to the time of the transfer, the acquirer is considered, at the moment of the transfer, to have made the offer to enter into a same pension agreement to the employees of the transferor.
4. The third paragraph is applicable accordingly to a savings plan.

Article 665

If the transfer of a company results in a change of the circumstances to the detriment of the employee and the labour agreement is therefore dissolved pursuant to article 685, in view of the application to the eighth paragraph of that article, it shall be deemed as dissolved due to a reason which is for the account of the employer.

Article 665a

The employer shall inform his own employees who are involved in the transfer of the company on a timely basis of:

a. The intended decision to transfer;

b. The intended date of the transfer;
c. The reason for the transfer;
d. The judicial, economic and social consequences of the transfer for the employees, and
e. The measures considered with regard to the employees.

Article 666

1. Articles 662 up to and including 665 and article 670, sixth paragraph are not applicable to the transfer of a company if the employer has been declared in a state of bankruptcy and the company is part of the estate, as well as, if the employer is a credit institution or an insurer, with regard to the employer, the emergency regulation, meant in the National Ordinance Supervision Banking- and Credit System or the National Ordinance Supervision Insurance systems, has been pronounced.
2. This section is not applicable to ocean vessels.

Section 9 End of the labour agreement

Article 667

1. Without prejudice to article 614a, a labour agreement ends legally, if the time has passed by agreement, by the law or indicated by custom.
2. Prior notice is necessary in that case:
   a. If this has been determined by written agreement;
   b. If, according to the law or custom, notice should take place and this has not been deviated from by written agreement, where this is permitted.
3. A labour agreement as meant in the first paragraph may only be terminated prematurely if that right has been agreed upon by each of the parties in writing.
4. If a labour agreement which has been entered for an indefinite period of time, which has terminated other than by legal termination or by dissolution by the judge, has been continued once or more than once by a labour agreement for a definite period of time with intervals of not more than three months, in deviation of the first paragraph for the termination of that last labour agreement, prior notice is necessary. The term of notice is calculated from the time of conclusion of the labour agreement for an indefinite period of time.
5. There is also a question of a continued labour agreement as meant in the fourth paragraph if a same employee has been successively in the employment of different employers that must reasonably be considered, with regard to the work performed to be each other's successor.
6. For the termination of a labour agreement entered into for an indefinite period of time, prior notice is necessary.
7. A stipulation, pursuant to which the labour agreement terminates legally, due to the marriage of the employee, is null and void.
8. A stipulation, pursuant to which the labour agreement terminates legally due to pregnancy or delivery, is null and void.

Article 668

1. If the labour agreement, after the passing of the time, meant in article 667, first paragraph, is continued by parties unchallenged, it shall be considered to have been entered into again for

2. The same is applicable, if in the cases in which giving notice is necessary, timely notice has not taken place and the consequences of the continuation of the labour agreement have not been regulated intentionally.

Article 668a

1. From the day that between the same parties:
   a. Labour agreements for a definite period of time have succeeded each other with intervals of not more than three months and have exceeded a period of thirty six months, including these intervals, starting on that day the last labour agreement shall count as having been entered for an indefinite period of time;
   b. More than three labour agreements, entered into for a definite period of time have succeeded each other with intervals of not more than three months, the last labour agreement shall count as having been entered into for an indefinite period of time.
2. The first paragraph is applicable accordingly to successive labour agreements between an employee and various employers, who with regard to the labour performed, must be reasonably considered to be each other's successors.
3. The first paragraph, section a, is not applicable to a labour agreement entered into for not more than three months, which is immediately followed by a labour agreement entered into between the same parties for thirty six months or more.
4. The term of notice is computed from the time of realization of the first labour agreement as meant in the first paragraph, sections a or b.
5. Deviations may only be made from the first up to and including the fourth paragraph, by collective labour agreement, to the detriment of the employee.

Article 669

The person who terminates the labour agreement, upon his request shall give the other party a written account of the reason for termination.

Article 670

1. The employer may not terminate during the time that the employee is unfit to perform his work due to illness, unless the disability:
   a. Has lasted for at least a year;
   b. Started after a request for permission as meant in article 4 of the National Ordinance Termination of labour agreements, has been received.

   For the computation of the term, meant in section a, periods of unfitness to perform labour, as a result of pregnancy, preceding the pregnancy leave and periods of disability during the pregnancy- or maternity leave, meant in article 629a, have not been taken into account. Furthermore periods of unfitness to perform labour, other than meant in the previous sentence, are added together, if they succeed each other with an interruption of less than four weeks, or if they immediately precede and follow a period in which pregnancy- or maternity leave is enjoyed, unless the disability cannot reasonably be considered to be the result of the same cause.
2. The employer may not terminate a labour agreement with an employee during her pregnancy and because of her delivery. The employer, for the corroboration of the pregnancy may require a statement from a doctor or an obstetrician. Furthermore, the employer may not terminate the

labour agreement during the period in which she is on maternity leave or as meant in article 629a and after resumption of work, for a period of six weeks following that maternity leave, or following a period of disability to perform work, the cause of which lies in the delivery or the preceding pregnancy and which follows that maternity leave.

3. The employer may not terminate during the time that the employee is prevented from performing the agreed upon work, because, being of age, other than with the intention of performing military service or other government service, by way of his profession, he is meeting and obligation, imposed upon him by the law, or resulting from an agreement entered into by him towards the Government, with regard to the defence of the Country or for the protection of the public order; the same is true with regard to the minor employee, if the labour agreement, at the time on which the prevention starts, has lasted for at least six months.
4. The employer may not terminate the labour agreement due to membership of the employee in an association of employees which pursuant to its by-laws has as its objective the protection of the members, as an employee or due to the performing of or participation in activities for that association, unless those activities are performed during the working hours without permission of the employer.
5. The employer may not terminate the labour agreement due to the marriage of the employee.
6. The employer may not terminate the labour agreement with the employee working in his company, due to the transfer of that company, meant in article 662, first paragraph, section a.
7. The first paragraph, first sentence and the third paragraph may only be deviated from by collective labour agreement.

Article 760b

1. Article 670 is not applicable in the case of termination during the trial period or because of an urgent reason.
2. Article 670 is not applicable if the employee has agreed to the termination in writing or if the termination is effected due to the completion of the work of the company or of the section of the company, in which the employee is exclusively or mainly employed. The termination due to the completion of the work may however not affect the female employee who is on pregnancy- or maternity leave, as meant in article 629a.
3. Article 70, first paragraph heading and section a, is not applicable, if the employee who in connection with disability as a result of illness is prevented from performing the agreed upon work, without sound reasons, refuses:
   a. To obey reasonable instructions given by the employer or an expert appointed by him, and to cooperate with measures taken by the employer or an expert appointed by him, in order to enable him to perform his own or other suitable work;
   b. To perform suitable work as meant in article 658a, second paragraph, for which the employer gives him the opportunity.

Article 672

1. Termination may occur on any day, unless by written agreement, another day has been designated for this.
2. The term of notice to be taken into account by the employer, with a labour agreement which on the date of termination:
   a. Has lasted for fewer than five years: a month;
   b. Has lasted for five years or more, but fewer than ten years: two months;

c. Has lasted for ten years or more, but fewer than fifteen years: three months;
d. Has lasted for fifteen years or more: four months.

3. The term of notice to be taken into account by the employer is one month.
4. If the permission, meant in article 4 of the National Ordinance termination of labour agreements, respectively the evaluation meant in article 5 of that National Ordinance has been given, the term of notice to be taken into account, is reduced by the term, mentioned in articles 4 respectively 5 of that National Ordinance, provided that the remaining term of notice is at least a month.
5. The term, meant in the second paragraph, may only be reduced by collective labour agreement. The term may only be extended in writing.
6. The term, meant in the third paragraph, may be deviated from in writing. The term of notice for the employee, upon extension, may not be more than six months and for the employer not less than double that of the employee.
7. The fourth paragraph, to the extent it concerns the remaining term of notice, may only be deviated from by collective labour agreement to the detriment of the employee.
8. By collective labour agreement, the term of notice, meant in the sixth paragraph, second sentence, may be reduced for the employer, provided that the term is not shorter than that for the employee.
9. For the application of the second paragraph, labour agreements are considered to form a same uninterrupted labour agreement in the event of recovery of the labour agreement pursuant to article 682.

Article 674

1. The labour agreement is terminated by the death of the employee.
2. Nevertheless the employer is obliged to provide a payment in the amount of the wage which the employee most recently earned, to the surviving relatives of the employee from the day of passing up to and including a month after the date of passing.
3. For the application of this article, by surviving relatives is understood: the surviving spouse with whom the employee was living on permanent basis or the person with whom the employee was living together in an unmarried state, in the absence of this, the minor children with whom the decedent was living as a family and in the absence of the latter, the person with whom the employee was living as a family and for whose livelihood he provided, for the most part. One speaks of living together as meant in the first sentence, if two single persons are keeping a joint household, with the exception of relatives in the first degree, if the persons in question have their main residence in the same residence and they show that they take care of each other, by means of making a contribution to the costs of the household or ensuring each other's wellbeing in another manner.
4. The death benefit, meant in the second paragraph, may be reduced by the amount of the benefit which is due to the surviving relatives with regard to the death of the employee, by virtue of a legally prescribed health- or disability insurance.
5. The second paragraph is not applicable if the employee, immediately preceding the passing, by application of article 629, second paragraph was not entitled to wages as meant in article 629, first paragraph, or if as a result of the fault of the employee, there is no claim to a payment pursuant to a legally prescribed health- or disability insurance.
6. This article cannot be deviated from to the detriment of the surviving relatives.

Article 675

The labour agreement does not terminate by the death of the employer, unless the contrary results from the agreement. However, the heirs of the employer as well as the employee are authorized to terminate the labour agreement, entered into for a definite period of time, taking into account articles 670 and 672, as though they had been entered into for an indefinite period of time. If the estate of the employer, pursuant to article 13 of Book 4 is divided, the authority of the heirs, meant in the second sentence, shall fall to his spouse.

Article 676

1. If a probationary period as meant in article 652 has been agreed upon, each of the parties, as long as that time has not passed, is authorized to terminate the labour agreement with immediate effect.
2. In the event of such a termination articles 681 and 682 are not applicable.

Article 677

1. Each of the parties is authorized to terminate the labour agreement immediately for an urgent reason, with the simultaneous announcement of that reason to the other party. The party who is terminating the labour agreement without an urgent reason or without simultaneous announcement of the urgent reason is liable for damages.
2. The party who is terminating the labour agreement at an earlier date than agreed upon between parties is liable for damages.
3. Also liable is the party who has intentionally or through his fault, given the other party an urgent reason to terminate the labour agreement immediately, if the other party has made use of that authority or the judge has dissolved the labour agreement on those grounds pursuant to article 685.
4. In the event that one of the parties is liable, the other party shall have the option of making a claim to the fixed compensation mentioned in article 80 or a complete compensation.
5. Not taking article 670 into account, first up to and including the sixth paragraph, does not make the employer liable to damages. The employee, in those cases, for two months after the termination of the labour agreement, may make an appeal to the annulment grounds. The appeal to the annulment grounds is done by giving notice to the employer. Article 55 of Book 3 is not applicable.

Article 678

1. For the employer, as urgent reasons, in the sense of article 677, first paragraph, are considered such acts, properties or conducts of the employee, which have as a result that the employer cannot be reasonably expected to have the labour agreement continue.
2. One may consider urgent reasons to be present, among other:
   a. If the employee, upon entering the agreement, has misled the employer by presenting false or falsified certificates, or he has intentionally given false information, as regards the manner in which his previous labour agreement ended;
   b. If, to a large degree, he appears to lack the skills and ability for the work for which he committed himself;
   c. If, in spite of warnings, he submits to drunkenness, misuse of drugs or stimulants or other loose conduct;

d. If he is guilty of theft, embezzlement, deceit or other criminal offences, thereby causing him to be unworthy of the confidence of the employer;
e. If he ill-treats, rudely insults or seriously threatens the employer, his family members or housemates or his co-workers;
f. If he entices or attempts to entice, the employer, his family members or housemates of his co-workers, to commit acts in conflict with the laws or common decency;
g. If he intentionally, or in spite of warnings, recklessly damages property of the employer or exposes this to grave danger;
h. If he intentionally, or in spite of warning, recklessly exposes himself and others to grave danger;
i. If he discloses details with regard to the household or the company of the employer, which he should have kept secret.
j. If he obstinately refuses to comply with reasonable orders or assignments, given him by or on behalf of the employer;
k. If he in another way grossly neglects the duties, which the labour agreement imposes on him;
l. If, due to intent or recklessness he has become or remains incapable of performing the agreed upon labour.

3. Stipulations in which the decision has been left to the employer, to determine whether or not there is an urgent reason in the sense of article 677, first paragraph, are null and void.

Article 679

1. Urgent reasons in the sense of article 677, first paragraph for the employee are considered such circumstances, which have as result that the employee cannot reasonably be expected to have the labour agreement continue.
2. Urgent reasons shall be considered to be present, among other:
   a. If the employer ill-treats, grossly insults or seriously threatens the employee, his family members or housemates, or tolerates such acts to be committed by one of his housemates or subordinates;
   b. If he entices or attempts to entice the employee, his family members, or housemates to commit acts, in conflict with the laws or the common decency, or tolerates that such enticement or attempt at enticement by one of his housemates or his subordinates is committed;
   c. If he does not pay the wages at the appointed time;
   d. If he has not provided the agreed upon room and board in a proper manner.
   e. If he does not provide sufficient work for the employee whose wages have been established, on the basis of the results of the work to be performed;
   f. If he does not provide the employee whose wages have been established on the basis of the results of the work to be performed with the agreed upon assistance or does not provide this to a proper extent;
   g. If he grossly neglects the duties in another manner, which the labour agreement imposes upon him;
   h. If, without the nature of the labour agreement entailing such, he orders the employee to perform work in the company of another employer, in spite of the employee's refusal to do so;

i. If the continuation of the labour agreement would involve grave danger for the life, health, morality or good name, of the employee, which was not clear at the time that the agreement was entered into;
j. If the employee, due to illness or other reasons, not being his fault becomes incapable of performing the agreed upon work.

3. Stipulations in which the decision is left up to the employee to determine whether or not there is an urgent reason in the sense of article 677, first paragraph, are null and void.

Article 680

1. The fixed compensation, meant in article 677, fourth paragraph is the same as the amount of the wages established in currency for the time, that the labour agreement should have been continued upon regular termination.
2. If the wages of the employee, either in its entirety, or in part, have not been established according to the timesheet, then the criterion of article 618 shall be applicable
3. Every stipulation in which, for the benefit of the employee, a fixed compensation has been reduced to a lower amount is null and void.
4. By written agreement, a fixed compensation may be set at a higher amount.
5. The judge is authorized to set the fixed compensation, at a lesser amount, if this appears to him to be excessive in view of the circumstances of the case, however not less than the wages established in currency for the duration of the term of notice, pursuant to article 672, nor at less than the wages established in currency for three months.
6. If the fixed compensation due by the employee is more than the wages established in currency for a month or that the fixed compensation due by the employee is more than the wages established in currency for three months, the judge may allow him to pay the compensation in instalments, in a manner determined by him.
7. Legal interest is due on the amount of the outstanding fixed compensation, starting from the day on which the labour agreement was terminated.

Article 680a

The judge is authorized to modify a judicial request for continued payment of wages, if allocation under the given circumstances would lead to unacceptable consequences, however at no less than the wages established in currency for the duration of the term of notice pursuant to article 672, nor at less than the wages established in currency for three months.

Article 681

1. If one of the parties of the labour agreement, whether or not taking into consideration the provisions in effect for the termination, gives notice which is obviously unreasonable, the judge may at all times grant a compensation to the other party.
2. Termination of the labour agreement by the employer shall be considered obviously unreasonable, among other:
   a. if this is done without giving an account of reasons or by giving an account of a phoney or false reason;
   b. if, also taking into consideration the provisions made for the employee and the existing possibilities for him to find other suitable work, the consequences of the termination are

c. if this happens in connection with the prevention of the employee to perform the agreed upon work as meant in article 670, third paragraph;
d. if this happens, in deviation of the numerical relationship or seniority regulation, in effect in the department or the company pursuant to legal regulation of custom, unless there are important reasons for this;
e. if this happens due to the single fact that the employee with an appeal to a serious conscientious objection refuses to perform the agreed upon work.

3. Termination of the labour agreement by the employee shall be considered obviously unreasonable, among other:
   a. If this happens without giving an account of reasons or by giving a phoney or false reason;
   b. If the consequences of the termination for the employer are too serious as compared to the interest of the employee upon termination.
4. A stipulation in which the decision is left up to one of the parties as to whether or not the labour agreement has been terminated in an obviously unreasonable manner or not, is null and void

Article 682

1. The judge may also sentence the employee who has become liable to compensation in accordance with article 677 or who has terminated the labour agreement in an obviously unreasonable manner, to reinstate the labour agreement.
2. If the judge pronounces such a sentence, he may determine the point in time before which the labour agreement must be reinstated and he can make provisions as regards the legal consequences of the interruption.
3. The judge may determine in the judgment, containing the sentence to reinstate the labour agreement, that the obligation to reinstate shall expire by payment of the compensation established in the judgment. If no compensation was established in the judgment, then the judge shall still establish this upon request of the employer. Such a request suspends the execution of the judgment, to the extent it concerns the sentencing to reinstate the labour agreement, until a decision has been made on the request, provided that the employer, in any event remains obligated to pay the wages during the suspension.
4. The judge determines the height of the compensation in view of the circumstances of the case in all fairness; he may allow the compensation to be paid in instalments in a manner to be determined by him.
5. If a compensation, because of non-compliance with an obligation to reinstate a labour agreement has been established in another manner, the judge may change the amount of the outstanding compensation upon the request of either party to such an amount as shall appear to be reasonable to him in view of the circumstances of the case and he may allow the compensation to be paid in instalments in a manner to be determined by him.

Article 683

1. Every legal claim, pursuant to article 677, fourth paragraph, article 681, first paragraph and article 682, first paragraph, becomes prescribed after six months.
2. Every legal claim of the employee in connection with the annulment of the termination of the labour agreement pursuant to article 677, fifth paragraph, becomes prescribed after six months.

Article 684

1. If the labour agreement has been entered into for more than five years or for the duration of the life of a certain person, the employee is nevertheless authorized, from the time on which five year has passed since its inception, to terminate this taking into consideration a term of six months.
2. This article may not be deviated from to the detriment of the employee..

Article 685

1. Each of the parties is at all times authorized to approach the judge in First Instance with the request to dissolve the labour agreement due to grave reasons. Every stipulation, in which this authority is excluded or restricted, is null and void. The judge in First Instance may only grant the request if he has satisfied himself that the request is related to the existence of a termination prohibition as meant in articles 647, 648 and 670 or any other prohibition to terminate the labour agreement.
2. Considered as grave reasons are circumstances which would have yielded an urgent reason as meant in article 677, first paragraph, if the labour agreement, on that account had been terminated immediately, as well as changes in the circumstances, which are of such a nature, that the labour agreement in all fairness, immediately of after a short while should be terminated.
3. The request is made to the competent judge in First Instance pursuant to Book 1, title 10, section 2 of the Code of Civil Procedure.
4. The petition mentions the place where the work must normally be performed, as well as the name and the place of residence or in the absence of a place of residence in this country the actual residence of the other party.
5. The judge in First Instance, if the request is related to a case, which has already been brought before another judge, concerning the same persons, may order the referral to that other judge. The Clerk of the Court sends a copy of the decision, as well as the petition and the other documents of the case for further discussion to the judge to whom it was referred.
6. The discussion shall not start later than in the fifth week, following that in which the petition was submitted.
7. If the Judge grants the request, he shall determine the time at which the labour agreement shall terminate.
8. If the Judge grants the request due to changes in the circumstances, if it appears to him reasonable in view of the circumstances of the case, he may award a compensation to one of the parties for the account of the other party; he may allow the compensation to be paid in instalments, the manner in which to be determined by him.
9. Before pronouncing a dissolution to which compensation is attached, the Judge shall inform the parties of his intention and he shall set a term, within which the requestor has the authority to withdraw his request. If the requestor does so, the Judge shall only give a decision as regards the costs of the proceedings.
10. The ninth paragraph is applicable accordingly if the judge intends to pronounce a dissolution without attaching this to the compensation requested by the requestor.
11. Against a decision pursuant to this article, neither appeal nor Cassation may be lodged.

The provisions of this section do not exclude the possibility of dissolution for any of the parties due to a shortcoming in the compliance of the agreement and of the compensation. The dissolution may only be pronounced by the Judge.

Section 10 Special provisions for sales representatives

Article 687

The agreement of sales representation is a labour agreement in which the one party, the sales representative binds himself towards the other party, the employer, for wages which consist wholly or partly of provision, to act as intermediary upon the realization of agreements and if necessary to conclude these in the name of the employer.

Article 688

1. Articles 426 and 429, article 430 second up to and including fourth paragraph and articles 431 up to and including 434 are applicable accordingly to the sales representation agreement.
2. Article 426, second paragraph, article 429, article 430, second up to and including fourth paragraph, article 431, second paragraph, and article 433 may not be deviated from.
3. Article 432, third paragraph, and article 434 may not be deviated from to the detriment of the sales representative.
4. Article 426, first paragraph and article 431, first paragraph, may only be deviated from, to the detriment of the sales representative, in writing.

Article 689

In deviation of article 680, second paragraph, for the establishment of the fixed compensation, meant in article 677, fourth paragraph, account is taken of the provision earned in the preceding time and with all other relevant factors to be considered.

Section 11 Special provisions with regard to the temp agreement

Article 690

The temp agreement is the labour agreement in which the employee is placed at the disposal of a third party by the employer, in the framework of exercising the profession or operation of the employer, in order to perform labour under the supervision and guidance of the third party, pursuant to an assignment given by the latter to the employer.

Article 691

1. Article 668a, first is applicable to the temp agreement, as soon as the employee has performed work for more than twenty six weeks.
2. In the temp agreement it may be agreed in writing that that agreement terminates legally because the placement of the employee by the employer to the third party as meant in article 690 upon request of that third party terminates. If a stipulation as meant in the first sentence has been included in the temp agreement, the employee may terminate that agreement immediately.

3. A stipulation as meant in the second paragraph loses its force if the employee, for more than twenty six weeks has performed labour for the employer. After the passing of this term, the authority of the employee to terminate as meant in the second paragraph shall expire.
4. For the calculation of the periods meant in the first and third paragraphs, periods in which labour is performed which follow each other with intervals of less than a year have also been taken into account.
5. For the calculation of the periods, meant in the first and third paragraphs, periods in which work is performed for various employers who, with regard to the work performed must reasonably be considered to be each other's successor, shall also be taken into consideration.
6. This article is not applicable to the temp agreement in which the employer and the third group companies as meant in Book 2 or one of them is a daughter company of the other as meant in Book 2.
7. The terms meant in the first and third up to and including the fifth paragraph may only be deviated from to the detriment of the employee, by collective labour agreement.

Article II

The Civil Code shall be further amended as follows:

A

Book 3 shall be amended as follows:

1. The designation '1' in front of the text of article 15 j lapses.

2. In article 288, first paragraph, sections c up to and including e, become ' worker and employment' each time replaced by: employee respectively labour agreement.

B

In article 186, first paragraph, of Book 4 ' keeping' is replaced by: keep.

C

In article 107a, first paragraph, of Book 6, the word 'employment' is replaced by: labour agreement.

D

Article 440, fourth paragraph, of Book 7 shall read as follows:
4.Article 685, fifth up to and including seventh and ninth up to and including eleventh paragraph, is applicable accordingly.

E

Book 7A shall be amended as follows:

1. The first up to and including the fifth section of the seventh title A shall lapse.
2. The first and second section of the fifteenth title shall lapse.

F

In article 1309, third paragraph, of Book 8, 'article 227' is replaced by:
Article 226.

Article III

The Bankruptcy decree 1931 shall be amended as follows:

A

After article 10 an article is inserted, reading as follows:
Article 10a

If the Bankruptcy is annulled on the basis of the fact that the bankruptcy has been requested with a view to infringing on industrial law protection of the employee, the termination of a labour agreement by a trustee, in deviation of article 10, first paragraph, with retroactive force is controlled by the legal or agreed upon rules which are applicable outside of bankruptcy, provided that the periods meant in article 683, first and second paragraph of Book 7 of the Civil Code and in article 7, third paragraph, of the National Ordinance Termination Labour Agreements is annulled.

B

A paragraph is added to article 63, reading as follows:
4.In deviation of the first paragraph, in the case of appeal against an authorization of the Official Receiver to the trustee for the termination of a labour agreement, the period of five days shall start on the day that the employee who has instituted the appeal, has been able to take note of the authorization. On penalty of reversibility, the trustee points out to the employee upon the termination, the possibility of appeal and the period for this. The appeal to the reversibility is realized by an extra-judicial statement to the trustee and may be made for fourteen days, starting from the day on which the labour agreement has been terminated.

C

Under placement of the designation "1" in front of the text of article 68, a paragraph is added, reading as follows:
2.In deviation of the first paragraph, the termination of a labour agreement by the trustee without the Official Receiver having given the authorization, meant in article 64, second paragraph, is reversible. In addition, the Trustee is liable towards the Bankrupt person and the employee. The appeal to the reversibility is made by an extra-judicial statement to the Trustee and can be made during the five days, starting from the day on which the labour agreement has been terminated.

Article IV

In article 491 of the Code of Commerce, the 'provisions of the Civil Code with the exception however of those of the seventh Title of the third Book' is replaced by: the provisions of the Civil Code with the exception however of that of Title 10 of Book 7.

Article V

Article 2, first paragraph, of the Labour regulation is amended as follows:

A

In section a ' the labourer', meant in article 1613a of the Civil Code, is replaced by: the employee, meant in article 610, first paragraph, of Book 7 of the Civil Code.

B

In section b 'the employer', meant in article 1613a of the Civil Code' is replaced by: the employer, meant in article 610, first paragraph, of Book 7 of the Civil Code.

Article VI

In article 2 of the redundancy payment scheme, for Government workers, by 'Government workers", subsection 4°, article 1615f of Book 7A', is replaced by: article 668 of Book 7.

Article VII

The National Ordinance termination of labour agreements is amended as follows:

A

Article 1 is amended as follows:

1. In section b 'the labourer', meant in article 1613a of the Civil Code' is replaced by: employee as meant in article 610, first paragraph, of Book 7 of the Civil Code.

2. In section c 'the employer' meant in article 1613a of the Civil Code' is replaced by: the employer as meant in article 610, first paragraph, of Book 7 of the Civil Code.

B

In article 2, section a, 'a public body' is replaced by: the Government.

C

In article 4, second paragraph, section e, 'article 1615e, seventh or eighth paragraph', is replaced by: article 667, fourth or fifth paragraph, of Book 7.

D

Article 7 shall read:

1. A termination without the required permission based on article 4, first paragraph, is reversible.
2. Acts in conflict with article 5, fourth paragraph are reversible.
3. The employee may make an appeal to this annulment ground for six months.

Article VIII

The Cessantia national ordinance shall be amended as follows:

A

Article 1 is amended as follows:

1. Under definition of 'employer', 'article 1613a of Book 7a' is replaced by: article 610, first paragraph of Book 7.

2. Under the definition of 'employee', 'the labourer', meant in article 1613a of Book 7a' is replaced by: the employee, meant in article 610, first paragraph, of Book 7.

B

Article 3, second paragraph, shall read as follows:
2.For the application of the first paragraph, employments are considered, to form a same uninterrupted employment:
a. if they have been in existence between the same parties and have followed each other with intervals of not more than thirty one days, unless the employments have merely affected the performance of casual, unregulated labour and they have all terminated within thirty one days;
b. if a same employee has been employed successively with various employers, who form part of a same group, or who must reasonably be considered, with regard to the labour performed to be each other's successors;
c. in the event of reinstatement of the employment pursuant to article 682 of Book 7 of the Civil Code.

Article IX

Article 1, first paragraph, of the National Ordinance to promote the employment for youthful job seekers shall be amended as follows:

A

Under the definition of ' employer', 'the employer', meant in article 1613a of the Civil Code' replaced by: the employer, meant in article 610, first paragraph, of Book 7 of the Civil Code.

B

Under the definition of 'labour agreement', 'article 1613a of the Civil Code' is replaced by: article 610, first paragraph, of Book 7 of the Civil Code.

Article X

In article 3a of the Labour Dispute National Ordinance ' the articles 1615p and 1615q' are replaced by : the articles 678 and 679 of Book 7.

Article XI

In article 5, first paragraph of the National Ordinance Health Insurance is replaced by 'article 1614 ca' is replaced by: article 629a of Book 7.

Article XII

In article 7, second paragraph, of the National Ordinance with regard to making workers available 'article 1613a' is replaced by: article 619, first paragraph, of Book 7.

Article XII

In the vacation regulation, the words 'worker and workers' are each time replaced by: employer respectively employees.

Article XIV

After article 14 of the National Ordinance Collective Labour Agreement, a new article is inserted, reading as follows:
Article 14a

1. Upon the transfer of an enterprise as meant in article 662 of Book 7 of the Civil Code, the rights and obligations, which result at that time for the employer in that enterprise, with regard to the employees in service, from provisions about labour conditions of a collective labour agreement, with which he is associated, are transferred legally to the Acquirer of the enterprise.
2. The rights and obligations, which pursuant to the first paragraph are transferred, terminate at the moment on which the Acquirer, with respect to the work, performed by the employees meant in the first paragraph, is bound by a collective labour agreement concluded after the transfer of the enterprise. The rights and obligations further terminate as soon as the time of the transfer validity duration of the collective labour agreement has passed.
3. In deviation of the first and second paragraph, articles 663 and 664 of Book 7 of the Civil Code are applicable to the rights and obligations of the employer, which result from a provision in the collective labour agreement, which is related to a pension plan with respect to old age pension, disability pension or surviving relatives' pension, or a savings plan.

Article XV

At the moment that the national ordinance under discussion as well as the National ordinance containing the enactment of a new Penal Code have entered into force, article 3:25 of the Penal Code shall read:
Article 3:25

Acting in conflict with article 614a of Book 7 of the Civil Code is punished by imprisonment of at

Article XVI

In title 7 of the National Ordinance transitional law new Civil Code, after article 157 an article is inserted, reading as follows:

Article 160

If the labour conditions of an employee, at the moment that title 10, Book 7, enters into force, are partly determined by a regulation as meant in article 1613 of Book 7A of the Civil Code, such as this article read prior to that moment, the content of that regulation after title 10 of Book 7 entered into force, forms part of the labour agreement.

Article XVII

The changes which are introduced in this National Ordinance in the Bankruptcy Decree 1931 are not applicable if the bankruptcy has been pronounced before the moment on which this national ordinance entered into force.

Article XVIII

The Minister charged with Labour shall send annually prior to April 1st, a report to Parliament as regards the effectiveness and effects of the provision in article 614a of Book 7 of the Civil Code.

Article XIX

This National Ordinance shall be cited as: National Ordinance Labour Agreement

Article XX

This National Ordinance shall enter into force at a point in time to be determined by National Decree.

This National Ordinance shall be published in the National Gazette together with the Explanatory Memorandum.

Given in Philipsburg,
The Governor of Sint Maarten

The Minister of Justice

The Minister of Public Health,
Social Development and Labour

Translated by:

Gracias M.M. Maccow
Sworn translator