

Curacao lawyer Mr. Frielink fights favouritism in lecture

BELAIR—It's favouritism and absolutely unnecessary. That is the opinion of Curacaoenian Mr. Karel Frielink about the three Boards of Supervisory Directors appointed to keep an eye on the functioning of the Board of Princess Juliana International Airport (PJIA).

One Board of Supervisory Directors on the Holding level should suffice; more Boards are only there to create well-paid jobs for political friends.

Mr. Frielink, who holds impressive records (see note) in the judiciary and commercial enterprise fields, was the guest speaker at the official opening of one of St. Maarten's largest Attorneys Offices, namely BergmanZwanikkenSnow-Essed, which took place at the Antek building on Welfare Road Friday.

Under the title *Good Corporate Governance on Sint Maarten: Will it become a long or a short way from paper to practice?* Mr. Frielink held against the light the newly implicated Island Ordinances Corporate Governance (May 1, 2009), Corporate Governance Council (implementation decision May 11, 2009) also known as Advice Council, and Corporate Governance Code (May 11, 2009).

Mr. Frielink also spoke about Corporate Governance with respect to private businesses. "We are dealing with the functioning of all parts of an enterprise, BVs and NVs, including

the Board of Directors, the Board of Supervisory Directors as well as the Meeting of Shareholders and the way in which these organs are undergoing possible influence from the outside world."

Lack of clearly defined and responsible game rules, not (fully) complying with such rules and lack of adequate supervision can cause financial disasters, such as the recent Bank Crisis, Mr. Frielink stressed.

Speaking about the Island Government in its capacity of shareholder of Government-ruled companies, such as the airport, harbour, telecommunication and others, he mentioned as "plus points" of the new regulations: better procedures concerning the decision making process, more transparency (advice will be sent to the Island Council), and application of the principle *comply or explain*.

The Executive Council will now be forced to motivate any critical objection that deviates from the advice of the Corporate Governance Council.

With the new Corporate Governance ordinances in hand the Judicial Courts are now also equipped to better evaluate Government decisions to fire and appoint Board members of government-owned companies, said Mr. Frielink.

Some important issues that are regulated in the Island Ordinance Corporate Governance include the implementation of a Corpo-



BergmanZwanikkenSnowEssed Attorneys-at-Law/Tax Lawyers officially opened its new office in the Antek Building near the roundabout on Welgelegen Road on Friday with a lecture at Belair Community Center and a reception on the premises of the new office. Both events attracted a large crowd, mainly consisting of lawyers, notaries at law, business people and government officials. Among the latter were Lt. Governor Franklyn Richards, Finance Commissioner Xavier Blackman and Island Council members Sarah Wescoat-Williams and Maria Buncaemper-Molanus. Attorney-at-Law Karel Frielink from Curacao captured his audience with a very up-to-date and critical lecture under the title "Good Corporate Governance on Sint Maarten: Will it become a long or a short way from paper to practice?" In the photo from left are attorneys Jelmer Snow, Roeland Zwanikken, Ger Bergman, guest lecturer Karel Frielink, Rik Bergman and Joeri Essed.

rate Governance Code that meets international norms by the Island Council. The Executive Council should check as much as possible that Government-owned companies comply with the principles and stipulations of the Code.

Other obligations of the Executive Council include checking that the dividend

policy is properly balanced. Appointments and dismissals of Board members and of Supervisory Directors of the Government-owned companies are also regulated in the Corporate Governance Code.

Among the tasks of the future Corporate Governance Council (Advice Council) is supporting the Island Territory with the judgment and advice of annual accounts, business plans and quarterly reports of government-owned companies.

Assisting with the implementation of Good Corporate Governance rules is included in the work of the Advice Council. So is its authority to ask for relevant information from government-owned companies and to perform evaluations of the Board of Directors and Supervisory Directors on behalf of the Island Territory.

Although the Corporate Governance Code, according to Mr. Frielink, is a document that contains detailed rules concerning the tasks, power and work methods of the Board of Supervisory Directors, he thinks that it does not go far enough.

"The document should have included stricter criteria concerning the independence of the Supervising Directors and of the Board of Directors as opposed to political powers. The con-

trolling accountant should be replaced by an accountant of a different bureau every five or seven years. The annual account and report should be made public to allow the (tax paying) population to take note of these documents," the speaker said among other things.

Mr. Frielink urged that government-owned companies implement a Board of Supervisory Directors which is completely independent of certain shareholders or pressure groups and, to a certain measure, of the General Meeting of Shareholders.

"Political favouritism is still possible and as far as this concerns I don't have any illusions," he told his large audience, which mainly consisted of politicians, lawyers and business people.

He added, "The question is to what extent politicians can withstand the old temptation to appoint their friends or other persons they consider loyal to their party. The only obstacles are an advisory council which is looking over their shoulder and a candidate who must be put to a test based on a commercial profile sketch.

"Politicians should not see Government-owned companies as the hen that lays the golden eggs and they should keep their hands off the day-to-day executive tasks," Mr. Frielink concluded.

Note—Mr. Karel Frielink lives in Curacao with wife and two daughters (7 and 9). He is a partner with Spighoff Lawyers and Tax Advisors in Curacao and currently Dean of the Bar Association. He is also Board member of the Chamber of Commerce, teaches Business Law at University of the Netherlands Antilles, is a Fellow of the Research Centre Business and Law of Radboud University and much more. He has written numerous publications and is member of the editorial staff of the Dutch language magazine *Jurispudent Commercial Enterprise and Law*.

Holy smoke, good governance?

Last week my friend Zwanikken called me. He and three other youngsters (Bergman, Snow en Essed) were throwing a party and I was invited. They had a party because for some five years, they had been paid advisors to criminal adults. There would be a lecture about good governance, followed by booze, snacks and Latin American music. Firstly, I thought of skipping the lecture because I really was only interested in the booze and the music. But I am a coward and was present before the lecture began.

The speaker was a nice Dutch comedian. He first explained the laws which would create good governance. However, his conclusion was that all of these laws were useless if politicians and leaders of government-owned companies were characterless crooks, putting self above country. What relief! Suppose we would have good governance in St. Maarten, then I would not have anything to write about.

The party that followed was very nice. I saw quite a few executives of mine who, in spite of my lessons, seemed to have done pretty well. My favourite local band was there - Latin Sugar, with guitarist Nacio and their absolutely gorgeous singer. There were some 150 people, but to my surprise, there were only three out of 150 who I could ask for a light to smoke my cigarette. Nobody was smoking. I was among smart people. And I suddenly realised that the conclusion of the speaker holds for "the good governing of your body." That all laws trying to ban smoking will not help as long as there are characterless fools who put self and cigarette above family and friends.

Deeply ashamed, I left the party. Holy smoke!

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