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 BergmanZwanikkenSnowEssed, 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 three ways in which these organs are undergoing possible influence from the outside.”

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 (advices 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 Island Ordinance Corporate Governance include the implementation of a Corporate 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 to support 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 controlling 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 these tomorrow 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 Spithoff 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 bimonthly jurisdiction magazine Jurisprudence Commercial Enterprise and Law.