



# PRACTICAL LAW

MULTI-JURISDICTIONAL GUIDE 2012/13

## CORPORATE GOVERNANCE AND DIRECTORS' DUTIES

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Analysis of critical  
legal issues



# Curaçao

Maike Bergervoet and Karel Frielink  
Spigt Dutch Caribbean (Attorneys at Law & Tax Advisers)

[www.practicallaw.com/8-523-4349](http://www.practicallaw.com/8-523-4349)

## CORPORATE ENTITIES

### 1. What are the main forms of corporate entity used in your jurisdiction?

The main forms of corporate entities that are most commonly used for business in Curaçao are:

- The limited liability company (*naamloze vennootschap*) (NV), a legal entity with one or more registered or bearer shares.
- The private limited liability company (*besloten vennootschap*) (BV), a legal entity with one or more registered shares.

## LEGAL FRAMEWORK

### 2. What is the regulatory framework for corporate governance and directors' duties?

The regulatory framework for corporate governance and directors' duties consists of:

- Book 2 of the Curaçao Civil Code (CC), which contains mandatory rules of law. Book 2 of the CC contains stricter rules for annual accounts for large companies, which are companies that:
  - have at least 20 employees in Curaçao who all work at least 20 man-days at any time in the period one month before and one month after the date of the balance sheet, under an employment contract with the company, a group company of the company, a temporary employment agency or a similar institution;
  - have assets shown on the balance sheet whose value exceeds ANG5 million or the equivalent in foreign currency; and
  - have a net turnover for the financial year shown in the annual accounts of over ANG10 million or the equivalent in a foreign currency.
- The articles of association of a company (articles).
- Supervisory regulations such as the guidance notes for the supervisory board of supervised financial institutions and the Summary of Best Practice Guidelines issued by the Central Bank of Curaçao and Sint Maarten.
- For state owned enterprises (SOEs) the:
  - National Ordinance regarding Corporate Governance (*Landsverordening Corporate Governance*) (National Ordinance);
  - Curaçao Corporate Governance Code (*Landsbesluit Code Corporate Governance Curaçao*) (Code) (see Question 3).

The National Ordinance and Code came into effect on 1 January 2010. These apply to SOEs (either limited liability companies or private limited liability companies) and foundations. The main objective of these regulations is to promote the transparency and good corporate governance of SOEs.

The Corporate Governance rules themselves do not contain any penal or other sanctions. Adherence to the provisions is desired but not mandatory. If duly explained and motivated deviation can be justified. The corporate governance rules primarily relate to the behaviour of the government itself and do not relate to more general company law, which is held in the CC.

The government is obliged to exercise its influence as shareholder in SOEs to comply with these regulations as much as possible and, for example, lay them down in the company articles. The general provisions of the CC can enforce compliance with the provisions of the National Ordinance and Code regulations in so far as the provisions of these regulations are incorporated in the SOE's articles. The Code sets out a duty to adapt company articles to conform to the Code or to at least make a reference in the articles to the duty to apply the Code. In addition, there is an obligation to elaborate on compliance with the Code in the SOE's annual report.

The Code is to be reviewed every two years after its adoption by the Foundation Office Supervision and Standards Government Entities (*Stichting Bureau Toezicht en Normering Overheidsentiteiten*) (SBTNO) and in the light of any changed internationally accepted standards, such as the OECD Guidelines on Corporate Governance of State Owned Enterprises 2005. Such international standards are also important for the interpretation of the Code.

Up to now compliance with the provisions of the corporate governance regulations has been problematic. Although politicians say that corporate governance is important they find it difficult to adhere to the standards in practice.

### 3. Has your jurisdiction adopted a corporate governance code?

The National Ordinance sets out procedures and requirements for:

- The disposal and acquisition of participating interests in SOEs.
- The dividend policy of subsidiaries.
- The appointment and dismissal of members of the management board and supervisory board.

In addition, the law requires the establishment of an independent advisory and supervisory body that advises and monitors the implementation of the corporate governance regulations. SBTNO



performs this task. The SBTNO became operational on 1 May 2012 (previously the duties of the SBTNO were performed by the *Stichting Overheids-Accountants Bureau* (SOAB)).

The Code is structured as a set of principles and provisions and is based on the comply-or-explain principle. The Dutch Corporate Governance Code (2004, amended 2008) has been used as a model and is partly replicated.

The Code has five chapters that set out:

- General principles of corporate governance, such as the long-term focus, enterprise, integrity and transparency of the management board, adequate supervision by a supervisory board and accountability to the shareholders.
- The role and procedures of the supervisory board, their appointment, independence, composition and expertise, the role of the chairman and company secretary, key committees, conflicts of interest, remuneration and the incompatibility of a seat on the supervisory board with political positions such as that of minister or member of parliament.
- The management board and its role and procedures, remuneration, conflicts of interest and its political incompatibility.
- The general meeting of shareholders and its powers, responsibilities and information rights.
- Auditing and financial reporting (that is, the roles of internal and external auditor).

The Code does not contain any penal or other sanctions. Adherence to the provisions is desirable but not mandatory. Failure to follow the Code provisions can be justified if duly explained.

## BOARD COMPOSITION AND REMUNERATION OF DIRECTORS

### 4. What is the management/board structure of a company?

#### Structure

It is possible to choose between the English/American one-board system and the traditional continental European two-tier system. In a two-tier system there is a management board (parallel to the inside directors on a one-tier board) and a separate supervisory board (parallel to the outside directors on a one-tier board) or combination thereof, a one-tier board with supervisory directors. Although every company (NV or BV) has a management board, not every company has a supervisory board.

There are two different kinds of board directors under Book 2 of the CC, the board and the independent board of supervisory directors. In this context the word independent means that the supervisory directors are independent of the shareholders, interest groups (*belangengroepen*) and to a certain extent also independent from the shareholders' meeting (see *Question 6, Independence*).

The CC also allows for a member-managed company (see *Question 14*).

#### Management

The management board has the function of managing the company, such as making policy and conducting the day-to-day

management and is authorised to represent it, except where restricted by the articles.

The management board is the legal entity's centre of gravity. The management board of a Curaçao company (NV or BV) combines the functions of executive directors and senior officers in a US corporation, unless the articles provide for a one-tier board. There is no position equivalent to that of chief executive officer. The concept of corporate officers is unknown in Curaçao corporate law.

#### Board members

In the two-tiered structure, the management board members sit on the management board and the supervisory board members sit on the supervisory board.

In a one-tier board structure, there are executive and non-executive board members.

#### Employees' representation

Employees have no legal right to board representation.

#### Number of directors or members

There are no requirements for the minimum or maximum number, nationality, residence and so on of the managing directors or supervisory directors of a NV or BV. The only requirement is that there is a board of managing directors. The number of managing directors or supervisory directors is left to the discretion of the incorporators and afterwards the shareholders of the NV or BV.

However, in order to qualify for a business licence, the company should have at least one local managing director or a local representative. This local representative must have the corporate power to represent the company to government and related institutions. The local representative is therefore an attorney-in-fact with specific powers.

If the articles of a NV provide for an independent supervisory board, this must consist of at least three natural persons.

### 5. Are there any general restrictions or requirements on the identity of directors?

#### Age

There are no restrictions on the age of directors.

#### Nationality

In order to qualify for a business licence the company must have one local director or local representative.

#### Gender

There are no gender requirements for directors.

### 6. Are non-executive, supervisory or independent directors recognised or required?

#### Recognition

Under the CC, non-executive, supervisory or independent directors are all possible and recognised. They are not mandatory, although the company's articles may choose to have non-executive, supervisory or independent directors.



An independent supervisory board has its own responsibilities and functions without a mandate and/or without having to consult those who appointed them. They are appointed in the interests of the company as such and connected companies, and therefore act for the stakeholders in general. The Memorandum to the Civil Code recommends an independent board in the financial sector.

In SOEs the Code requires a two-tiered board structure with a supervisory board, which may or may not be independent. An independent supervisory board is subject to several strict statutory requirements while the main management board is in some aspects more flexible.

### Board composition

For the one-tier board structure, the CC stipulates that one or more members of the general management can also be a member of the executive management, provided that the executive members constitute a minority in the general management with jointly fewer votes than the other members.

There are no special requirements for board composition in the two-tiered structure.

### Independence

The company's articles in the two-tiered board structure can stipulate that the supervisory board is independent. The Code contains specific criteria for the independence of SOEs' supervisory directors, mainly concerning other (previous) business and family relations with the company.

If the choice has not been made in the articles for an independent supervisory board, and unless the articles do not provide otherwise, a supervisory director can act in the best interests of the person who appointed or nominated him for appointment and, in relative terms, to attach greater importance to such interests.

Supervisory directors may be removed by a resolution of the general meeting of shareholders to the extent the articles do not provide otherwise. In the case of an independent supervisory board, according to the specific articles in the CC, members of such a supervisory board can only be removed by the supervisory board itself or by a court order on request of one of the bodies of the company.

### Duties and liabilities

The CC states that the first duty of the supervisory board is to supervise the board of managing directors. The supervisory board can also advise the management board and the Code stipulates this second duty explicitly for SOEs.

Liability arising from members' failure to meet the obligation of the supervisory board of an NV or BV to properly carry out their duties can be attributed to them as individuals. Therefore, a supervisory director of an NV or BV can be held liable by the company if serious negligence in the performance of his duties is attributable to him.

This standard for internal liability (the liability of a supervisory director towards the NV or BV) is also applicable when an individual shareholder holds a supervisory director of the company liable for the manner in which he has carried out his duties.

Curaçao law does not provide for a shareholders' action against supervisory directors. Shareholders may have a claim against a supervisory director personally under general tort law principles.

In the event of bankruptcy of an NV or BV that is caused by significant mismanagement, each member of the supervisory board is liable towards the bankruptcy estate for the deficit. Unless the members of the supervisory board can prove that they cannot be blamed for not meeting their obligations, each member will be personally, jointly and severally liable. Such a claim can only be instituted by the bankruptcy trustee.

## 7. Are the roles of individual board members restricted?

An individual cannot act as managing and supervisory director or executive and non-executive board member at the same time.

Apart from limitations arising from the law or the articles, the management board is charged with the management of the company. Limitations on management duties may also arise from bye-laws or a corporate agreement. Individual managing directors must exercise their powers in accordance with the resolutions adopted by the board of managing directors. Such limitations also extend to a limitation of the authority to represent the company.

## 8. How are directors appointed and removed? Is shareholder approval required?

### Appointment of directors

Unless the articles of association stipulate otherwise, the general meeting of shareholders appoints the individual managing directors and supervisory directors.

In SOEs, the Code makes it obligatory to seek the advice of the advisory body on corporate governance issues including the appointment and removal of directors (see *Question 3*).

### Removal of directors

The corporate body able to appoint directors is given by the articles (normally the general meeting) and can also remove them at any time.

## 9. Are there any restrictions on a director's term of appointment?

Restrictions on a director's term of appointment only apply under the CC if the articles provide for an independent supervisory board. If so, the minimum term is three years and the maximum six for all directors.

The Code imposes a maximum term of appointment for the supervisory directors of SOEs of four years that can be prolonged once for another term of four years.

## 10. Do directors have to be employees of the company? Can shareholders inspect directors' service contracts?

### Directors employed by the company

The CC explicitly states that the legal relationship between a director and the company is not an employment contract.



### Shareholders' inspection

The shareholders can in principle inspect directors' service contracts.

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#### 11. Are directors allowed or required to own shares in the company?

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Directors are allowed but are not required to own shares in the company.

There are no provisions on director's ownership of shares for SOEs under the Code.

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#### 12. How is directors' remuneration determined? Is its disclosure necessary? Is shareholder approval required?

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##### Determination of directors' remuneration

The general meeting determines directors' remuneration, although the articles can provide otherwise.

For SOEs, the Code provides that the managing directors' remuneration is determined by the supervisory board within the limits determined by the general meeting. The Code states that the remuneration of supervisory directors should not be tied to the results of the company.

##### Disclosure

The CC does not require any disclosure of directors' remuneration.

For SOEs, the Code provides that the remuneration of the board of managing directors and the remuneration of individual supervisory directors is disclosed in the annual report.

##### Shareholder approval

See above, *Determination of directors' remuneration*.

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### MANAGEMENT RULES AND AUTHORITY

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#### 13. How is a company's internal management regulated? For example, what is the length of notice and quorum for board meetings, and the voting requirements to pass resolutions at them?

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The CC does not regulate the company's internal management. The length of notice and quorum for board meetings, and the voting requirements to pass resolutions at them can be stipulated in the articles of a company. The basic principle is the collective responsibility of the board members. Every board member should therefore be able to participate in the decision making process. In most cases, resolutions are adopted by a majority of votes, unless the articles state otherwise. The articles may stipulate that an actual meeting is required to adopt resolutions and may include a notice period.

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#### 14. Can directors exercise all the powers of the company or are some powers reserved to the supervisory board (if any) or a general meeting? Can the powers of directors be restricted and are such restrictions enforceable against third parties?

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##### Directors' powers

According to the CC, the articles of a company may provide that a company be a member-managed company, which is a company without a management board. The shareholders (members) are then in charge of the company, including its day-to-day affairs. A member-managed company is suitable for smaller companies, such as family businesses, with only one or a few shareholders.

The designation of a limited liability company as either member-managed or manager-managed is important because it defines who the agents are and therefore have the apparent authority to bind the company. If such designation is absent in the articles of a company, the company will be a manager-managed company.

In a manager-managed company the shareholders have the authority to determine the company's general policy. The shareholders may also give instructions to the management board on the general direction of the financial, social, economic and personnel policies of the corporation. However, the shareholders cannot give detailed instructions to the management board unless the articles of association permit this.

Although not explicitly provided for in the CC, it is considered a general rule of corporate law that the management board must act in the best interests of the company in the performance of its duties, even when acting on instructions from others (such as shareholders). Generally, the shareholders have a very limited role in the management and operations of the company and cannot operate as the executives of the corporation (which is the exclusive power of the management board).

The basic rule is that authority with regard to legal acts, as well as lawsuits between the company and a managing director, rests with the supervisory board. If the company has no supervisory board, this authority rests with the general meeting or a person or body to be appointed by the general meeting. This rule can be deviated from by a provision in the articles or in a bye-law laid down by the general meeting pursuant to the articles. It is not possible to deviate from these provisions for a company limited by shares with an independent supervisory board.

##### Restrictions

Restrictions on the board's authority can arise from a bye-law or a corporate agreement. Individual managing directors exercise their powers according to the resolutions of the management board. Subject to restrictions arising from the law or the articles, the legal entity is represented by the management board. If there are multiple managing directors the legal entity is represented by each managing director, unless provided otherwise in the articles. Restrictions on managing authority may also restrict the associated representative authority. A (direct or indirect) restriction of representative authority is enforceable against a counterparty who either:

- Was or should have been aware of the restriction.
- Could have been aware of the restriction by consulting the Trade Register.



A counterparty can trust a written statement issued by the management board or a managing director that the legal entity will not invoke such a restriction. The management board must give a decisive written answer to the written request of a counterparty with regard to the question of whether such a restriction is involved and if so, its nature. Each managing director can issue such a statement on behalf of the management board. This is because it is important for the counterparty to obtain certainty at a relatively early stage about whether a known or possible restriction could create an impediment to the continuation of a transaction or intended transaction. Should it become evident afterwards that a managing director issued a statement wrongly or too prematurely, he might be liable for mismanagement in the relationship with the legal entity. This does not make any difference to the validity of the transaction, although in a case of collusion between the managing director and the counterparty the principle of reasonableness and fairness may be invoked.

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**15. Can the board delegate responsibility for specific issues to individual directors or a committee of directors? Is the board required to delegate some responsibilities, for example for audit, appointment or directors' remuneration?**

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The management board can but is not required to delegate responsibilities for specific issues. The management board may contractually agree to a limitation of its powers to manage the company. Such arrangements are typical for trust service providers engaged by a foreign ultimate beneficiary to render services to the trust service providers' client.

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## DUTIES AND LIABILITIES OF DIRECTORS

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**16. What is the scope of a director's duties and personal liability to the company, shareholders and third parties?**

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### General duties

Article 2:14 of the Curaçao Corporate Code provides that each member of the management board, either one-tier or two-tier, is responsible to the company for the proper performance of his assigned duties. A board has a duty to use its powers properly and to act within its limits. In addition, a board must act in accordance with the other duties it has, based on, among other things, the law and the articles of association.

The members of the management board are personally and severally liable towards the company for any losses caused by the improper performance of their duties. A board member will not be liable if he proves that:

- He cannot be blamed for the improper act.
- The activities concerned fell outside the scope of his responsibilities.
- He was not negligent and took steps to avert the losses.

Therefore, the division of tasks among the board members can influence the liability.

In the event of bankruptcy of a company being significantly caused by mismanagement, each member of the management board is

liable to the bankruptcy estate for the deficit. Only the improper management in the three-year period preceding the bankruptcy (or a suspension of payments preceding the bankruptcy) is taken into account. The director cannot claim that he was granted any form of discharge from liability by the company.

As far as directors' liability is concerned, the law focuses on the period that a director has been in office. A director cannot escape from liability for past actions or negligence by resigning from office. In practice, directors need not worry about liability, provided they observe the proper procedures and do not act recklessly or irresponsibly.

Any person or legal entity that is not a member of the board but nevertheless contributing to determining the policy of the board, may face similar liability.

### Theft and fraud

A company under Curaçao law can commit a crime or offence.

### Securities law

The National Ordinance on the Supervision of Stock Exchanges 1998 (*Landsverordening toezicht effectenbeurzen 1988*) Stock Exchange Ordinance contains a prohibition on insider trading. Any person who is in possession of inside information is prohibited from carrying out a transaction or being instrumental in a transaction in securities in a company listed on the Curaçao stock exchange or on any other foreign recognised stock exchange, or in any securities whose value is determined by such securities.

Managing directors can also be liable under tort law in case of a misleading information or prospectus.

### Insolvency law

In the event of bankruptcy of an NV or BV, which is caused by significant mismanagement, each member of the management board is personally, jointly and severally liable towards the bankruptcy estate for the deficit they can prove that they cannot be blamed for not meeting their obligations. Such a claim can only be instituted by the bankruptcy trustee.

The law does not require a company to file for bankruptcy once it becomes insolvent. Directors are generally not liable to creditors for debts of the company. However, creditors of the company may hold a director liable in tort if he entered into a transaction on behalf of the company while he knew, or should reasonably have known, that the company would not be able to fulfil the obligations arising from that transaction and the company would not have sufficient assets for the creditor to take recourse against. A director may also be personally liable in tort if the company does not perform its obligations towards a creditor by refusing to pay rather than as a result of an inability to pay.

### Health and safety

No specific regulations exist in relation to liability for health and safety issues.

### Environment

No specific regulations exist in relation to environmental issues.

### Anti-trust

There are no competition or anti-trust laws in Curaçao.



### Cyber-crime

There are no laws that relate to cyber-crime in Curaçao.

### Other

Managing directors can be personally liable for the tax owed by the company.

If the board has not observed its obligation to keep accounts in good time, there is a statutory presumption of clear mismanagement. Unless the members of the board can prove that they cannot be blamed for not meeting such obligations, each member will be personally and severally liable.

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### 17. Can a director's liability be restricted or limited? Is it possible for the company to indemnify a director against liabilities?

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The CC does not contain provisions specifically dealing with discharging managing directors from liability and there is no conclusive case law available. In principle, managing directors of a limited liability company can be discharged from their liability towards the company by an express shareholders' resolution. However, the articles of many companies contain a provision stating that approval of the annual accounts by the shareholders' meeting discharges the managing director from his liability towards the company with regards to the performance of his duties during that fiscal year. However, even without any explicit basis in the company's articles and without an express shareholders' resolution, arguably when the shareholders unconditionally approve the annual accounts, discharge is also given to the managing director effectively waiving any internal liability towards the company.

Such a discharge would be limited to the facts disclosed to the shareholders' meeting in the annual accounts and annual report, or otherwise. Managing directors are not discharged from liability arising from actions that are intentionally withheld by the managing director from the shareholders.

A discharge of directors' internal liability does not release managing directors from their liability towards third parties for unlawful acts, which includes individual shareholders and, in the case of the NV or BV having been declared bankrupt, the trustee in bankruptcy.

The Supreme Court, in a Dutch case, held that, as a general rule, a discharge does not release managers from liability for acts about which the shareholders could not reasonably have known. However, if legal acts that could be harmful to the company were known by the shareholders' meeting and the managing directors were discharged from liability for those acts, they can invoke this discharge on the grounds of the requirements of good faith. Such an indemnification has yet to be tested in the courts in Curaçao.

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### 18. Can a director obtain insurance against personal liability? If so, can the company pay the insurance premium?

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A director can obtain insurance against personal liability and the company can pay the insurance premium.

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### 19. Can a third party (such as a parent company or controlling shareholder) be liable as a de facto director (even though such person has not been formally appointed as a director)?

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A shareholder (or supervisory director) who is not part of the management board may be considered to be a managing director in some circumstances if he determines or co-determines company policy as if he were a managing director. Such a policy-maker is known as a de facto managing director or quasi-managing director and falls within the scope of the provisions on directors' liability, and may be held liable in the same way as a managing director.

Most legal commentators take the view that instructions from a parent company to a subsidiary do not constitute "management" in this sense. However, the statutory language is ambiguous and there is no Curaçao case law on this issue.

Corporate shareholders can, generally speaking, be held liable for the subsidiary's obligations in certain situations, including when:

- The subsidiary is being operated in an unfair manner (profits accumulate in the parent and losses in the subsidiary).
- The subsidiary is consistently represented as being part of the parent.
- When the parent and the subsidiary are essentially operating the same integrated business, and the subsidiary is undercapitalised.

Therefore, a corporate shareholder can be held liable if it uses a subsidiary in such a way that the rights of third parties are abused.

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## TRANSACTIONS WITH DIRECTORS AND CONFLICTS

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### 20. Are there general rules relating to conflicts of interest between a director and the company?

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The law leaves those drawing up articles fully free to create rules for a qualitative or indirect conflicting interest. Resolutions and acts of representative authority that are contrary to these rules are null and void.

The Code stipulates that a potential transaction with a company in which the director holds a financial interest, of which a family member is a director or of which a supervisory director is a board or supervisory member would be a conflict of interest and should be avoided or reported to the board.

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### 21. Are there restrictions on particular transactions between a company and its directors?

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There are no restrictions on particular transactions between a company and its directors other than the general restrictions. The articles may contain specific restrictions (see *Question 20*).




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**22. Are there restrictions on the purchase or sale by a director of the shares and other securities of the company he is a director of?**


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There are no general restrictions on the purchase or sale by a director of shares or other securities in the CC. The Stock Exchange Ordinance contains a prohibition on insider trading (see *Question 16, Securities law*).

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**DISCLOSURE OF INFORMATION**


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**23. Do directors have to disclose information about the company to shareholders, the public or regulatory bodies?**


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The management board of a NV or BV must keep a register in which the names and addresses of all holders of registered shares are recorded, stating the:

- Class of share.
- Attached voting rights.
- Amount paid.
- Obligation to make an additional contribution, if any.
- Date of acquisition.
- Whether or not a share certificate has been issued.

A record must also be made of the establishment or transfer of a right of usufruct over the shares and the establishment of a right of pledge on the shares and any transmission of the connected voting rights. The management board must keep the shareholders register accurate and up-to-date. The date on which any change was made must be recorded.

The managing directors must register the following information with the Chamber of Commerce and Industry:

- Official company name.
- Trade name.
- Legal name.
- Statutory seat and business address.
- Object categories of the business of a company.
- Issued and outstanding capital and if there are different classes of shares issued.
- Fiscal year.
- Date of incorporation.
- Date of establishment.
- Date of the last amendment of the articles.
- Certain particulars of the managing directors and, if applicable, supervisory directors and/or proxy holders.

Managing directors must ensure that the commercial register is accurate and up-to-date. Every alteration to the registered information must be filed with the commercial register.

The management board of a NV or BV owes a duty to account for its management to the shareholders' meeting. The duty to account to the shareholders' meeting is embodied in the duty to draw up and submit the annual accounts and annual reports to the shareholders' meeting. This duty to account is also embodied in the obligation to provide information to the shareholders' meeting, unless this conflicts with a serious interest of the company. There is no general duty to account to individual shareholders.

A shareholder is entitled to inspect the annual accounts. Shareholders are not entitled to inspect other books, records or documents of whatever nature. However, in the course of proceedings involving a NV or BV, the court may require, under certain circumstances, the company to give the opposite party access to its books, records and documents but only to the extent necessary to pursue the court case.

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**COMPANY MEETINGS**


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**24. Does a company have to hold an annual shareholders' meeting? If so, when? What issues must be discussed and approved?**


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General meetings of shareholders of a Curaçao company are held in Curaçao. The articles may provide that such meetings be held outside Curaçao, except in large companies (see *Question 2*).

Shareholders and every holder of voting rights, managing and supervisory directors and such other persons appointed in the articles, have the right to attend and address a general meeting in person or to be represented by a person holding a written proxy. Unless the articles provide otherwise, one vote can be cast for every share. The articles may provide that certain voting rights are limited to certain specific issues only. The articles may require persons who wish to attend and address the shareholder's meeting to notify the management board of the company of their intention at least three days before the meeting.

The agenda of the shareholders' meeting is determined by the party convening the meeting. In principle, such meetings are convened by the management board or one of its members. During a meeting, resolutions on items not properly placed on the agenda cannot be adopted in a legally valid manner unless all persons entitled to attend the meeting are present or represented or have consented to the manner of adoption of the resolutions.

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**25. Can shareholders call a meeting or propose a specific resolution for a meeting? If so, what level of shareholding is required to do this?**


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In an NV, persons who have at least 10% of the votes with respect to a specific subject can request the management board or supervisory board to convene a meeting.

In a BV, persons entitled to vote with respect to a specific subject and who have a reasonable interest, can request the management board or supervisory board to convene a meeting.



## MINORITY SHAREHOLDER ACTION

### 26. What action, if any, can a minority shareholder take if it believes the company is being mismanaged and what level of shareholding is required to do this?

There are several important statutory rules that can protect a minority shareholder. For example, under the general principles of reasonableness and fairness a controlling shareholder must take into consideration the interests of his fellow minority shareholders in taking decisions that affect the interests of minority shareholders. Further statutory minority shareholder protections include:

- The nullification of resolutions contrary to provisions in the articles or statute regulating the passing of resolutions, or when the resolution is contrary to the principles of reasonableness and fairness.
- A minority shareholder has the right to have his shares bought by a majority shareholder in case the continuation of his shareholding can no longer be reasonably expected of him due to the conduct of other shareholders.
- Section 3:13 Civil Code provides generally that legal powers cannot be abused. It is an elaboration of the dictates of reasonableness and fairness.
- The inquiry procedure (investigation proceedings) can result in a court order for an investigation into the affairs of a corporation. Shareholders of limited liability companies may file a petition with the Joint Court for an investigation if they hold at least 10% of the equity and/or voting rights.
- A shareholder who holds at least 95% of the equity of a company (NV or BV) may initiate court proceedings to buy out the minority shareholders. The articles may provide for another percentage, provided it is not less than 90%.

## INTERNAL CONTROLS, ACCOUNTS AND AUDIT

### 27. Are there any formal requirements or guidelines relating to the internal control of business risks?

Annual statements must be drawn up by the management board and submitted to the general meeting of shareholders annually and within eight months after the company's financial year has ended, (unless this term has been extended by the general meeting). The annual statements, comprising the balance sheet, profit and loss account and an explanatory statement, should be signed by all the directors and supervisory directors, if applicable.

The annual statements must be approved by the general meeting of shareholders. This meeting can (and, when this is prescribed by the articles of association, must) appoint an expert to regularly supervise the bookkeeping and to report to the meeting on the balance sheet and profit and loss account with an explanatory statement as drafted by the management board. However, there is no obligation to appoint an (external) auditor.

There are no filing or publication requirements. Except for members of the board of managing directors and supervisory directors

## THE REGULATORY AUTHORITY

Foundation Office Supervision and Standards Government Entities (SBTNO)

**Main activities.** The SBTNO is the corporate governance advisor for the government of Curaçao.

**W** [www.sbtno.org](http://www.sbtno.org)

(if any), the shareholders are entitled to review these statements for a two-year period.

Large NVs (*see Question 2*) are subject to a special regime. The financial statements of a large NV must be in accordance with the standards laid down by the International Accounting Standards Board (IASB). The statements must be reviewed by an external auditor and must be available at the offices of the large NV for inspection by shareholders and certain interested parties for a two-year period. A BV or regular NV may voluntarily opt for applicability of the special regime.

### 28. What are the responsibilities and potential liabilities of directors in relation to the company's accounts?

Directors are potentially liable in relation to the company's accounts if the accounts are misleading or inaccurate.

If the management board has not observed its obligation to keep accounts in good time, there is a statutory presumption of clear mismanagement (*see Question 16*).

### 29. Do a company's accounts have to be audited?

*See Question 27.*

### 30. How are the company's auditors appointed? Is there a limit on the length of their appointment?

An auditor is appointed by the general meeting of shareholders or another corporate body designated in the articles. The general meeting of shareholders appoints the auditors in a large company (*see Question 2*).

In SOEs, the general meeting of shareholders appoints auditors on the recommendation of the supervisory board.

### 31. Are there restrictions on who can be the company's auditors?

*See Question 27.*

In SOEs, the external auditor must be independent of the company for which they audit accounts. Independence as such is not defined in the Code but it does stipulate that the responsible partners of the external accounting firm should rotate.




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**32. Are there restrictions on non-audit work that auditors can do for the company that they audit accounts for?**


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There are no restrictions on the non-audit work that auditors can do for the company for which they audit accounts.

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**33. What is the potential liability of auditors to the company, its shareholders and third parties if the audited accounts are inaccurate? Can their liability be limited or excluded?**


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Auditors can be liable if they do not properly perform their task, which can result in a breach of contract with respect to the company or tort with respect to third parties. Liability can be limited or excluded but this will not be accepted by the courts if the auditors have been negligent.

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**CORPORATE SOCIAL RESPONSIBILITY**


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**34. Is it common for companies to report on social, environmental and ethical issues? Please highlight, where relevant, any legal requirements or non-binding guidance/best practice on corporate social responsibility.**


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It is not common for companies to report on social, environmental and ethical issues.

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**COMPANY SECRETARY**


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**35. What is the role of the company secretary in corporate governance?**


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There is no concept of a company secretary in Curaçao.

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**INSTITUTIONAL INVESTORS AND SHAREHOLDER GROUPS**


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**36. How influential are institutional investors and other shareholder groups in monitoring and enforcing good corporate governance? Please list any such groups with significant influence in this area.**


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The influence of institutional investors and other shareholder groups in monitoring and enforcing good corporate governance is limited.

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**REFORM**


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**37. Please summarise any proposals for reform and state whether they are likely to come into force and, if so, when.**


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The Corporate law was recently revised on 1 January 2012. There are currently no proposals for reform.

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**ONLINE RESOURCES**


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**Commercial and Foundations Register**

**W** [www.curaçao-chamber.an](http://www.curaçao-chamber.an)

**Description.** The Commercial and Foundations Register keeps records of and provides information on registered companies and foundations, and their activities. The Commercial Register also has extracts of company registrations, certificates of origin for re-export, legalisation of authorised signatures and other business-related documents. It can also supply addresses of local businesses by category, on lists or on labels.

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**CONTRIBUTOR DETAILS**


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**MAIKE BERGERVOET**

*Spigt Dutch Caribbean (Attorneys at Law & Tax Advisers)*

**T** +5999 461 8700 #24

**F** +5999 461 8073

**E** [maike.bergervoet@spigtcd.com](mailto:maike.bergervoet@spigtcd.com)

**W** [www.spigtcd.com](http://www.spigtcd.com)

**Qualified.** Curaçao, Bonaire, Saba, Statia, Aruba, Sint Maarten.

**Areas of practice.** Maike is a partner who practices in the fields of corporate and financial law. She holds a notarial and Dutch law degree from the Radboud University Nijmegen, the Netherlands. Her clients include a variety of local and international corporations, private clients, investment institutions and financial institutions such as banks and trust service providers.


**KAREL FRIELINK**

*Spigt Dutch Caribbean (Attorneys at Law & Tax Advisers)*

**T** +5999 461 8700

**F** +5999 461 8073

**E** [karel.frielink@spigtcd.com](mailto:karel.frielink@spigtcd.com)

**W** [www.spigtcd.com](http://www.spigtcd.com)

**Qualified.** Kingdom of the Netherlands (Amsterdam) and the Dutch Caribbean (Aruba, Bonaire, Curaçao, St. Maarten, Saba and Statia).

**Areas of practice.** Karel is a senior partner who practices in the fields of corporate law, financial law, commercial law and dispute resolution. He holds a notarial and Dutch law degree from the VU University Amsterdam. His clients include local and international corporations, investment institutions and financial institutions.