

OFFICIAL GAZETTE OF THE NETHERLANDS ANTILLES

NATIONAL ORDINANCE of the 22nd of January 1991 on the acquisition of an interest or a controlling interest in listed companies

IN THE NAME OF THE QUEEN!

THE GOVERNOR of the Netherlands Antilles,

considering

that it is desirable to lay down an obligation to report the acquisition of considerable parcels of voting shares in listed companies, and to protect the shareholders of such companies against hostile takeovers;

after consultation with the Advisory Council and in concert with the States, has laid down the Act below.

CHAPTER 1: GENERAL PROVISIONS

Article 1

In this Act and the provisions based thereupon,

- a. company shall mean: a public limited company under the laws of the Netherlands Antilles, the voting shares of which, as defined hereinafter, are listed at one or more recognised stock exchanges or are traded as shares **TRADED OVER THE COUNTER**;
- b. voting shares shall mean: shares with full voting rights and shares with limited voting rights if the right can be exercised in any meeting held to appoint, suspend or remove a managing director or a supervisory director, or to approve, authorise or assign any action by the management, irrespective of the fact whether the shares are listed at a recognised stock exchange or are traded as unlisted shares;
- c. securities shall mean:
 1. shares, except those for which depository receipts have been issued in cooperation with the company;
 2. depository receipts issued in cooperation with the company;
 3. profit sharing certificates, founder's shares and other documents that entitle their holder(s) to a part of the profit or capital in as far as they are listed at a recognised stock exchange or are traded as shares traded over the counter;
 4. rights, and documents that entitle their holder(s) to the acquisition of shares and certificates of shares as referred to in subparagraphs 1 and 2, in as far as those rights or documents are listed at a recognised stock exchange or are traded as shares traded over the counter;
- d. recognised stock exchange shall mean: a stock exchange or other organisation

concerned with the trade in securities that is included in the list of recognised stock exchanges laid down by national decree, providing for general rules geared to implementing this Act;

e. person shall mean: a natural person or a corporate body, irrespective of nationality, residence or registered office, or the governing laws;

f. subsidiary of a person shall mean:

1. a corporate body in which the person or one or more of his/its subsidiaries, whether or not under the terms of an agreement with others who are entitled to vote, alone or jointly can exercise more than half of the voting rights in the general meeting;
2. a corporate body of which the person or one or more of his/its subsidiaries are members or shareholders and, whether or not under the terms of an agreement with others who are entitled to vote, alone or jointly can appoint or remove more than half of the managing directors or supervisory directors, even if all those who are entitled to vote do so;
3. a company with or without corporate capacity, in which the person or one or more of his/its subsidiaries is liable *vis-à-vis* third parties;
4. a corporate body and a company with or without corporate capacity, in which the person participates; a person is considered to participate in a corporate body or a company if he/it or one or more of his/its subsidiaries as referred to in subparagraphs 1, 2 and 3 alone or jointly furnish capital or have capital furnished to that corporate body at their own expense, in order to create a long-lasting commitment to that corporate body for the benefit of their own business; if a fifth or more of the issued and outstanding share capital is furnished, the existence of a participation is assumed.

Article 2

1. In this Act and the provisions based thereupon, voting rights shall also mean:
 - a. depository receipts; both the shareholder and the holder of the depository receipt shall be considered to be the owner or the holder of the voting right on the shares concerned;
 - b. deposit receipts and other documents that represent an interest in voting shares; both the shareholder and the holder of the receipt or document shall be considered to be the owner or the holder of the voting right on the shares concerned;
 - c. the right of lien and the right of usufruct in respect of voting shares if the lienee or the holder of the right of usufruct exercises the voting rights attached to those shares; the lienee or bare owner shall also be considered to be the owner or the holder of the voting rights attached to the shares;
 - d. rights to acquire voting shares; the holder or owner of the right shall also be considered to be the holder of the voting right attached to those shares; if the right concerns non-issued shares or shares that are held by the company itself, for the calculation of the percentage of the voting right due to that person, the shares the acquisition of which that person is entitled to, are calculated as issued and held by that person.
2. The acquisition or holding of voting shares by a person shall also mean:

- a. the acquisition or holding, as well as the commencement of holding, by a third party at the expense or risk of that person or a person as referred to in subparagraphs b, c and d;
 - b. the acquisition or holding by a subsidiary of that person or of a person as referred to in subparagraphs c and d;
 - c. the acquisition or holding by the spouse of that person, from whom he/she is not separated, by the individual with whom that person cohabits as if they were married, by minors over whom that person exercises parental authority, guardianship or co-guardianship, and by relatives by blood and relatives by marriage whose maintenance is largely provided for by that person;
 - d. the acquisition or holding by a managing director, a supervisory director or a functionary of that person, and persons related to them as referred to in subparagraph c, and their subsidiaries.
3. The acquisition or holding of voting shares by a person shall also mean the acquisition or holding by a third party with whom the person or one or more related persons as referred to in paragraph 2, subparagraphs b, c and d, has entered into an agreement that provides for a long-lasting joint policy as regards the exercise of the voting right in the company, or that is intended to acquire a say in the company, either jointly or by one or more of the parties involved in the agreement.
 4. When a person enters into an agreement as referred to in paragraph 3 with a third party that holds voting shares, or a relationship as referred to in paragraph 2 arises between that person and the third party, or the third party becomes the person's subsidiary, then the moment at which the agreement is entered into, the relationship arises or the third party becomes subsidiary shall count as the moment at which those shares have been acquired by that person.
 5. In this Act, a party affiliated with a person shall mean a person whose acquisition or holdership of voting rights is also attributed to that person pursuant to paragraph 2, subparagraphs b, c or d, or pursuant to paragraph 3.

Article 3

Voting shares that are acquired and held by clearing institutions, securities custodians, stock brokers and similar institutions and persons that are admitted to a recognised stock exchange or are otherwise licensed to exercise their trade under the rules applicable to that exchange, in as far as those shares are acquired and held in the normal exercise of their profession or trade, and in as far as they are not used to acquire or attempt to acquire a controlling interest in the company, are disregarded in the calculation of the percentage of voting right acquired or held by them.

CHAPTER II: NOTIFICATION OF A CONTROLLING INTEREST

Article 4

1. The person who, under whatever title, also acquires voting rights in the capital of a company and who knows or ought to know that, on the basis of this acquisition, he has a voting right of more than 5, 10, 20, 33 1/3, 50 or 66 2/3 per cent of all votes that can be cast on the issued and outstanding share capital of that company, shall notify the company without delay.
2. If voting shares are acquired other than by transfer of registered shares, the requirement to notify without delay shall be met if the notification is received by the company within five days after the notification requirement came into being.

Article 5

1. The notification shall be submitted in writing, and be addressed to the office of the company according to the Commercial Register of the Chamber of Commerce on the island where the company is established, as well as to the registered offices of the company in cities where recognised stock exchanges are located that have been chosen by the company and entered into said Commercial Register in accordance with this Act.
2. The notification shall contain:
 - a. name, place and address of the individual who is obliged to submit such a notification and the nature of his business or company;
 - b. the number of each type of voting shares held and acquired by the individual and, if one of the situations described in article 2 occurs, the names, residences and addresses of those by whom they are held or acquired;
 - c. the percentage of the votes and the percentage of issued and outstanding share capital that he, pursuant to article 2, holds;
 - d. the date at which the notification requirement came into being.
3. If the percentage of the voting right held by the individual who is obliged to submit notification of a controlling interest is 10 per cent or more, he shall further include in the notification whether, within a period of twelve months, he intends:
 - a. to acquire more voting shares or to expand his voting right in another manner;
 - b. to use his participation in the company to influence the management's policy, or to bring about decisions that do not fit into a normal investment policy, or to acquire representation in the management or the supervisory board, or to acquire proxies from shareholders for a future shareholder meeting.

If the notification states that the individual who is obliged to submit disclosure has none of the intentions referred to in subparagraphs a and b, then he shall not be allowed to acquire more shares within a period of twelve months without, in accordance with this article, notifying the management thereof at least four weeks in advance.

Article 6

If, pursuant to article 2, paragraph 2, more individuals are obliged to submit notification, the notification by one of them shall release the others from their obligation.

Article 7

1. The management of a company that has received a notification as referred to in this chapter shall publicise its contents without delay by means of an advertisement in one or more of the newspapers published in the Netherlands Antilles, and inform the shareholders in the manner in which it normally communicates messages or convocations to them.
2. The management shall have fulfilled its obligation to inform without delay if the advertisement has been placed and the communications have been issued within five days after the notification was received at each of the registered offices as referred to in article 4 (5?).
3. In the advertisement and communications, the management shall be allowed to leave out parts from the notification that are not relevant or that might make a false impression on the shareholders.

CHAPTER III: PUBLIC BID ON SECURITIES

Article 8

1. The person who, under whatever title, intends to acquire voting shares in a company's capital and who knows or ought to know that, after this acquisition, he will hold votes that represent 20 per cent or more of all votes that can be cast on the issued and outstanding share capital of that company, shall, before actually acquiring them, inform the management of the company of his intentions and give the management the opportunity to confer with him within a period that he shall not determine to be less than two weeks after his informing the management.
2. The invitation to confer as referred to in the previous paragraph shall be extended in writing, in accordance with the provisions of article 5, stating, *mutatis mutandis*, the person's intentions described in article 5 with regard to the company if he acquires influence over its policy, and the way in which the acquisition will be financed, including the name and address of each bank, financial institution or other party that is committed to financing the acquisition in full or in part.
3. During the time that consultations may take place and for a week after the consultations have started, the person and the parties affiliated with that person shall not make any public or private bid on voting shares or other securities of the company, nor shall they acquire such shares or securities other than with the management's and the supervisory board's consent.
4. If the management has not made use of the invitation to confer or if the consultations have not, within a week, led to a result approved by the supervisory board, the person shall not acquire voting shares and other securities of the company in excess of the threshold mentioned in paragraph 1 other than by making a public bid in accordance

with the conditions laid down in article 10.

Article 9

1. The person who, for whatever reason, has come to hold voting shares in excess of the threshold referred to in article 8, paragraph 1, without the consent of the company's management and supervisory board or other than as the result of a public bid as referred to in article 10, shall reduce his shareholding to below that threshold without delay.
2. If the threshold referred to was crossed unintentionally or through no fault of the person or of the parties affiliated with that person, the management, with the supervisory board's consent, is authorised to grant the person full or partial exemption of the obligation to reduce his shareholding to below the threshold, which exemption can be granted conditionally.
3. Within ten days after a person unintentionally or through no fault of his own and through no fault of the parties affiliated with that person has come to hold voting shares in excess of the threshold referred to or after the person learnt of such a fact or after a request for exemption as referred to in paragraph 1 was declined, the person may inform the management of his intention to make a public bid as referred to in article 10, in which case he is not obliged to reduce his shareholding to below the threshold. The obligation shall revive, however, as soon as the person abandons that intention.

Article 10

A public bid, made by a person or an affiliated party, which is aimed at or may lead to that person's acquiring voting shares in the company's capital in excess of the threshold referred to in article 8, paragraph 1, and which bid is made without the consent of the company's management and supervisory board, shall:

- a. be made publicly on all securities of the company, except for those securities that are held by the company itself;
- b. offer, for each type of security, a price to be paid in cash per security not lower than:
 1. the highest price quoted by recognised stock exchanges or the price advertised for that type of security during a period of twelve months immediately preceding the bid; and
 2. the highest price that, for that type of security, was offered by the person or the parties affiliated with that person for any security of that type during a period of twenty-four months immediately preceding the bid;
- c. offer the opportunity to accept the bid during a first application period of at least four and at the utmost ten weeks, and during a consecutive second application period of at least two weeks, if the bid was initially made conditionally and becomes unconditional during the first application period;
- d. be unconditional and irrevocable, provided that the bidder shall be allowed to stipulate one or more of the following conditions:
 1. that, among the securities reported during the first application period, there be

- so many voting shares that the person will be able to cast at least 50 per cent or a higher percentage, set by that person, of the votes that can be cast on the issued and outstanding share capital;
2. that, during the first application period, no third party will announce for the first time that it makes a public bid on the securities or part thereof or has the intention to do so, or that it has agreed with the company to take voting shares that represent 5 per cent or more of the votes that can be cast on the issued and outstanding share capital;
 3. that, during the first application period, all judicial and administrative permissions needed to acquire the securities are or will be granted or that promises to that effect are or will be made;
 4. that a condition on which a permission or a promise thereof as referred to in subparagraph 3 has been granted, has not been met;
 5. that, during the first application period, no circumstances occur that were not known and did not need to be known to the person when making the bid and that would have been decisive if they had been known at the time of making the bid.

CHAPTER IV: MISCELLANEOUS PROVISIONS

Article 11

If a public bid as referred to in article 10 has been made by a person or a party affiliated with that person, and if that person, as a result of the voting shares acquired through that bid together with the voting shares the person already held at the time of making the bid, can cast less than 85 per cent of the votes that can be cast on the issued and outstanding share capital of the company, the person nor the parties affiliated with that person shall, for the duration of one year after the expiry of the application period(s):

- a. enter into any business transaction with the company with regard to a considerable part of the company's assets;
- b. agree to, co-operate in and stimulate others to agree to or co-operate in the sale of considerable assets of the company and its subsidiaries, and agree to or co-operate in any decision to dissolve the company, merge with another company or change the location of the company's registered office.

Article 12

1. If registered shares are transferred and the company's management knows or suspects that
 - a. the transfer is to be the subject of a notification pursuant to chapter II, and such a notification has not taken place;
 - b. the transfer is in violation of a prohibition in this Act to acquire voting shares;
 - c. the transfer is the result of the acceptance of a public bid that has been made in violation of the regulations in chapter III;
 the company is entitled not to acknowledge the transfer or, if the transfer is served to the company, to declare the transfer null and void by way of registered letter sent by

air mail to both the intended acquirer and the intended transferor.

2. If the company has not acknowledged a transfer as the result of a suspicion, the transfer shall be acknowledged after a period of two weeks, unless in the meantime the suspicion has been replaced by evidence or a reasonable suspicion.
3. The transfer shall be acknowledged forthwith as soon as the reason for not acknowledging the transfer has ceased to exist.

Article 13

1. On the voting shares attributed to a person no more votes in total shall be cast than representing 5 per cent of the issued voting share capital of the company:
 - a. as long as the person has not submitted the notification that is required pursuant to article 4;
 - b. up to four weeks after that notification has been submitted, if the person acquired voting shares without having submitted the prior notification as referred to in article 5, paragraph 3;
 - c. until the person has reduced his shareholding below the threshold referred to in article 9 or has been granted an exemption by the management and the supervisory board.
2. Persons who intend, or whose affiliated parties intend, to make a public bid on voting shares of a company and the parties affiliated to that person shall not convene shareholders' meetings, be present or represented in such meetings, nor exercise their right to vote on voting shares of the company in or outside the meeting until the public bid as referred to in article 10 has been made, or it has been agreed with the management and the supervisory board that the bid can be made other than pursuant to article 10. When the intention to bid is abandoned, the prohibition of this article shall remain in force until a year after the management has been notified thereof in writing.
3. Votes cast in contravention to the above shall nevertheless be valid unless in the case of suspension as referred to in article 14.
4. For the calculation of the quorum required in the articles of association, the shares on which no votes can be cast due to the above shall be considered to be non-issued.

Article 14

1. If the management of a company knows or suspects that someone exercises voting or other rights or tries to exercise such rights in violation of the provisions of article 13, the management shall be authorised to suspend that person's exercising said rights by means of a registered letter sent to that person by air mail.
2. If the management deems it in the interest of the company or the shareholders, the management shall be entitled to publicise the suspension in the manner described in

article 7.

3. If during a shareholders' meeting it appears or the suspicion is aroused that someone tries to exercise rights in violation of the provisions of article 13, the chairperson may adjourn the meeting for at least half an hour and three hours at the utmost, in order to consult with the person or persons concerned. If this consultation does not produce evidence to the contrary or dispels the suspicion, the chairperson may suspend the person or persons concerned and continue the meeting without them.
4. If a suspension is the result of a suspicion, the suspension shall be lifted after two weeks' time if the suspicion has not been converted into proof or a reasonable suspicion.
5. A suspension shall be lifted without delay when the provisions of article 13 no longer bar the individual concerned from exercising the rights for which he was suspended.

Article 15

The shareholders of a company as referred to in this Act shall only make valid decisions outside the shareholders' meeting if the management requests them to make such a decision.

CHAPTER V: EXCEPTIONS

Article 16

By national decree, providing for general rules, it may be determined for certain types of company that chapters II and III of this Act shall not or only partially apply to those types of company, or that for those types of company other thresholds are applicable than those referred to in those chapters.

CHAPTER VI: TRANSITIONAL PROVISIONS

Article 17

Voting shares that are held by a person at the time this Act enters into force, shall, for the application of this Act, be considered to have been acquired at the time of this Act's entering into force. Notwithstanding the provisions of article 4, the notification referred to in that article is to be made within a month after this Act's entering into force.

CHAPTER VII: PENAL PROVISIONS

Article 18

The following shall be considered to be offences, and shall be punished by a fine of NLG 10,000 at the utmost:

- a. failure to perform, or failure to perform fully, the notification requirement as referred to in chapter II;
- b. stating false or misleading information in a notification as referred to in chapter II; and
- c. the acquisition of voting shares for a consideration, in violation of a prohibition in this Act;
- d. failure to satisfy the notification requirement as referred to in article 7 of this Act;
- e. making or implementing a decision in one's function of manager, supervisory manager, official or adviser of a corporate body, or co-operating in the making or implementing of a decision by which the corporate body commits an offence as made punishable in this article.

Article 19

The following shall be considered to be criminal offences, and shall be punished by imprisonment of one year at the utmost and a fine of NLG 5,000,000 at the utmost:

- a. the offences stated in article 18, paragraphs a, b and d, if they were committed with the object to conceal that a person intends to acquire a controlling interest in the company;
- b. the offence stated in article 18, paragraph c, if it was committed with the object to acquire a controlling interest in the company;
- c. making a public bid on voting shares of a company other than permitted under this Act;
- d. making or implementing a decision in one's function of manager, supervisory manager, official or adviser of a corporate body, or co-operating in making or implementing a decision by which the corporate body commits an offence as made punishable in this article.

Article 20

1. If an offence made punishable under this Act is committed by or on behalf of a company or another body holding corporate capacity, criminal proceedings shall be instituted, and the penalty shall be imposed on the members of the management and, in their absence, on the corporate body's representative in the Netherlands Antilles.
2. The provision in the previous paragraph shall be equally applicable to a corporate body acting as the manager or representative of another corporate body.

CHAPTER VIII: FINAL PROVISIONS

Article 21

This Act shall enter into force on the day after the date of publication of the *Official Gazette* in which it is published.

Article 22

This Act may be cited as the National Ordinance on Controlling Interest in Listed Companies.

Curaçao, the 22nd of January 1991
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The Minister of Justice,
W.J. KNOPPEL

The Minister of Finance,
G. DE PAULA

Published on the 22nd of January 1991
The Minister of General Affairs,
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