Eisers verschijnen vrijwillig!

Gerecht in Eerste Aanleg van Sint Maarten
10 mei 2016

AKTE EISVERMEERDERING

Inzake:

1. Rene Richardson,
2. Edwin Gumbs,
eisers,
gemachtigde: mr. J.G. Bloem

Tegen:

De Openbare Rechtspersoon het Land Sint Maarten,
gedaagde,
gemachtigde: Mr. R.F. Gibson

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1. Eisvermeerdering

1.1 Gisteren, 10 mei 2016, informeerde gedaagde eisers dat zij hun op 28 januari 2013 geschorste aandeelhoudersvergadering op vrijdag, 13 mei 2016 zal voortzetten, teneinde een nieuwe directeur van N.V. GEBE te benoemen (productie 1). Eisers begrijpen, na medewerkers bij het secretariaat van gedaagde te hebben gesproken, dat gedaagde voornemens is om een directeur te benoemen, terwijl de Veiligheidsdienst Sint Maarten nota bene geen advies hierover heeft uitgebracht. Nog afgezien van het feit dat een benoeming zonder een advies van de Veiligheidsdienst Sint Maarten een nietig, dan wel vernietigbaar besluit zal opleveren, hebben eisers wederom recht op en belang bij een gedegen voorbereiding.

1.2 Eisers menen dat de statutaire oproeptermijn voor aandeelhoudersvergaderingen van N.V. GEBE een reflex werking moet hebben voor het, zeker na ruim vier maanden, voortzetten van een gehouden aandeelhoudersvergadering. Zij stelden voor om een aandeelhoudersvergadering te beleggen voor 26 mei aanstaande en om de aangehouden vergadering van 28 januari 2016 alsdan ook voort te zetten (productie 2). N.V. GEBE liet vervolgens weten dat de vergadering van vrijdag, 13 mei 2016 op maandag, 16 mei 2016 zal plaatsvinden (productie 3). Ook dit is oneigenlijk, schendt de statutaire zorgvuldigheid die de bestuursorganen jegens elkaar hebben te betrachten en de redelijkheid en billijkheid. Deze laatste rechtshandeling van de Aandeelhouder van N.V. GEBE noodzaakt de hierna te formuleren eisvermeerdering.

1.3 Er is ook sprake van een eisvermindering of beter gezegd intrekking van de eis tegen N.V. GEBE. Deze vennootschap heeft namelijk bij brief van hedenochtend laten weten dat het inziet dat de oproeptermijn die aan eisers is gegund te kort dag is en instemt om de aandeelhoudersvergadering op 26 mei 2016, in plaats van 12 mei 2016, te agenderen (productie 4). Eisers trekken aldus hierbij hun eis tegen N.V. GEBE in. Nochtans hebben eisers geen reactie in deze kwestie van de aandeelhouder van N.V. GEBE ontvangen.

1.4 De nieuwe eis luidt:

MITSDIEN, voor zover mogelijk uitvoerbaar bij voorraad op de minuut en op alle dagen en uren, bij vonnis:

1. De Openbare Rechtspersoon het Land Sint Maarten, als de Aandeelhouder van NV GEBE, te verbieden om een algemene of buitengewone aandeelhoudersvergadering te beleggen op 12 mei 2016 dan wel een andere datum krachtens een oproep van de Tijdelijke Manager, kosten rechtens;
2. De openbare Rechtspersoon het Land Sint Maarten, als aandeelhouder van N.V. GEBE, de gebieden om de op 28 januari 2016 geschorste aandeelhoudersvergadering, voort te zetten op of na 26 mei 2016.

Namens eiseres,

De gemachtigde,

Bloem

J.G. Bloem

Eisers verschijnen vrijwillig!

Gerecht in Eerste Aanleg van
Sint Maarten
10 mei 2016

KORT GEDING VERZOEKSCHRIFT STREKKENDE TOT VERBOD BIJEENROEPING EN HOUDEN VAN EEN AANDEELHOUDERS-VERAGDERING VAN NV GEBE KRACHTENS DE OPROEP VAN DE TIJDELIJKE MANAGER D.D. 29 APRIL 2016

Geven eerbiedig te kennen!

1. **Rene Richardson,**
2. **Edwin Gumbs,**

eisers, beide wonende op Sint Maarten, in deze zaak domicilie kiezende aan de Juancho Yrausquin Blv. # 6, op Sint Maarten, ten kantore van mr. J.G. Bloem, die verklaart voor en namens eisers gerechtigd zijn om onderhavig verzoekschrift te ondertekenen en in te dienen.

Eisers hebben een rechtsvordering tegen:

1. **De Naamloze Vennootschap Gemeenschappelijk Elektriciteitsbedrijf Bovenwindse Eilanden**, gedaagde, gevestigd en kantoorhoudende aan de Walter Nisbeth Road # 35,
2. **de Openbare Rechtspersoon het Land Sint Maarten,** gedaagde, gevestigd en kantoorhoudende aan de Clem Labega Plein z/n, Sint Maarten,

en wel op grond van het navolgende

---

1. Inleiding

1.1 Eisers zijn allen leden van de Raad van Commissarissen van gedaagde sub 1 ("*NV GEBE*"). NV GEBE is een concessiehouder met het alleenrecht tot exploitatie van een elektriciteit en watervoorziening bedrijf op Sint Maarten. De statuten van NV GEBE worden als productie 1 ingebracht. Gedaagde sub 2 is de houder van alle geplaatste en uitstaande aandelen in het kapitaal van N.V. GEBE, verder aan te duiden als: "*de Aandeelhouder*".

1.2 NV GEBE heeft vanaf 1 december 2015 geen fungerende bestuursleden. De Raad van Commissarissen van NV GEBE benoemde ex artikel 8 lid 11 van de statuten van NV GEBE gelet hierop allereerst de heer W. Brooks als Tijdelijke Manager van gedaagde. Nadat de heer Brooks op 29 januari 2016 met onmiddellijke ingang ontslag nam, benoemde de Raad van Commissarissen de heer A. Zagers als Tijdelijke Manager.

1.3 Artikel 8 lid 11 van de statuten van NV GEBE bepaalt:
"*When one or more Managing Directors are absent or otherwise precluded from acting, the remaining managing directors shall be responsible for the entire management of the corporation; when all the Managing Directors are absent or otherwise precluded from acting, the corporation shall be temporarily managed by a person appointed for that purpose by the Supervisory Board.*
***The person thus-appointed shall convoke a general shareholders' meeting as soon as possible in order to provide for a definitive management. As long as this has not been accomplished, the acts of management of the person thus appointed, shall be limited to those that cannot be delayed*."**

1.4 De Tijdelijke Manager fungeert derhalve als een door de Raad van Commissarissen benoemde procuratiehouder, met een –zeer- beperkte volmacht, namelijk het doen van uitsluitend de verrichtingen die niet uitgesteld kunnen worden. De Tijdelijke Manager is aldus een verlengstuk van de Raad van Commissarissen en legt rekening en verantwoording af aan de Raad Commissarissen. Reeds hierdoor volgt dat de Aandeelhouder niet, zeker niet buiten de Raad van Commissarissen om, opdrachten aan de Tijdelijke Manager kan verstrekken.

1.5 De Aandeelhouder van NV GEBE verzocht de heer A. Zagers op 28 april 2016 om een buitengewone vergadering van aandeelhouders op te roepen, met als agenda onderwerp: "*ontslag van de commissarisleden*" (productie 2). Eerder verzocht de Aandeelhouder van NV GEBE alle commissarisleden om vrijwillig hun ontslag in te dienen (productie 3). De Tijdelijke Manager gaf weliswaar onder protest, dan wel met tegenzin, gevolg aan het verzoek van de Aandeelhouder van NV GEBE en belegde een buitengewone aandeelhoudersvergadering voor 12 mei 2016 (productie 4). Eisers zijn op maandag, 9 mei 2016, vooreerst daarin gekend (productie 5). De oproep voor een buitengewone vergadering van aandeelhouders voor 12 mei 2016 is nietig, dan wel vernietigbaar.

1.6 Eisers hebben recht op en belang bij dat er, kort en krachtig gezegd, geen vergadering conform een nietig oproepingsbesluit wordt belegd. Het belang van de vennootschap NV GEBE is namelijk daarmee gediend. Zij hebben intussen zelf voor 26 mei 2016 een buitengewone vergadering van aandeelhouders bijeengeroepen met in elk geval als agenda onderwerp: "*ontslag commissarisleden N.V. GEBE*".

1.7 Bij brieven van 10 mei 2016 is de Aandeelhouder van NV GEBE verzocht en gesommeerd om te bevestigen dat de vergadering geen doorgang zou vinden, vanwege de aangegeven nietigheden (productie 6 en 7). Helaas heeft de Aandeelhouder geen gevolg gegeven aan deze sommatie. Dit noodzaakt de indiening van onderhavige spoed kortgedingprocedure.

2. Relevante achtergrond

2.1 Er was geen vuiltje aan de lucht totdat de Aandeelhouder op 28 januari dit jaar N.V. GEBE verzocht om kort gezegd het bedrag van ƒ 31.000.000's aan interim-dividend te betalen. N.V. GEBE en diens bestuursorganen weigerden om hieraan te voldoen, nu dit verzoek simpelweg niet rechtsgeldig is. Ten blijke daarvan verwijzen eisers het Gerecht naar de inhoud van de als productie 8 aangehechte Legal Opinion, met betrekking tot voornoemde resolutie van de Aandeelhouder van N.V. GEBE tot betaling van ƒ 31.000.000's aan interim-dividend. Eisers verzoeken het Gerecht de inhoud van betreffende opinie hier als letterlijk herhaald en ingelast te beschouwen.

2.2 Eind 2015 vond er een coalitiewisseling plaats op Sint Maarten. De meerderheid van de –destijds- leden van de Raad van commissarissen zijn aangesteld door de voormalige coalitie. Vanaf het prille begin deden zich steeds aanhoudende geruchten de ronde, zijdens de overheid, dat de overheid zou overgaan tot het ontslaan van commissarisleden van de zogeheten overheid nv's, waaronder in het bijzonder N.V. GEBE en Princess Juliana International Airport.[1]

2.3 In het bijzonder de weigering van eisers als leden van de Raad van Commissarissen van N.V. GEBE om zoals gesteld gevolg te geven aan het bevel van de Aandeelhouder van N.V. GEBE, bracht een nieuwe wending in de wijze waarop de Aandeelhouder alsook bepaalde leden van het Parlement van Sint Maarten, met de vennootschap en in het bijzonder eisers als leden van de Raad van Commissarissen omgingen.[2] Plotsklaps verschenen artikelen in de media waaruit volgt dat parlementariërs, die tevens de huidige coalitie steunen, vonden dat de leden van Raad van Commissarissen naar huis moesten gaan. Kort daarna volgde het verzoek van de Aandeelhouder van N.V. GEBE aan de leden van de Raad van Commissarissen van N.V. GEBE, waaronder eisers, om vrijwillig hun ontslag in te dienen.

[1] http://721news.com/airport-board-not-going-home-busy-putting-friends-in-positions/;
[2] Vanaf de inauguratie van de nieuwe coalitie schermde de parlementariër, de heer M. Lake, naar bepaalde Commissarisleden van NV GEBE toe, met het naar huis sturen van de leden van de Raad van Commissarissen van NV GEBE.

2.4 De leden van de Raad van Commissarissen, waaronder wederom eisers, berichtten de Aandeelhouder in reactie daarop bij brief dat zij geen aanleiding zagen om vrijwillig terug te treden (productie 9). Een en ander gelet op het vennootschapsbelang van NV GEBE en het feit dat intussen door of zijdens de Aandeelhouder, publiekelijk insinuaties waren gemaakt dat de leden van de Raad van Commissarissen niet, althans niet naar behoren, zouden fungeren. Dit is simpel gezegd onbehoorlijk, mede nu het functioneren van de Raad van Commissarissen tot op heden geen onderwerp van enig gesprek of van besprekingen is geweest met de Aandeelhouder van N.V. GEBE.

2.5 Op vrijdag, 29 april 2016, wezen eisers de Aandeelhouder van N.V. GEBE wederom op een aantal er urgente kwesties en de noodzaak om te vergaderen teneinde die kwesties te bespreken (productie 9). Eisers verzoeken het Gerecht kortheidshalve wederom om de inhoud van die brief hier als letterlijk herhaald en ingelast te beschouwen. In betreffende brief is onder meer de noodzaak om op zeer korte termijn over te gaan tot benoeming van statutaire bestuurders van N.V. GEBE aan de orde gekomen.

2.6 Eisers wezen de Aandeelhouder van N.V. GEBE daarbij nogmaals op de beperkingen die inherent zijn aan het fungeren van de Tijdelijke Manager en het feit dat betrokkene onder toezichtstelling van de Raad van Commissarissen staat en aldus aan de Raad van Commissarissen rekening en verantwoording aflegt. Verder, dat de situatie waarbij N.V. GEBE bestuurd wordt door een Tijdelijke Manager bij uitstek een is die zeer kort moet duren. De situatie waarbij de vennootschap al langer dan vijf maanden operationeel uitsluitend wordt aangestuurd door een Tijdelijke Manager (lees: een procuratiehouder met een zeer beperkte volmacht van de Raad van Commissarissen), met alle beperkingen van dien is eufemistisch gezegd onwenselijk en nadelig voor N.V. GEBE.

2.7 De hierbij als productie 10 aangehechte Legale Opinion met betrekking tot de vraag of er gronden zijn waardoor de leden van de Raad van Commissarissen moeten aftreden geeft een zeer gedetailleerde omschrijving van alle relevante feiten en omstandigheden in deze zaak. Het Gerecht wordt aldus met klem verzocht kennis te nemen van de inhoud van deze opinie, met het verzoek ook die inhoud hier als letterlijk herhaald en ingelast te beschouwen.

2.8 Uit het vorenstaande en het bijzonder de aangehechte producties volgt kort en krachtig gezegd dat de Aandeelhouder op oneigenlijke gronden en zeer goed mogelijk ter bevordering van de uitvoering van een nietig dan wel vernietigbaar besluit, de functie van de huidige commissarisleden wilt beëindigen.

3. Nietigheid/vernietigbaarheid besluit oproep buitengewone aandeelhoudersvergadering

3.1 Opgemeld besluit ("*het Oproepingsbesluit*") is nietig dan wel vernietigbaar als zijnde in strijd met de wet en de statuten van NV GEBE. De wet en de statuten van NV GEBE schrijven namelijk voor dat buitengewone of algemene aandeelhoudersvergaderingen, behoudens een aandeelhoudersvergadering ter fine van benoeming van een directeur na aanstelling van een Tijdelijke Manager, uitsluitend bijeengeroepen kunnen worden door de Raad van Bestuur en/of de Raad van Commissarissen. De Aandeelhouder van N.V. GEBE trachtte met haar verzoek aan de Tijdelijke Manager Zagers deze bepaling te omzeilen.

3.2 Krachtens artikel 2:129 lid 1 BW kunnen:

"*aandeelhouders die alleen of samen met andere aandeelhouders ten minste tien procent van de stemmen ten aanzien van een bepaald onderwerp kunnen uitbrengen, kunnen het bestuur of de raad van commissarissen schriftelijk verzoeken om een algemene vergadering bijeen te roepen teneinde te beraadslagen en te besluiten over dat onderwerp, mits zij daarbij een redelijk belang hebben*."

3.3 Het derde lid van artikel 2:129 BW bepaalt dat :

"*Indien het bestuur of de raad van commissarissen niet binnen veertien dagen na de dag dat het verzoek de vennootschap of het betrokken orgaan heeft bereikt, gevolg geeft aan een zodanig verzoek, kunnen de verzoekers zelf tot bijeenroeping overgaan. Met het oog daarop geeft het bestuur de verzoekers inzage in het register, bedoeld in artikel 109*."

3.4 Artikel 14 lid 1 en 2 van de statuten van N.V. GEBE stelt:

1. **"*Each individual Managing Director and each individual Supervisory Director is authorized to convoke a General Meeting. The Managing Board and the Supervisory Board are at all times authorized to convoke the General Meeting. Shareholders, representing alone or jointly with other shareholders at least ten percent (10) of the voting power on outstanding capita are authorized to request the Managing Board or the Supervisory Board in writing to convoke a General Meeting in order to deliberate on and adopt a resolution on a subject, provided that they have a reasonable interest therein. If the Managing Board or the Supervisory Board should fail to comply with such request Within fourteen (14) days after the date on which the request reached the relevant corporate body or the corporation, the applicant (s) shall be authorized to convoke the meeting in their own right*."**

Lid 2 van dit artikel bepaalt:

"*The convocation shall be effected with due observance of a term of notification of at least twelve (12) days, not counting the date of sending of the notification; nor the date of the meeting.*"

3.5 Reeds een normale lezing van de statuten van N.V. GEBE en de wet leert dat de Aandeelhouder van N.V. GEBE niet aan de Tijdelijke Manager het verzoek kon doen om een buitengewone vergadering van aandeelhouders te beleggen. Dit verzoek had, mede gelet op het feit dat er geen fungerende directieleden zijn, aan de Raad van Commissarissen gedaan moet worden. De Raad van Commissarissen had uiteraard gevolg daaraan gegeven.

3.6 Indien het besluit van de Aandeelhouder om in wezen een illegale oproeping uit te lokken van de Tijdelijke Manager, geënt was op vrees dat de Raad Commissarissen geen vergadering zou beleggen om diens eigen leden te ontslaan, dan was dat evident een onjuiste gedachtegang.[3] De Raad van Commissarissen houdt zich naarstig aan de wet en de redelijkheid en billijkheid die bestuursorganen jegens elkaar hebben te betrachten krachtens artikel 2:7 BW.

3.7 Het oproepingsbesluit is niet alleen nietig omdat de oproep van de Bestuurs- en/of Commissariaat-organen van N.V. GEBE moet uitgaan, maar tevens omdat de heer A. Zagers als Tijdelijke Manager uitsluitend gerechtigd is tot het doen van die verrichtingen, die strikt noodzakelijk zijn voor de continuatie van de operatie van N.V. GEBE en niet uitgesteld kunnen worden. Er zijn goede gronden om te betogen dat de oproep van een buitengewone aandeelhoudersvergadering voor andere doeleinden van de benoeming van een directeur, niet daaronder valt. Dus daargelaten het feit dat de geëxerceerde bevoegdheid niet aan de Tijdelijke Manager toekomt, valt het beleggen van een aandeelhoudersvergaderingen in dit kader niet in de beperkte volmacht van de Tijdelijke Manager als bijzondere procuratiehouder.

4. <u>Oproepingsbesluit is in strijd met de statuten, redelijkheid en billijkheid en belangenafweging</u>

4.1 Krachtens artikel 2:7 BW dienen de bestuursorganen van N.V. GEBE zich te allen tijde redelijk en billijk tegenover elkaar te gedragen. Door de Raad van Commissarissen drie (3) dagen voor de bijeengeroepen vergadering daarvan op de hoogte te stellen, terwijl artikel 14 lid 2 van de statuten van N.V. GEBE duidelijk een termijn van 12 dagen voorschrijft (zonder de oproepings- dag en de dag waarop de vergadering zelf gehouden wordt) handelden NV GEBE en diens Aandeelhouder ook onzorgvuldig en daarmee onrechtmatig tegenover eisers.

4.2 Van eisers kan in redelijkheid niet verwacht worden dat zij zich terdege voorbereiden voor een vergadering op een dergelijke korte oproeptermijn. De ratio achter een oproeptermijn van 12 dagen is bij uitstek gelegen in het belang van een geëigende voorbereiding. Dit regardeert rechtstreeks het adequaat fungeren van de organen binnen N.V. GEBE en bevordert aldus diens bedrijfsvoering. Kort en krachtig gezegd: het belang van NV GEBE is gediend met de nakoming van de 12 dagen oproeptermijn bepaling.

4.3 Tegenover het belang van eisers, in de uitoefening van hun functie als commissarisleden van NV GEBE, tot het erop toezien dat de wettelijke en statutaire bepalingen van NV GEBE worden nageleefd, waarbij bij eisers in het bijzonder vooropstaat het zich terdege kunnen voorbereiden op een

[3] De Raad van Commissarissen heeft binnen een dag na ontvangst van stukken waaruit blijkt dat de Aandeelhouder een algemene vergadering wenst te beleggen, een vergadering bijeen geroepen voor 26 mei 2016.

aandeelhoudersvergadering, staat absoluut geen belang van N.V. GEBE. Een en ander klemt temeer nu er geen enkele objectieve aanwijzingsgronden zijn dat het commissariaat van N.V. GEBE niet deugdelijk zou fungeren. Integendeel, het, wederom in het belang van N.V. GEBE niet toestaan dat uitvoering wordt gegeven aan onrechtmatige resoluties, getuigt juist van deugdelijk functioneren, en uiteraard karakter. Zeker als bezien wordt dat er enorm veel – oneigenlijke- druk op de leden van de Raad Commissarissen is gelegd door of vanwege de Aandeelhouder, om simpelweg af te treden.

5. Conclusie

5.1 Het oproepingbesluit is nietig dan wel vernietigbaar. Eisers hebben aldus recht op en belang bij de stopzetting van de vergadering opgeroepen voor aanstaande donderdag, 12 mei 2016 krachtens dit nietig dan wel vernietigbare besluit.

MITSDIEN, voor zover mogelijk uitvoerbaar bij voorraad op de minuut en op alle dagen en uren, bij vonnis:

N.V. GEBE en de Openbare Rechtspersoon het Land Sint Maarten, als de Aandeelhouder van NV GEBE, te verbieden om een algemene of buitengewone aandeelhoudersvergadering te beleggen op 12 mei 2016 dan wel een andere datum krachtens een oproep van de Tijdelijke Manager, kosten rechtens.

Namens eiseres,

De gemachtigde,

J.G. Bloem

Eisers verschijnen vrijwillig!

Gerecht in Eerste Aanleg van Sint Maarten
10 mei 2016

PLEITNOTITIES

Inzake:

1. Rene Richardson,
2. Edwin Gumbs,
eisers,
gemachtigde: mr. J.G. Bloem

Tegen:

De Openbare Rechtspersoon het Land Sint Maarten,
gedaagde,
gemachtigde: Mr. R.F. Gibson

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1. Ontvankelijkheid

1.1 Uit de uitspraak van het Gerechtshof Amsterdam van 7 maart 2012, gepubliceerd in ECLI:NL:RBAMS:2011:BU7540, volgt kort en krachtig gezegd dat commissarisleden gerechtigd zijn om in rechte op te treden tegen de vennootschap dan wel de aandeelhouder van de vennootschap waarin zij een commissarisfunctie vervullen. Voorts, dat voorgenomen besluiten tot benoeming statutaire directeuren en goedkeuring titulaire benoemingen vernietigbaar kunnen zuhb wegens ernstige oproepingsgebreken, aannemelijkheid van vooropgezet plan om een van de commissarissen daadwerkelijke invloed op besluitvorming te ontnemen en door onmiddellijk aan besluit gegeven uitvoering. De uitspraak in kwestie is van belang voor de beoordeling van hoe de redelijkheid en billijkheid de verhouding tussen bestuursorganen in vennootschappen ingeeft.

1.2 Ietsjes dichter bij huis achter het Gerecht in eerste aanleg van Curaçao bij vonnis van 3 juli 2006 commissarisleden ontvankelijk in hun vorderingen tegen UTS voor wat betreft een onrechtmatige, op politieke gronden geïnspireerde/gebaseerde, beëindiging van de commissarisfunctie (productie 5).

1.3 Uit het vorenstaande volgt dat eisers in hun verzoeken kunnen worden ontvangen.

Eisers persisteren, ook in hun eisvermeerdering!

Namens eiseres,

De gemachtigde,

J.G. Bloem

ST MAARTEN f 10,- ST MAARTEN f 10,- ST MAARTEN f 5,-

Bloem Bonapart & Aardenburg
Attorneys at Law | Advocaten

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10 mei 2016

KORT GEDING VERZOEKSCHRIFT STREKKENDE TOT VERBOD BIJEENROEPING EN HOUDEN VAN EEN AANDEELHOUDERS-VERAGDERING VAN NV GEBE KRACHTENS DE OPROEP VAN DE TIJDELIJKE MANAGER D.D. 29 APRIL 2016

Op heden, 10 mei 2016 ter Griffie van het Gerecht in Eerste Aanleg van St. Maarten ingediend. De Griffier. 95.

Geven eerbiedig te kennen!

1. **Rene Richardson,**
2. **Edwin Gumbs,**

eisers, beide wonende op Sint Maarten, in deze zaak domicilie kiezende aan de Juancho Yrausquin Blv. # 6, op Sint Maarten, ten kantore van mr. J.G. Bloem, die verklaart voor en namens eisers gerechtigd zijn om onderhavig verzoekschrift te ondertekenen en in te dienen.

Eisers hebben een rechtsvordering tegen:

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1.2 NV GEBE heeft vanaf 1 december 2015 geen fungerende bestuursleden. De Raad van Commissarissen van NV GEBE benoemde ex artikel 8 lid 11 van de statuten van NV GEBE gelet hierop allereerst de heer W. Brooks als Tijdelijke Manager van gedaagde. Nadat de heer Brooks op 29 januari 2016 met onmiddellijke ingang ontslag nam, benoemde de Raad van Commissarissen de heer A. Zagers als Tijdelijke Manager.

1.3 **Artikel 8 lid 11 van de statuten van NV GEBE bepaalt:**
"When one or more Managing Directors are absent or otherwise precluded from acting, the remaining managing directors shall be responsible for the entire management of the corporation; when all the Managing Directors are absent or otherwise precluded from acting, the corporation shall be temporarily managed by a person appointed for that purpose by the Supervisory Board.
The person thus-appointed shall convoke a general shareholders' meeting as soon as possible in order to provide for a definitive management. As long as this has not been accomplished, the acts of management of the person thus appointed, shall be limited to those that cannot be delayed."

1.4 De Tijdelijke Manager fungeert derhalve als een door de Raad van Commissarissen benoemde procuratiehouder, met een –zeer- beperkte volmacht, namelijk het doen van uitsluitend de verrichtingen die niet uitgesteld kunnen worden. De Tijdelijke Manager is aldus een verlengstuk van de Raad van Commissarissen en legt rekening en verantwoording af aan de Raad Commissarissen. Reeds hierdoor volgt dat de Aandeelhouder niet, zeker niet buiten de Raad van Commissarissen om, opdrachten aan de Tijdelijke Manager kan verstrekken.

1.5 De Aandeelhouder van NV GEBE verzocht de heer A. Zagers op 28 april 2016 om een buitengewone vergadering van aandeelhouders op te roepen, met als agenda onderwerp: "*ontslag van de commissarisleden*" (productie 2). Eerder verzocht de Aandeelhouder van NV GEBE alle commissarisleden om vrijwillig hun ontslag in te dienen (productie 3). De Tijdelijke Manager gaf weliswaar onder protest, dan wel met tegenzin, gevolg aan het verzoek van de Aandeelhouder van NV GEBE en belegde een buitengewone aandeelhoudersvergadering voor 12 mei 2016 (productie 4). Eisers zijn op maandag, 9 mei 2016, vooreerst daarin gekend (productie 5). De oproep voor een buitengewone vergadering van aandeelhouders voor 12 mei 2016 is nietig, dan wel vernietigbaar.

1.6 Eisers hebben recht op en belang bij dat er, kort en krachtig gezegd, geen vergadering conform een nietig oproepingsbesluit wordt belegd. Het belang van de vennootschap NV GEBE is namelijk daarmee gediend. Zij hebben intussen zelf voor 26 mei 2016 een buitengewone vergadering van aandeelhouders bijeengeroepen met in elk geval als agenda onderwerp: "*ontslag commissarisleden N.V. GEBE*".

1.7 Bij brieven van 10 mei 2016 is de Aandeelhouder van NV GEBE verzocht en gesommeerd om te bevestigen dat de vergadering geen doorgang zou vinden, vanwege de aangegeven nietigheden (productie 6 en 7). Helaas heeft de Aandeelhouder geen gevolg gegeven aan deze sommatie. Dit noodzaakt de indiening van onderhavige spoed kortgedingprocedure.

2. Relevante achtergrond

2.1 Er was geen vuiltje aan de lucht totdat de Aandeelhouder op 28 januari dit jaar N.V. GEBE verzocht om kort gezegd het bedrag van *ƒ* 31.000.000's aan interim-dividend te betalen. N.V. GEBE en diens bestuursorganen weigerden om hieraan te voldoen, nu dit verzoek simpelweg niet rechtsgeldig is. Ten blijke daarvan verwijzen eisers het Gerecht naar de inhoud van de als productie 8 aangehechte Legal Opinion, met betrekking tot voornoemde resolutie van de Aandeelhouder van N.V. GEBE tot betaling van *ƒ* 31.000.000's aan interim-dividend. Eisers verzoeken het Gerecht de inhoud van betreffende opinie hier als letterlijk herhaald en ingelast te beschouwen.

2.2 Eind 2015 vond er een coalitiewisseling plaats op Sint Maarten. De meerderheid van de –destijds- leden van de Raad van commissarissen zijn aangesteld door de voormalige coalitie. Vanaf het prille begin deden zich steeds aanhoudende geruchten de ronde, zijdens de overheid, dat de overheid zou overgaan tot het ontslaan van commissarisleden van de zogeheten overheid nv's, waaronder in het bijzonder N.V. GEBE en Princess Juliana International Airport.[1]

2.3 In het bijzonder de weigering van eisers als leden van de Raad van Commissarissen van N.V. GEBE om zoals gesteld gevolg te geven aan het bevel van de Aandeelhouder van N.V. GEBE, bracht een nieuwe wending in de wijze waarop de Aandeelhouder alsook bepaalde leden van het Parlement van Sint Maarten, met de vennootschap en in het bijzonder eisers als leden van de Raad van Commissarissen omgingen.[2] Plotsklaps verschenen artikelen in de media waaruit volgt dat parlementariërs, die tevens de huidige coalitie steunen, vonden dat de leden van Raad van Commissarissen naar huis moesten gaan. Kort daarna volgde het verzoek van de Aandeelhouder van N.V. GEBE aan de leden van de Raad van Commissarissen van N.V. GEBE, waaronder eisers, om vrijwillig hun ontslag in te dienen.

[1] http://721news.com/airport-board-not-going-home-busy-putting-friends-in-positions/;
[2] Vanaf de inauguratie van de nieuwe coalitie schermde de parlementariër, de heer M. Lake, naar bepaalde Commissarisleden van NV GEBE toe, met het naar huis sturen van de leden van de Raad van Commissarissen van NV GEBE.

2.4 De leden van de Raad van Commissarissen, waaronder wederom eisers, berichtten de Aandeelhouder in reactie daarop bij brief dat zij geen aanleiding zagen om vrijwillig terug te treden (productie 9). Een en ander gelet op het vennootschapsbelang van NV GEBE en het feit dat intussen door of zijdens de Aandeelhouder, publiekelijk insinuaties waren gemaakt dat de leden van de Raad van Commissarissen niet, althans niet naar behoren, zouden fungeren. Dit is simpel gezegd onbehoorlijk, mede nu het functioneren van de Raad van Commissarissen tot op heden geen onderwerp van enig gesprek of van besprekingen is geweest met de Aandeelhouder van N.V. GEBE.

2.5 Op vrijdag, 29 april 2016, wezen eisers de Aandeelhouder van N.V. GEBE wederom op een aantal er urgente kwesties en de noodzaak om te vergaderen teneinde die kwesties te bespreken (productie 10). Eisers verzoeken het Gerecht kortheidshalve wederom om de inhoud van die brief hier als letterlijk herhaald en ingelast te beschouwen. In betreffende brief is onder meer de noodzaak om op zeer korte termijn over te gaan tot benoeming van statutaire bestuurders van N.V. GEBE aan de orde gekomen.

2.6 Eisers wezen de Aandeelhouder van N.V. GEBE daarbij nogmaals op de beperkingen die inherent zijn aan het fungeren van de Tijdelijke Manager en het feit dat betrokkene onder toezichtstelling van de Raad van Commissarissen staat en aldus aan de Raad van Commissarissen rekening en verantwoording aflegt. Verder, dat de situatie waarbij N.V. GEBE bestuurd wordt door een Tijdelijke Manager bij uitstek een is die zeer kort moet duren. De situatie waarbij de vennootschap al langer dan vijf maanden operationeel uitsluitend wordt aangestuurd door een Tijdelijke Manager (lees: een procuratiehouder met een zeer beperkte volmacht van de Raad van Commissarissen), met alle beperkingen van dien is eufemistisch gezegd onwenselijk en nadelig voor N.V. GEBE.

2.7 De hierbij als productie 11 aangehechte Legale Opinion met betrekking tot de vraag of er gronden zijn waardoor de leden van de Raad van Commissarissen moeten aftreden geeft een zeer gedetailleerde omschrijving van alle relevante feiten en omstandigheden in deze zaak. Het Gerecht wordt aldus met klem verzocht kennis te nemen van de inhoud van deze opinie, met het verzoek ook die inhoud hier als letterlijk herhaald en ingelast te beschouwen.

2.8 Uit het vorenstaande en het bijzonder de aangehechte producties volgt kort en krachtig gezegd dat de Aandeelhouder op oneigenlijke gronden en zeer goed mogelijk ter bevordering van de uitvoering van een nietig dan wel vernietigbaar besluit, de functie van de huidige commissarisleden wilt beëindigen.

3. Nietigheid/vernietigbaarheid besluit oproep buitengewone aandeelhoudersvergadering

3.1 Opgemeld besluit ("*het Oproepingsbesluit*") is nietig dan wel vernietigbaar als zijnde in strijd met de wet en de statuten van NV GEBE. De wet en de statuten van NV GEBE schrijven namelijk voor dat buitengewone of algemene aandeelhoudersvergaderingen, behoudens een aandeelhoudersvergadering ter fine van benoeming van een directeur na aanstelling van een Tijdelijke Manager, uitsluitend bijeengeroepen kunnen worden door de Raad van Bestuur en/of de Raad van Commissarissen. De Aandeelhouder van N.V. GEBE trachtte met haar verzoek aan de Tijdelijke Manager Zagers deze bepaling te omzeilen.

3.2 Krachtens artikel 2:129 lid 1 BW kunnen:

"aandeelhouders die alleen of samen met andere aandeelhouders ten minste tien procent van de stemmen ten aanzien van een bepaald onderwerp kunnen uitbrengen, kunnen het bestuur of de raad van commissarissen schriftelijk verzoeken om een algemene vergadering bijeen te roepen teneinde te beraadslagen en te besluiten over dat onderwerp, mits zij daarbij een redelijk belang hebben."

3.3 Het derde lid van artikel 2:129 BW bepaalt dat :

"Indien het bestuur of de raad van commissarissen niet binnen veertien dagen na de dag dat het verzoek de vennootschap of het betrokken orgaan heeft bereikt, gevolg geeft aan een zodanig verzoek, kunnen de verzoekers zelf tot bijeenroeping overgaan. Met het oog daarop geeft het bestuur de verzoekers inzage in het register, bedoeld in artikel 109."

3.4 Artikel 14 lid 1 en 2 van de statuten van N.V. GEBE stelt:

1. ***"Each individual Managing Director and each individual Supervisory Director is authorized to convoke a General Meeting. The Managing Board and the Supervisory Board are at all times authorized to convoke the General Meeting. Shareholders, representing alone or jointly with other shareholders at least ten percent (10) of the voting power on outstanding capita are authorized to request the Managing Board or the Supervisory Board in writing to convoke a General Meeting in order to deliberate on and adopt a resolution on a subject, provided that they have a reasonable interest therein. If the Managing Board or the Supervisory Board should fail to comply with such request Within fourteen (14) days after the date on which the request reached the relevant corporate body or the corporation, the applicant (s) shall be authorized to convoke the meeting in their own right."***

Lid 2 van dit artikel bepaalt:

"The convocation shall be effected with due observance of a term of notification of at least twelve (12) days, not counting the date of sending of the notification; nor the date of the meeting."

3.5 Reeds een normale lezing van de statuten van N.V. GEBE en de wet leert dat de Aandeelhouder van N.V. GEBE niet aan de Tijdelijke Manager het verzoek kon doen om een buitengewone vergadering van aandeelhouders te beleggen. Dit verzoek had, mede gelet op het feit dat er geen fungerende directieleden zijn, aan de Raad van Commissarissen gedaan moet worden. De Raad van Commissarissen had uiteraard gevolg daaraan gegeven.

3.6 **Indien het besluit van de Aandeelhouder om in wezen een illegale oproeping uit te lokken van de Tijdelijke Manager, geënt was op vrees dat de Raad Commissarissen geen vergadering zou beleggen om diens eigen leden te ontslaan, dan was dat evident een onjuiste gedachtegang.[3] De Raad van Commissarissen houdt zich naarstig aan de wet en de redelijkheid en billijkheid die bestuursorganen jegens elkaar hebben te betrachten krachtens artikel 2:7 BW.**

3.7 Het oproepingsbesluit is niet alleen nietig omdat de oproep van de Bestuurs- en/of Commissariaat-organen van N.V. GEBE moet uitgaan, maar tevens omdat de heer A. Zagers als Tijdelijke Manager uitsluitend gerechtigd is tot het doen van die verrichtingen, die strikt noodzakelijk zijn voor de continuatie van de operatie van N.V. GEBE en niet uitgesteld kunnen worden. Er zijn goede gronden om te betogen dat de oproep van een buitengewone aandeelhoudersvergadering voor andere doeleinden van de benoeming van een directeur, niet daaronder valt. Dus daargelaten het feit dat de geëxerceerde bevoegdheid niet aan de Tijdelijke Manager toekomt, valt het beleggen van een aandeelhoudersvergaderingen in dit kader niet in de beperkte volmacht van de Tijdelijke Manager als bijzondere procuratiehouder.

4. <u>Oproepingsbesluit is in strijd met de statuten, redelijkheid en billijkheid en belangenafweging</u>

4.1 Krachtens artikel 2:7 BW dienen de bestuursorganen van N.V. GEBE zich te allen tijde redelijk en billijk tegenover elkaar te gedragen. Door de Raad van Commissarissen drie (3) dagen voor de bijeengeroepen vergadering daarvan op de hoogte te stellen, terwijl artikel 14 lid 2 van de statuten van N.V. GEBE duidelijk een termijn van 12 dagen voorschrijft (zonder de oproepings- dag en de dag waarop de vergadering zelf gehouden wordt) handelden NV GEBE en diens Aandeelhouder ook onzorgvuldig en daarmee onrechtmatig tegenover eisers.

4.2 Van eisers kan in redelijkheid niet verwacht worden dat zij zich terdege voorbereiden voor een vergadering op een dergelijke korte oproeptermijn. De ratio achter een oproeptermijn van 12 dagen is bij uitstek gelegen in het belang van een geëigende voorbereiding. Dit regardeert rechtstreeks het adequaat fungeren van de organen binnen N.V. GEBE en bevordert aldus diens bedrijfsvoering. Kort en krachtig gezegd: het belang van NV GEBE is gediend met de nakoming van de 12 dagen oproeptermijn bepaling.

4.3 Tegenover het belang van eisers, in de uitoefening van hun functie als commissarisleden van NV GEBE, tot het erop toezien dat de wettelijke en statutaire bepalingen van NV GEBE worden nageleefd, waarbij bij eisers in het bijzonder vooropstaat het zich terdege kunnen voorbereiden op een

[3] De Raad van Commissarissen heeft binnen een dag na ontvangst van stukken waaruit blijkt dat de Aandeelhouder een algemene vergadering wenst te beleggen, een vergadering bijeen geroepen voor 26 mei 2016.

aandeelhoudersvergadering, staat absoluut geen belang van N.V. GEBE. Een en ander klemt temeer nu er geen enkele objectieve aanwijzingsgronden zijn dat het commissariaat van N.V. GEBE niet deugdelijk zou fungeren. Integendeel, het, wederom in het belang van N.V. GEBE niet toestaan dat uitvoering wordt gegeven aan onrechtmatige resoluties, getuigt juist van deugdelijk functioneren, en uiteraard karakter. Zeker als bezien wordt dat er enorm veel – oneigenlijke- druk op de leden van de Raad Commissarissen is gelegd door of vanwege de Aandeelhouder, om simpelweg af te treden.

5. <u>Conclusie</u>

5.1 Het oproepingbesluit is nietig dan wel vernietigbaar. Eisers hebben aldus recht op en belang bij de stopzetting van de vergadering opgeroepen voor aanstaande donderdag, 12 mei 2016 krachtens dit nietig dan wel vernietigbare besluit.

MITSDIEN, voor zover mogelijk uitvoerbaar bij voorraad op de minuut en op alle dagen en uren, bij vonnis:

N.V. GEBE en de Openbare Rechtspersoon het Land Sint Maarten, als de Aandeelhouder van NV GEBE, te verbieden om een algemene of buitengewone aandeelhoudersvergadering te beleggen op 12 mei 2016 dan wel een andere datum krachtens een oproep van de Tijdelijke Manager, kosten rechtens.

Namens eiseres,

De gemachtigde,

J.G. Bloem

Produktie 1

M.L. ALEXANDER
H.Th.G. SIMON

Ms. E. STEENBAAR
Ms. N.M. ALEXANDER
Ms. C.A.P. BAATEN
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The Undersigned:

Miguel Lionel Alexander, LL.M., a civil law notary, practicing in Curaçao, herewith certifies that attached hereunto are the governing articles of association of "**N.V. Gemeenschappelijk Electriciteitsbedrijf Bovenwindse Eilanden**", a limited liability company with statutory seat in Sint Maarten.

Curaçao, May 12th, 2012

33129/MLA/js

------------------------- NAME AND SEAT -------------------

---------------------------- Article 1 -------------------

1. The corporation shall be named: ------------------------
"N.V. Gemeenschappelijk Electriciteitsbedrijf Bovenwindse - Eilanden" --
In its foreign business transactions it may, instead of --- using the abbreviation "N.V.", use the abbreviation "INC" - in English and the abbreviation "S.A." in Spanish and ----- French in its name. -----------------------------------

2. The corporation is domiciled in Sint Maarten and may --- have branches and/or affiliate offices elsewhere ----------

--------------------------PURPOSE ------------------------

------------------------- Article 2 ----------------------

1. The corporation has for its purposes: -----------------

a. to established and commercially operate and electricity company in the Windward Islands of the former -------- Netherlands Antilles, as well as to lay electric ----- wiring and the trade in and installing of electric --- equipment for use by consumers; ---------------------

b. to prepare, design, supervise, execute and cause to be - executed in the Dutch part of Sint Maarten, Saba and - Sint Eustatius to co-ordinate, commercially operate -- and manage water plants, including the production and distribution of water and the trade in the machinery, equipment and spare parts necessary for that purpose;

c. to prepare, design, construct, supervise and cause to be executed in the Dutch part of Sint Maarten, waste ---- water treatment plants and sewerage infrastructure, to coordinate, commercially operate and manage waste ---- water treatment plants and sewerage infrastructure, -- equipment and spare parts necessary for that purpose;

d. to prepare, design, construct, supervise and cause to be executed in the Dutch part of Sint Maarten solid waste incineration plants and solid waste to energy -------- facilities, to coordinate, commercially operate and -- manage solid waste plants, solid waste to energy ----- facilities, collection and handling and cause to be -- executed the collection and handling of household and commercial solid waste and the trade in machinery, and spare parts necessary for that purpose. --------------

2. The corporation is authorized to do and perform each and every act expedient or necessary for the attainment of ---- its purposes, or therewith connected in the widest sense, - including the participation in and/or forming of joint ---- ventures with other enterprises and corporations. ---------

-------------------------- DURATION ----------------------

---------------------------- Article 3 ------------------

The corporation has been established for an indefinite ---- period of time. ---

---------------------- CAPITAL AND SHARES ------------------

------------------------- Article 4 ----------------------

1. The corporation has one or more issued shares A, one or more issued shares B and one or more issued shares C, each with a nominal value of one hundred guilders Netherlands -- Antilles currency (NAf. 100.00). -------------------------

2. Sub-shares may be issued. ------------------------------

3. Whenever shares, share certificates or shareholders ---- are mentioned in these articles of association, the ------- designation shall include all classes of shares, share ---- certificates or shareholders, except where explicitly ----- provided otherwise. --------------------------------------

4. The shares shall be issued by the Board of Managing ---- Directors, hereinafter the "Managing Board", after -------- approval of the General Meeting of Shareholders, ---------- hereinafter the "General Shareholders' Meeting" or the ---- "General Meeting". Only the issue of registered (sub)- ---- shares is permitted. -------------------------------------

5. The "Managing Board" shall, after approval of the ------ General Shareholders' Meeting, determine the time and ----- rate of the issue, as well as the time for payment of ----- calls. ---

6. In subsequent issues of shares A, respectively shares B or shares C and on disposal by the corporation of any ----- shares A respectively shares B or shares C acquired in ---- its own capital, the holders of shares A, respectively ---- shares B or shares C shall be preferred in proportion to -- their holdings of shares A, respectively shares B or ------ shares C when the stock is made available, unless the ----- General Shareholders' Meeting, should decide otherwise. ---

------- SHAREHOLDERS REGISTER AND SHARE CERTIFICATES -------

------------------------Article 5------------------------

1. The shares shall be registered shares and shall be------ consecutively numbered per class from one (1) up.---------

2. The shares shall be entered into a register, which shall be maintained and updated by the Managing Board or a person designated for that purpose by the Managing Board. The ---- register shall state the names of the holders and a-------- domicile of each shareholder, the quantity and the class -- and serial numbers of the shares. The voting rights vested in the shares, the amount paid up or thereon represented as paid, the obligation to make additional payments, if any, - the date of payment and whether or not a share certificate was issued.--

Annotation is also made of the establishment or transfer of a usufruct on the shares or the establishment of a pledge,- as well as the transfer of voting rights thereto related. -
The shareholders are under obligation to notify the ------- corporation in writing of any change of address in order to have this recorded in the register. As long as this has not taken place, all convocations and announcements may be ---- validly effected by the corporation by being sent to the -- address stated in the register. ---------------------------
All the annotations in the share register shall be signed - by a Managing Director. -------------------------------------

3. Share certificates shall be issued for the shares as the request of the shareholders. ------------------------------

4. Delivery of the shares is effected, either by a deed of transfer signed by the parties and served upon the -------- corporation, or by acknowledgement of the transfer by the - corporation. Acknowledgement takes place by a signed ------ annotation on the deed of transfer or by a written -------- statement from the corporation, directed to the acquirer. -
If a share certificate has been issued by the corporation,- then that document with an endorsement of the transfer ---- thereon signed by the parties, shall constitute a deed of - transfer. ---

5. The Managing Board is authorized, subject to the ------- approval from the Supervisory Board, to acquire for its own account shares in its own capital, provided that: ---------

a. at least one share will remain outstanding outside of - the corporation itself. -------------------------------
b. as a consequence of payment of the purchase price of -- the relevant shares, the net worth of the corporation - will remain at least equal to the nominal capital. ----

The thus acquired shares may be cancelled by the ---------- corporation by the Managing Board, subject to the approval of the General Shareholders' Meeting. ---------------------

6. The corporation is authorized, subject to the approval - of the General Shareholders' Meeting, to alienate the non-cancelled shares it holds in its own capital again, without detriment to the provision of this article 5. -------------

7. The corporation will not be entitled to voting or claim rights, nor to any preferential right to be exercised on -- the shares it holds in its own capital, neither will the -- shares confer any dividend rights; nor shall any surplus -- balance after liquidation be distributed to the corporation in virtue of its shareholding. Such shares shall neither be counted in, for obtaining a quorum at any meeting. --------

8. The General Shareholders' Meeting may resolve to a -----

reimbursement in whole or in part or to an exemption from - the obligation to make additional payments on shares, as -- referred to in article 2:107, paragraph 4 Civil Code, ----- provided that at the time of the reimbursement or --------- exemption, the net worth of the corporation shall be at --- least equal to the nominal capital. ----------------------

-------------- SHARE TRANSFER RESTRICTIONS ----------------

---------------------- Article 6 ----------------------

1. In order for any share transfer to be valid, the ------- approval of all of the shareholders of the corporation ---- shall always be required. --------------------------------

2. The shareholder who wishes to proceed to a transfer to - be referred to in this article also as: the "petitioner" -- shall notify the Managing Board of his intention in writing against acknowledgement of receipt, stating the number of - shares to be transferred and the person(s) to whom he ----- wishes to transfer same.-----------------------------------

3. The Managing Board is under obligation, within thirty -- (30) days after receipt of such notification, to convene a General Shareholder's Meeting in order for a decision to be taken on requested transfer. ------------------------------

4. The Shareholder's Meeting is under obligation to take a decision within thirty (30) days after the date it received the convocation from the Managing Board. -----------------

5. If the General Shareholder's Meeting grants the approval referred to in paragraph, the transfer shall be effected -- within thirty (30) days. ---------------------------------

6. In the event: --

a. the approval has not been granted within the term limit of one month, stipulated in paragraph 3, or -----------

b. the approval did not obtain the required majority of --- votes in the General Shareholder's Meeting, without the General Shareholder's Meeting simultaneously with the -- refusal having indicated to the petitioner, one or more prospective transferees, which may include the --------- corporation itself, who are prepared and willing to ---- purchase all the shares pertinent to the petition, ----- against cash payment, the approval requested shall be -- deemed to have been granted on the last day of the one - month term, referred to in paragraph 3 of this article.

7. Unless otherwise agreed upon between the petitioner and the prospective buyers proposed by the General ------------ Shareholder's Meeting and accepted by the petitioner, ----- regarding the price of the shares the purchase price of the shares or the determination thereof, the purchase price --- shall be determined at the request of the willing party by an expert who must be either a member of Het Nederlands ---

Instituut voor Register Accountants or The American -------
Institute of Certified Public Accountants (or their -------
successors if applicable), to be appointed by the ---------
Supervisory Board of the corporation. The petitioner is ---
authorized to withdraw his request, provided that this ----
takes place within one month after the outcome of the -----
aforementioned determination has been notified in writing -
to him.---

Half the expenses involved in the determination of the ----
purchase price shall be for the account of the petitioner;
the other half shall be borne by the purchaser(s), or if no
purchase agreement is reached, by the corporation. --------

----------------------- MANAGEMENT ------------------------

----------------------- Article 7 ------------------------

1. The corporation shall be managed by a Managing Board, --
consisting of at least one (1) but not more than three (3)
natural persons, under the supervision of a Supervisory ---
Board, consisting of five (5) natural persons. ------------

If only one Managing Director has been appointed he shall -
carry the title of Chief Executive Officer (CEO) or -------
President, hereinafter referred to as President. ----------

If more than one Managing Directors have been appointed the
Supervisory Board shall designate one of them as President.
In the latter case the Supervisory Board can also designate
a managing director as Chief Financial Officer (CFO) and --
another as Chief Operation'Officer (COO). -----------------

2. Managing Directors shall be appointed by the General ---
Shareholders' Meeting on a binding nomination from the ----
majority of the then officiating members of the Supervisory
Board. ---

3. Only natural persons are eligible to be appointed in the
capacity of Managing Director. A Managing Director shall --
resign ultimately at the end of the financial year during -
which he reached the age of sixty (60), unless the General
Shareholders' Meeting should otherwise decide. ------------

4. Each nomination for the appointment of a Managing ------
Director should state at least two names of persons who are
candidates. --

Within one month after the vacancy has arisen in the ------
Managing Board, a meeting of the Supervisory Board shall be
convoked, to be held not later than four (4) months after -
the date the convocation is sent, in order to make a ------
binding nomination. --------------------------------------

If the Supervisory Board should not succeed in making the -
nomination, within the period of four (4) months, the -----
General Shareholders' Meeting will be at liberty to appoint
a Managing Director. -------------------------------------

The General Shareholders' Meeting is at any time empowered to eliminate the binding character from a nomination, by a resolution adopted by a majority of votes cast representing more then fifty percent (50%) of the nominal capital of the corporation. --

5. Managing Directors may at any time be instantly -------- dismissed by the General Shareholders' Meeting for urgent - reasons. ---

In other instances the Managing Directors may at any time - be dismissed from office, it to be understood that a ------ resolution to dismiss a Managing Director otherwise than at his own request, may only be adopted after the Managing --- Director in question has had the opportunity to justify --- himself in the General Shareholders' Meeting. -------------

6. The General Shareholders' Meeting as well as the ------- Supervisory Board is authorized to suspend a Managing ----- Director. The Managing Director in question shall be ------ granted the opportunity to plead his own case or to have -- his interests be pleaded. ---------------------------------

7. The suspension is imposed for a period not exceeding two (2) months, whether or not with salary paid. Access to the offices and premises of the corporation is denied to the -- suspended Managing Director, unless the suspending -------- corporate body decides otherwise. -------------------------

8. The suspension becomes null and void if within two ----- months after the date the suspension was imposed, the ----- person involved is not dismissed from office. -------------

The dismissal shall not be effected before the Managing --- Director involved has had the opportunity to justify ------ himself towards the General Shareholder' Meeting. ---------

9. The remuneration and other terms and conditions of the - appointment of the Managing Directors shall be determined - by the General Shareholders' Meeting at the proposal from - the Supervisory Board and shall be laid down in a written - agreement with the corporation. ---------------------------

--------------------- REPRESENTATION ----------------------

----------------------- Article 8 -------------------------

1. The corporation shall be represented by the President -- if only one Managing Director should be officiating, and by the President acting alone or by the President and another Managing Director acting jointly, if more than one Managing Director should be officiating, with due observance of the provision of the following paragraphs. --------------------

2. The following acts of management of the Managing Board - are subject to the approval of the Supervisory Board: -----

a. to incorporate and/or participate in other corporations and to exercise voting rights on shares held by the ---- corporation in other enterprises. ----------------------

Whenever the approval of the General Shareholders' ----- Meeting is required for a legal act in a corporation in which the corporation is a shareholder, the Managing --- Board shall exercise the voting rights in connection --- with the approval in such corporation only after having obtained the approval of the Supervisory Board. --------

b. to appoint and dismiss attorneys-in-fact and to -------- determine the powers to be thereby granted, which ------ resolution shall be published at the Commercial -------- Register, as well as to contract advisers/consultants -- for a period exceeding one year, among which is included for shorter periods which in total exceed one year. ----

c. to contract financial loans and credit arrangements for the account of the corporation, with the exception of -- taking up moneys from the bankers of the corporation, -- designated by the Supervisory Board, to the extent that the corporation should, in so doing, not run up a debit balance in excess of the amount determined by the ------ Supervisory Board and having been imparted beforehand to the bankers; --

d. to acquire, alienate, encumber, rent, lease, construct - or re-construct immovable property, involving a -------- financial interest for the corporation in excess of the amount determined for such financial year by the ------- Supervisory Board, the resolution of which has been ---- published at the Commercial Register. Aforementioned --- amount to be determined by the Supervisory Board, must - at least be fifty thousand guilders Netherlands -------- Antilles currency (Naf.50,000.--). Contrary to the ----- provision stated herein before, no approval of the ----- Supervisory Board shall be required for rental --------- agreements with a rental period not exceeding three (3) years, or whereby the total rental fee calculated on the entire rental period, does not exceed one hundred ------ thousand Guilders (NAf.100,000.--) Netherlands Antilles Currency; ---

e. to transfer by way of security or to encumber the assets of the corporation; ---------------------------------

f. to grant surety bonds, to provide guarantees and to ---- provide financial loans; ------------------------------

g. to enter into deeds of compromise or to submit any ----- dispute to a committee of arbitration for adjudication, whereby a financial interest is involved for the company in excess of an amount to be determined by the ---------

Supervisory Board of at least fifty thousand ----------
Guilders (NAf.50.000.--) Netherlands Antilles Currency;

h. to conduct legal procedures, with the exception of such measures that cannot be postponed or which are of a ---- purely conservatory nature; ---------------------------
i. to enter into agreements with a creditor of the -------- corporation, whose financial claim amounts to more than ten percent (10%) of the total of outstanding debts of - the corporation; -------------------------------------
j. to determine or modify the general wage and salary ----- structure for the personnel of the corporation; --------
k. to contract agreements with the Managing Board; --------
l. to establish or close down offices and subsidiaries of - the corporation; -------------------------------------
m. to initiate new activities and to terminate existing --- activities, to the extent such are of significant ------ interest to the corporation; --------------------------
n. to contract agreements -to the extent not forming part of standardized agreements- by virtue of which disputes will be submitted to a committee of arbitration for ---- adjudication or a binding advice; --------------------
o. to adjust tariff formula in order to increase or ------- decrease the tariffs of electricity and water. ---------
p. to execute legal acts which involve a financial interest for the corporation in excess of an amount to be ------- determined by the Supervisory Board and published at the Commercial Register of at least fifty thousand --------- (NAf.50,000.--) Guilders Netherlands Antilles Currency - at once not including the execution of the annual ------ budgets approved by the Supervisory Board, referred to - in paragraph 7 of this article 8 and/or by which the --- corporation commits itself for a period of more than --- five (5) years. --

3. Moreover for the following legal acts the prior consent of the General Shareholders' Meeting is required by the --- Managing Board: --
a. the acquisition or alienation of shares in other ------- corporations by the corporation; -------------------------
b. the alienation of any kind of immovable property or part thereof, which belongs in ownership to the corporation; ---
c. the encumbrance by way f mortgage and/or in any other -- manner of any kind of immovable property or part thereof, - which belongs in ownership to the corporation regarding an amount in total exceeding one million Guilders Netherlands Antilles currency (NAf. 1,000,000.--). ------------------
4. The approval from the Supervisory Board referred to in - paragraph 2 of this article 8 shall be sufficiently -------

evidenced towards third parties by a written statement ---- relative thereto from the Chairman of the Supervisory ----- Board, or if the latter is precluded from officiating, by - the Vice-Chairman. ---------------------------------------

5. The consent of the General Shareholders' Meeting ------- referred to in paragraph 3 shall be sufficiently evidenced towards third parties by a relevant statement to that ----- effect from the chairman of the General Shareholders' ----- Meeting. --

6. Without detriment to the provision stated in paragraph 2 of this Article 8, the General Meeting is at all times ---- authorized to designate one or more persons as special ---- representative of the corporation, either incidentally or - for a definite period, in the event of a conflict of ------ interest between the corporation and a Managing Director or shareholder. ---

7. The Managing Board shall submit to the General --------- Shareholders' Meeting for its review and to the Supervisory Board for its approval the operational and investment ----- budgets for the coming financial year, not later than ----- October thirty-first. ----------------------------------

8. The Managing Board has the power, without limiting its - own responsibility and with due observance of paragraph 2 - sub b of this article, to appoint attorneys-in-fact, to --- determine their powers and the manner in which they are to represent the corporation and to sign on its behalf. ------

9. Every Managing Director has the power to authorize a --- co-managing director to represent him in his capacity of -- Managing Director at meetings of the Managing Directors, -- with due observance of the terms set forth in the power of attorney. ---

10. Each Managing Director may in his capacity of Managing Director appoint by telegram, telefax, telex, e-mail or --- other writing a natural or legal person as his proxy to --- represent him in his said capacity, such proxy to be ------ specific and not general. ---------------------------------

When issuing such a proxy the Managing Director may not --- exceed the authority vested in him pursuant to these ------ articles of association. ----------------------------------

11. When one or more Managing Directors are absent or ----- otherwise precluded from acting, the remaining managing --- directors shall be responsible for the entire management of the corporation; when all the Managing Directors are ------ absent or otherwise precluded from acting, the ------------ corporation shall be temporarily managed by a person ------ appointed for that purpose by the Supervisory Board. ------

The person thus appointed shall convoke a general --------- shareholders' meeting as soon as possible in order to ----- provide for a definitive management. ----------------------
As long as this has not been accomplished, the acts of ---- management of the person thus appointed, shall be limited - to those that cannot be delayed. -------------------------
10. With due observance of the law, especially articles --- 2:14 and 2:16 of the Civil Code, each Managing Director of the corporation, as well as each other person ------------- empowered by the board of Managing Directors or the ------- General Meeting to act on behalf of the corporation, ------ shall be held harmless by the corporation from all -------- damages, fines, costs of whatever nature, which were ------ actually and reasonably incurred as a consequence of acts - or omissions committed in a capacity as stated ------------ above, resulting from any civil, penal or administrative -- proceeding and/or investigation of fact and law and ------- preliminary legal work, whether or not leading to such ---- proceedings, provided that while performing the act which - caused the liability, he acted in a reasonable and bona --- fide belief, that he was furthering the interests of the -- corporation and provided that his actions were not in ----- contravention with any instructions given to such person or with any limitation put on his authority. -----------------

----------------------- Article 9 ------------------------

1. The Managing Board is in charge of managing the affairs of the corporation. ---------------------------------------
The resolutions of the Managing Board shall be adopted by - an absolute majority of the votes validly cast. -----------
In the event there should be a tie vote when voting on ---- material matters, the President shall cast the decisive --- vote. --
In the event of a tie vote when voting on persons, the ---- proposal shall be considered to have been rejected. -------
2. The Managing Board shall meet as often as one of the --- Managing Directors deems such necessary, but at least once a month. ---
The convocation to the meeting shall be effected in writing (including in the following articles of incorporation, by - the serving of a writ, by telegram, telefax, telex, e-mail or other word processing means of telecommunication) by the person who deems the meeting necessary, with due observance of a term of notice of at least five (5) days, not counting the date of the notification, nor the day of the meeting. -
In urgent cases, at the discretion of the President a ----- deviation is permitted from the aforementioned term of five (5) days. --

The convocation shall state the place, date and time of the meeting, as well as the subjects to be dealt with. --------
Blank votes are invalid and shall be disregarded when ----- calculating the number of votes cast. ---------------------
3. The proceedings at the meeting of the Managing Board --- shall be recorded in minutes, unless an official report --- should be drawn up of same by a civil law notary. ---------
4. The minutes are confirmed and adopted by the relevant -- meeting or in a following meeting, in evidence of which --- they shall be signed by the President. --------------------
5. The Managing Board may also adopt its resolutions ------ without holding a meeting, but only provided that all the - Managing Directors have been consulted in writing and more than half of the Managing Directors have voted in favour of the proposal. --
6. A resolution adopted in this manner shall be recorded in the register of minutes of the Managing Board. ------------

---- OBLIGATIONS OF THE BOARD OF MANAGING DIRECTORS -------

---------------------- Article 10 -------------------------

The Managing Board is under obligation to conduct --------- administrative procedures to record the financial position of the corporation and its operational activities, in ----- accordance with the requirements incidental to such ------- activities, and to maintain the books, ledgers and other -- data bases pertaining thereto in such a manner as to ensure that the rights and obligations of the corporation may at - any time be ascertained from same. Each Managing Director - is entitled to access to the administration and to the ---- books, ledgers and other data bases pertaining thereto. ---

---------------------- MANAGEMENT LIABILITY ---------------

------------------------- Article 11 ---------------------

1. Each Managing Director is under the obligation towards - the corporation to appropriately perform the tasks within - his scope of responsibility. -----------------------------
2. Within the scope of responsibility of any director are - implied all tasks and duties of management, which have ---- not specifically been entrusted to one or more other ------ Managing Directors pursuant to or by virtue of the -------- articles of incorporation. --------------------------------
3. Each Managing Director is nevertheless responsible for - the general course of the affairs of the corporation and is under the obligation to make efforts to the best of his --- ability to avoid any injurious act which might cause ------ financial injury, regardless whether such act is to be ---- considered within his scope of responsibility. The -------- Managing Directors to whom certain tasks have been -------- specifically allocated pursuant to paragraph 2 of this ----

article, shall keep the other Managing Directors informed - about the status of such matters in such area. ------------

4. The liability regarding the provisions stated in the --- preceding paragraphs is imposed severally on all the ------ Managing Directors involved. Not held liable shall be the - Managing Director, however, who is able to prove that the - matter, also in view of his scope of responsibility and --- the period of his employment, was not imputable to him ---- and that he was not negligent in taking the necessary ----- measures to avoid the consequences. ----------------------

5. If, in the event of bankruptcy of the corporation, the - curator should submit a claim pursuant to this article, --- no Managing Director shall be entitled to being held ------ harmless on the ground of an acquittal and discharge ------ granted by the corporation in whichever form or manner. In such event a Managing Director may not invoke compensation either with any claim he might have on the corporation. ---

--------------- BOARD OF SUPERVISORY DIRECTORS ------------

---------------------- Article 12 -----------------------

1. The corporation shall have a Board of Supervisory ------ Directors, consisting of three (3) Supervisory Directors A, one (1) Supervisory Director B and one (1) Supervisory ---- Director C. --

Each Supervisory Director will be appointed for four (4) -- years and may be reappointed for another four (4) years. -- The Supervisory Board may establish a schedule of --------- resignation for the Supervisory Directors. ---------------

2. The Supervisory Board shall be authorized to give ------ directions regarding the general trend to be followed in -- the financial, social, economic and personnel management, - upon which the Managing Board shall be under an obligation to act in accordance with such directions. ---------------

Resignation by a Supervisory Director shall be effected by the submission of a letter to the corporation. ------------

3. The Supervisory Directors A shall be appointed by the -- holders of shares A, while the Supervisory Director B and - the Supervisory Director C shall be appointed by the ------ holders of shares B, respectively shares C.---------------

4. The holders of shares A, respectively shares B and ----- shares C are authorized to suspend or dismiss respectively the Supervisory Directors A, B and C. --------------------

5. the Chairman, Vice-Chairman, Secretary and Treasurer of the Supervisory board shall be designated as follows: ----- The Supervisory Directors A shall designate the Chairman -- and Vice-Chairman of the Supervisory Board, while the ----- Supervisory Director B, respectively C shall designate ----

material contribution to the decision-making within the --- Supervisory Board. --
10. Supervisory Directors may receive a remuneration to be determined by the General Shareholders' Meeting, while they also are entitled to reimbursement of their travel and ---- hotel expenses and other expenses, if any, incurred in the course of carrying out their office with the corporation. -
11. The Supervisory Board is entrusted with the task to --- supervise the policy of the Managing Board and the course - of affairs in the enterprise of the corporation. It shall - assist the Managing Board with advice, all this without --- detriment to the further tasks and duties allocated to the Supervisory Board by the law or by these articles of ------ incorporation. In executing its tasks and duties, the ----- Supervisory Board shall be oriented to the interests of the corporation and its enterprise. ---------------------------
12. Each Supervisory Director has at any time access to --- all the buildings and premises in use by the corporation -- and is entitled to inspect all the books and documentation of the corporation. The Managing Board shall provide him at his first request with all the information he might ------- require in connection with the corporation. --------------
The Supervisory Board may impose rules upon its members --- regarding a duty of secrecy to be observed in connection -- with the information provided by the Managing Board. ------
13. The Managing Board shall provide the Supervisory Board and the Supervisory Directors severally timely with the --- information necessary for the execution of their tasks and duties and requested by them in view thereof. ------------
14. The Supervisory Board shall meet as often as the ------ Chairman of the Supervisory Board or two of its members or a Managing Director request(s) same, but at least once ---- quarterly.--
The meetings of the Supervisory Board are convoked in ----- writing under the care of the Managing Board, with due ---- observance of a term of convocation of five (5) days, not - counting the date of the convocation, nor the day of the -- meeting. In urgent cases, in the discretion of the -------- Chairman of the Supervisory Board, the term stated in the - preceding sentence may be reduced to three (3) days. ------ The convocation shall state the place, date and time of the meeting, as well as the topics to be dealt with. ---------- If the Supervisory Board requires such, the Managing ------ Directors shall attend the meeting, in this meeting they -- are entitled to render advice. ---------------------------
15. The Supervisory Board adopts its resolutions by an ---- absolute majority of the votes cast in a meeting at which -

at least the majority of the then officiating Supervisory - Directors are present. Blank votes are invalid and shall be disregarded for the calculation of the number of votes ---- cast. --

In the event of a tie vote when voting on material matters, the Chairman of the Supervisory Board is empowered to cast a decisive vote. --

In the event of a tie vote when voting on persons, the ---- proposal shall be deemed to have been rejected. -----------

16. The proceedings at the meeting of the Supervisory Board shall be recorded in minutes, unless an official report is drawn up by a civil law notary. --------------------------

17. The minutes shall be confirmed and adopted by the ----- meeting concerned and shall be signed by the Chairman of -- the Supervisory Board in evidence thereof. ----------------

18. The Supervisory Board may also adopt resolutions ------ without holding a meeting, provided that all the ---------- Supervisory Directors are consulted in writing and also --- provided that all the Supervisory Directors have voted in - favour of the proposal. A resolution adopted in this manner shall be recorded in the register of minutes of the ------- Supervisory Board. --------------------------------------

19. A resolution of the Supervisory Board is sufficiently - evidenced towards third parties by the signature of the --- Chairman of the Supervisory Board and in the event the ---- latter should be precluded from acting by the signature of the Vice-Chairman. -------------------------------------

20. The provision of article 11 is similarly applicable to the Supervisory Directors. --------------------------------

21. In the event of one or more officiating Supervisory --- Directors being absent or precluded from acting, for ------ whichever reason, the remaining Supervisory Directors or -- the sole remaining Supervisory Director shall fulfill the - tasks and duties, which have been allocated to the -------- Supervisory Board by virtue of the provisions of these ---- articles of incorporation. --------------------------------

22. The Supervisory Board may cause itself to be assisted - for the account of the corporation, by one or more experts in the execution of its tasks and duties. ----------------

23. The Supervisory Board shall establish rules and ------- regulations regarding the allocation of their tasks and --- duties among themselves, particularly regarding the manner in which they are to execute their tasks. ----------------

24. The Supervisory Board shall establish by-laws, in ----- consultation with the Managing Board, regarding the ------- performance and the decision-making procedure of the ------

Managing Board if more than one Managing Directors have --- been appointed. --

25. The Supervisory Board shall approve the operational and investment budgets at least fourteen (14) days prior to the commencement of the new financial year. Before approving -- the operational and investments budgets the Supervisory --- Director will discuss said documents in a joint meeting --- of the Shareholder(s) and the Supervisory Board. In the --- event the Supervisory Board should not have approved the -- operational and investment budgets drawn up by the Managing Board within the term stipulated in the preceding sentence and it neither stated any reasons why the approval was ---- withheld, then the relevant approval shall be deemed to --- have been granted, provided that the Managing Board ------- submitted the operational and investment budgets drawn up - by it to the Supervisory Board with due observance of the - term stated in article 8, paragraph 7.--------------------

------------GENERAL MEETINGS OF SHAREHOLDERS---------------

-----------------------Article 13------------------------

1. General Shareholders' Meetings shall be held in Sint --- Maarten, Sint Eustatius or Saba. -------------------------

2. The Annual General Shareholders' Meeting shall be held - within six months after the close of the financial year of the corporation. ---------------------------------------

In this latter meeting shall be -inter alia- dealt with the following:---

a. the Managing Board shall render a report on the course - of business affairs of the corporation and of the ------ management conducted during the past financial year; ---
b. the balance sheet and the profit and loss account shall be confirmed and adopted; ------------------------------
c. the external expert referred to in article 19, paragraph 6 shall be designated; --------------------------------
d. a resolution shall be adopted regarding the ------------ appropriation of the reserves, as referred to in ------- article **20**, paragraph 2; ----------------------------
e. it shall be resolved whether or not to acquit and ------ discharge the Managing Board from liability for the ---- management conducted during the past financial year, to the extent such becomes evident from the documentation - submitted; furthermore it shall be resolved whether or - not to acquit and discharge the Supervisory Board from - the supervision conducted by the Board. ----------------

------------------------- Article 14 --------------------

1. Each individual Managing Director and each individual -- Supervisory Director is authorized to convoke a General ---

Meeting. The Managing Board and the Supervisory Board are - at all times authorized to convoke the General Meeting. --- Shareholders, representing alone or jointly with other ---- shareholders at least ten percent (10%) of the voting power on outstanding capital are authorized to request the ------ Managing Board or the Supervisory Board in writing to ----- convoke a General Meeting in order to deliberate on and --- adopt a resolution on a subject, provided that they have a reasonable interest therein. If the Managing Board or the - Supervisory Board should fail to comply with such request - within fourteen (14) days after the date on which the ----- request reached the relevant corporate body or the -------- corporation, the applicant(s) shall be authorized to ------ convoke the meeting in their own right. ------------------

1. The convocation shall be effected with due observance of a term of notification of at least twelve (12) days, not -- counting the date of sending of the notification, nor the - date of the meeting. The shareholders shall be called to -- the meeting in writing by either by letter, email, telefax or telegram sent to the addresses recorded in the share -- register. The convocation shall state the subjects to be -- dealt with. Concerning subjects respective to which the --- aforementioned has not been duly observed, valid ---------- resolutions may nevertheless be adopted, provided that such resolutions are adopted unanimously in a meeting at which - the entire outstanding share capital is represented. ------

4. General Meetings shall be chaired by a person designated for that purpose by the General Shareholders' Meeting. If - the General Shareholders' Meeting does dot designate such - person, the meeting shall be chaired by the Chairman of --- the Supervisory Board. ------------------------------------

5. A person designated by the General Shareholders' Meeting shall record the deliberations and the resolutions adopted in minutes. The minutes shall be signed by the chairman of the meeting. --

6. Shareholders may be represented at the General --------- Shareholders' Meeting, as well as at the extraordinary ---- General Shareholders' Meeting by a proxy-holder empowered - in writing. ---

7. All resolutions of the Annual General Shareholders' ---- Meeting and the extraordinary General Shareholders' Meeting shall be adopted by an absolute majority of the votes cast, unless otherwise provided for in these articles of -------- incorporation. --

------------------------- <u>Article 15</u> --------------------

1. For each share one (1) vote may be cast. ---------------

2. Blank votes are invalid and must be disregarded when ---

counting the number of votes cast. -----------------------

3. Valid votes may also be cast on the shares of those, --- who, apart from being a shareholder of the corporation, --- would be granted a right towards the corporation, or ------ would be relieved from an obligation towards the ---------- corporation by the resolution to be adopted. --------------

4. Voting on persons shall be effected by closed ballots. -

------------------------- Article 16 ---------------------

1. The proceedings at the General Shareholders' Meetings -- shall be recorded in minutes, unless an official report is drawn up by a civil law notary. --------------------------

2. The minutes are confirmed and adopted by the meeting in question or in a subsequent meeting in evidence of which -- they shall be signed by the persons officiating as chairman and secretary of the meeting at which the minutes are ----- confirmed and adopted. ----------------------------------

------------ RESOLUTIONS OF THE SHAREHOLDERS --------------

---------------- ADOPTED WITHOUT HOLDING ------------------

------------------ A GENERAL MEETING ----------------------

------------------------ Article 17 -----------------------

1. A resolution that may be adopted by the General -------- Shareholders' Meeting may also be validly adopted by ------ casting votes in writing without holding a meeting, ------- provided that all the shareholders have cast their votes. - All shareholders, Managing Directors and Supervisory ------ Directors shall timely be informed of this intended manner of decision-making. --------------------------------------

2. The provision of article 15 shall be similarly --------- applicable. ---

-------------------- FINANCIAL YEAR ----------------------

---------------------- Article 18 ------------------------

The financial year of the corporation coincides with the -- calendar year. ---

---------------------- Article 19 ------------------------

Once every three years a combined meeting of the ---------- Shareholders, the Supervisory Directors and the Managing -- Directors shall be held, in which meeting the strategic --- long term planning of the enterprise for the coming three - (3) financial years is determined. This takes place on the basis of a strategic long term plan drawn up by the ------- Managing Board, in which the objectives to be attained in - the subsequent three years are laid down. ----------------

2. Within six (6) months after the close of the financial - year, except for an extension of this term by the General - Shareholders' Meeting based on extraordinary circumstances for a maximum of six (6) months, the Managing Board shall - draw up an annual account and an annual report and shall --

make these documents accessible for inspection by the ----- shareholders at the office of the corporation. ------------
The Managing Board adds to the annual account the following documents: the most recent, available annual accounts, ---- together with the reports from experts, if any, and the --- annual reports from the subsidiary companies, to the extent these are not consolidated, unless as evidenced by the ---- explanatory memorandum pertaining to the annual account, -- these data are of negligible significance for the --------- corporation to gain an insight as referred to in the third paragraph. ---
3. The annual account shall be drawn up according to the -- norms established by the International Accounting Standards Board (IASB) and shall provide such insight as to enable a reliable assessment of the assets and the results, as well as to the extent as permitted by the nature of the annual - account, concerning the solvability and liquidity of the -- corporation. The corporation is allowed to have the annual account drawn up according to other international --------- standards, provided that it becomes apparent from the ----- explanatory memorandum which justified reasons caused this deviation and which standards have been applied. ----------
4. The drawn up annual account shall be signed by all the - Managing Directors and all the Supervisory Directors. If -- the signature of one of them is lacking, the reason ------- therefor shall be stated. --------------------------------
5. The annual report shall be submitted to the General ---- Shareholders' Meeting forthwith after the term stipulated - in the second paragraph has expired. Simultaneously the --- annual account shall be submitted to the General ---------- Shareholders' Meeting for its approval. ------------------
6. The General Shareholders' Meeting shall give an -------- assignment to an external expert to audit the annual ------ account. If the General Shareholders' Meeting fails to ---- proceed to such assignment, the Supervisory Board is ------ empowered to do so. If the Supervisory Board fails to act,- the Managing Board is authorized to proceed to such ------- assignment. ---
7. The balance sheet, the profit and loss account and the -- explanatory statement and the report from the external ---- expert referred to in paragraph 6, shall be available for - inspection by the shareholders or their proxyholders, at -- the office of the corporation from the date of the -------- convocation to the General Shareholders' Meeting at which - these documents are to be confirmed and adopted until the - close of said meeting. ------------------------------------
8. Any interested party in the sense of the law who wishes -

to gain insight in the annual account of the corporation, - shall elect to be represented by a person referred to in -- Section 2:121, sixth paragraph of the Civil Code. ---------

------------------- DISTRIBUTION OF PROFITS ---------------

------------------------ Article 20 ----------------------

1. The profits shall be added to the reserves, unless the - General Shareholders' Meeting resolves to distribute ------ dividends, after consultation with the Managing Board and - the Supervisory Board. ------------------------------------

2. The General Shareholders' Meeting shall decide upon the appropriation of the thus reserved amounts after consulting the Managing Board and the Supervisory Board. -------------

3. In the event of a distribution of profits, the profits - shall be distributed to the shareholders proportionately, - in accordance with the number of shares held by each. -----

4. The General Shareholders' Meeting may resolve, at a ---- proposal from the Managing Board subject to the approval by the Supervisory Board, to effectuate the distribution of -- profits in whole or in part, by way of issuing new shares, proportionately to the number of shares held by each. -----

5. The remaining profit shall be at the disposal of the --- General Shareholders' Meeting at its discretion. ----------

6. The Managing Board is authorized, after consultation --- with the Supervisory Board and subject to the approval of - the General Shareholders' Meeting to distribute interim --- dividends as an advance payment in anticipation of the ---- profits to be expected. -----------------------------------

7. No distributions shall be effected to shareholders if -- the net worth of the corporation is less than the nominal - capital or if, as a result of such distribution the net --- worth of the corporation should become less than the ------ nominal capital of the corporation. -----------------------

8. Unless otherwise resolved by the General Shareholders' - Meeting, dividends shall be paid ultimately thirty (30) --- days after having been declared. --------------------------

---------------------- CORPORATE GOVERNANCE ---------------

-------------------------- Article 21 --------------------

1. The rules stipulated in the Island Ordinance Governance (A.B. 2009, Nr. 10) and in the Corporate Governance Code, - as well as all regulations resulting from aforementioned -- rules will be applicable to the corporation. The ---------- corporation has the obligation to comply with ------------- aforementioned rules and regulations. ---------------------

2. If the articles of incorporation of the corporation are in conflict with the Island Ordinance Corporate Governance or the legal regulations resulting from said Island -------

Ordinance Governance, then the said Island Ordinance ------
Corporate Governance and legal regulations shall prevail. -

------------------------ FINAL PROVISION ------------------

-------------------------- Article 22 ---------------------

In all instances not provided for by the law or by these -- articles of incorporation, as well as in case of a dispute concerning the interpretation of these articles of -------- incorporation, the General Shareholders' Meeting shall have decisive power. --

Bloem Bonapart & Aardenburg
Attorneys at Law | Advocaten

Produktie 2

MINISTER-PRESIDENT VAN SINT MAARTEN
PRIME MINISTER OF SINT MAARTEN

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Overheid van Sint Maarten

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Bestuurskantoor
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PMCabinet@sintmaartengov.org

Aan: De Directie van GEBE N.V.,
T.a.v. de heer Andrew Zagers,
W.J.A. Nisbeth Road 35,
Alhier

Datum: APR 28 2016
Kenmerk: 2807
Onderwerp: Buitengewone vergadering van GEBE N.V.
Bijlage(n): --

Geachte Zagers,

Namens de aandeelhouder van GEBE N.V., verzoek ik U een buitengewone aandeelhouders vergadering voor GEBE N.V. bij een te roepen. U wordt dringend verzocht de oproep tot deze vergadering, welke op uiterlijk donderdag 12 mei a.s. gehouden dient te worden, hedenmiddag vóór 16.00 uur te verzenden. Als enig agendapunt zal dienen: Ontslag leden Raad van Commissarissen GEBE N.V. U wordt verzocht mij een kopie van de uitnodiging tot de vergadering te doen toe komen.

Bereids deel ik U mede, dat indien de vergadering niet op de boven aangegeven wijze en tijdstip wordt bijeen geroepen, de aandeelhouder langs andere weg zal bevorderen dat de vergadering alsnog plaatsvindt.

Ik vertrouw dat U het niet zo ver zult laten komen.

MINISTER-PRESIDENT VAN ST. MAARTEN

William Marlin

Minister Of General Affairs
St. Maarten

Cc.:
Ministerie van VROMI

Produktie 3

PRIME MINISTER OF SINT MAARTEN
MINISTER-PRESIDENT VAN SINT MAARTEN

Postal address:
Government of Sint Maarten

Ministry of General Affairs
Government Administration Building
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Aan: De Raad van Commissarissen N.V. GEBE
T.a.v. Dhr. Rene Richardson, Voorzitter
Mw. Zylena Bary, Vice-voorzitter
Mw. Veronica Jansen-Webster, Lid
Dhr. Patrice Gumbs, Lid
Dhr. Edwin Gumbs, Lid
PERSOONLIJK OVERHANDIGD

Datum: FEB 19 2016

Onderwerp: Verzoek tot vrijwillig ontslag

5823/16

Geachte Voorzitter, geachte Raadslid,

De Ministerraad is van oordeel dat de ontwikkelingen rondom N.V. GEBE van het afgelopen jaar niet het vertrouwen geven dat de Raad van Commissarissen zijn taak op behoorlijke wijze vervult.

Gelet hierop wordt u hierbij verzocht onverwijld op eigen verzoek uw ontslag, uiterlijk aanstaande donderdag 25 februari, schriftelijk in te dienen.

Hoogachtend,

MINISTER-PRESIDENT VAN SINT MAARTEN

William Marlin

Cc. Ministerraad

Bloem Bonapart & Aardenburg

Attorneys at Law | Advocaten

Produktie 4

April 29, 2016

CONVOCATION

Upon the request of the Shareholder representing more than 10 percent of the voting power and in accordance with Article 14 paragraph 1, the Managing Board convokes a General Meeting on Thursday, May 12, 2016 at 3:00pm. This joint meeting will be held in the Conference Room of the Main Office of NV GEBE in Philipsburg, St. Maarten.

<u>Proposed Agenda</u>

1. Opening
2. Dismissal of NV GEBE Supervisory Board of Directors
3. Closing

Yours truly,
Managing Board

Andrew Zagers 29/4/2016
Interim Managing Director

Bloem Bonapart & Aardenburg
Attorneys at Law | Advocaten

Productie 5

From: "Zagers, Andrew" <zagers.andrew@nvgebe.com>
Date: 9 May 2016 at 1:19:32 PM GMT-4
To: Rene Richardson <rene.adrien.richardson@gmail.com>
Cc: "GO2-OSS@caribserve.net" <GO2-OSS@caribserve.net>, "Daniel, Sharine" <daniel.sharine@nvgebe.com>, Secretary <secretary@nvgebe.com>
Subject: FW: Extra-ordinary shareholder's meeting

Mr. Richardson,

See various attachments (e.g. Letter from the Prime Minister, Legal advice form Lexwell, Convocation for the Extra-ordinary meeting on May 12) and e-mail below.
On April 28 the SXM government requested the Temporary manager of NV GEBE to arrange an Extra-ordinary meeting.
The meeting is scheduled for May 12.
It is not clear to me if it is my responsibility or the Shareholder Representative responsibility to inform the SBoD members of the meeting, considering the subject matter.
Regards,
Andrew S. Zagers

Bloem Bonapart & Aardenburg
Attorneys at Law | Advocaten

Productie 6

SUPERVISORY BOARD OF DIRECTORS N.V. GEBE

Mr. Rene A. Richardson,	Chairman	•	rene.adrien.richardson@gmail.com	• 520-0021
Ms. Zylena Bary,	Vice Chairlady	•	barylegal@gmail.com	• 553-4141
Mr. Edwin Gumbs,	Member	•	ed1949@live.nl	• 587-4195

Date: 10 May 2016

To: The Council of Ministers of Country Sint Maarten
Per the Prime Minister

From: The Chairman of the Supervisory Board of N.V. GEBE

Re: Nullity of the convocation of an extraordinary shareholders meeting of NV GEBE for May 12, 2016

Enclosed: 1. Letter to the COM dated 10 May 2016 (2 pages)

Bestuurskantoor Sint Maarten
Datum: 10 MAY 2016

SUPERVISORY BOARD OF DIRECTORS N.V. GEBE

Mr. Rene A. Richardson,	Chairman	rene.adrien.richardson@gmail.com	520-0021
Ms. Zylena Bary,	Vice Chairlady	barylegal@gmail.com	553-4141
Mr. Edwin Gumbs,	Member	ed1949@live.nl	587-4195

HAND DELIVERED AND PER EMAIL

The Council of Ministers of Country Sint Maarten
Per the Secretariat of the Council of Ministers

Present

Bestuurskantoor Sint Maarten
Datum ontv.: 10 MAY 2016

Sint Maarten, May 10th, 2016

Re: Nullity of the convocation of an extraordinary shareholders meeting of NV GEBE for May 12, 2016

Honorable Council Members,

The Temporary Manager of NV GEBE, Mr. Andrew Zagers, yesterday sent a letter of the Shareholder of NV GEBE (*"the* Shareholder") dated April 28, 2016 to him, with the request to convene an extraordinary shareholders meeting, with as agenda subject: "Dismissal of the Supervisory Board". The Temporary Manager also provided the Supervisory Board of Directors of NV GEBE (*"the Supervisory Board"*) with a copy of the judicial advice that he requested and obtained in this respect. He thereby informed the Supervisory Board that he was not certain as to whether or not he had to inform the Supervisory Board about the request of the Shareholder.

The shareholders' request to the Temporary Manager to in short schedule an extraordinary meeting is illegal/incorrect. By both law and the articles of incorporation of NV GEBE only the statutory organs Managing Board and/or Supervisory Board can legally call a shareholders meeting. The Temporary Manager is not a statutory organ of NV GEBE and certainly not a Managing Director. As such he does not form part of the Managing Board. Needless to say that the convocation sent to the Supervisory Board was also way too late and not in conformity with the statutory requirements. One and other also violates the reasonability and equitability that organs of NV GEBE have to maintain towards each other as per article 2: 7 Civil Code.

The aforementioned shows that the convocation sent by the Temporary Manager of NV GEBE to the Shareholder for an extraordinary shareholders meeting for coming Thursday, May 12, 2016 is null and void or can be annulled. Please read in this letter a request, with the power of a summons, to confirm in writing on or before 1600 hrs. today that the Shareholder acquiesces that this convocation is null and void and will refrain from conducting set meeting. Failure to timely comply with this request/summons, will regretfully result in appropriate legal measures being taken.

The Supervisory Board in the last five months scheduled to extraordinary shareholders meeting, none of which were attended by the Shareholder. The various letters of the Supervisory Board to the Shareholder in this respect, were all simply left unanswered. This also is simply put inequitable and does not attest to good business practices. Certainly not, to the manner in which the statutory organs of NV GEBE must relate to each other.

The Supervisory Board acknowledges that the Shareholder now suddenly wants to schedule an extraordinary shareholders meeting to discuss the subject of the dismissal of the supervisory Board Members. In order to accommodate this wish of the Shareholder the Supervisory Board is hereby scheduling an extraordinary shareholders meeting for Thursday, May 26, 2016 at 10.00 hrs., at the head offices of NV GEBE at Walter J.A. Nisbeth Road 35, needless to say that both the time and venue and even the date, if so desired, can be changed, in consultation between parties. This is in accordance with how shareholders' meetings have always been scheduled, to this date.

The Shareholder will find the Supervisory Board at all times willing to elaborate further and/or answer possible specific questions that the Shareholder might have.

Yours truly,

Rene Richardson
Chairman

Bestuurskant...
Datum/date: 10 MAY 2016

Productie 7

Jairo Bloem

From: Jairo Bloem
Sent: Wednesday, May 11, 2016 8:42 AM
To: Andrew Zagers
Subject: Verzoek/sommatie tot aflassing van de bijeengeroepen buitengewone aandeelhoudersvergadering van 12 mei 2016
Attachments: Letter from SBOD to COM dd 10MAY2016.pdf

Geachte heer Zagers,

Thans bemerk ik dat een afschrift van aangehechte brief gisteren niet naar u, in uw functie als Tijdelijke Manager, is gestuurd. Bij deze ontvangt u een afschrift daarvan, met alsnog het verzoek, met de kracht van sommatie, om uiterlijk voor 1100 uur vandaag aan te geven of u wel of niet vrijwillig de opgeroepen vergadering zal aflassen.

Met vriendelijke groet,

Jairo Bloem

Bloem Bonapart & Aardenburg
Attorneys at Law | Advocaten

Productie 8

HAND DELIVERED, with receipt confirmation AND PER EMAIL
The Supervisory Board of Directors of NV GEBE
Attn: Mr. Rene Richardson (chairman)

Present

Thursday, April 14, 2016

Re: Advice on resolution of the Shareholder dated January 28th, 2016

Dear Mr. Richardson, dear Rene,

1. Introduction and relevant facts

1.1 The Supervisory Board of Directors of NV GEBE, hereinafter: "*the Supervisory Board*" requested our office advise with regard to the instruction/resolution of the Shareholder of NV GEBE dated January 28, 2016. The Shareholder thereby resolved:

"1. To approve the request of management and Board of Directors of N.V. Gemeenschappelijke Electriciteitsbedrijf Bovenwindse Eilanden (GEBE) to purchase the Wartsila Dual Fuel Generator Set of 11.3 MWe on a turnkey delivery basis for a sum of EURO 10.342.000, with a downpayment of 15% at the signing of the turnkey delivery contract. The balance of the purchase price to be financed by a local financial institution on a long term basis in accordance with the conditions outlined in the letter from the sha reholder to GEBE under reference #23418/15.

2. To declare a temporary dividend in the amount of NAf. 11 million payables immediately to the shareholder in view of the fact that no annual budget, no audited financial statements nor investment plan have yet been submitted to the shareholder for approval, and by financing the remaining balance of the purchase price of the Wartsila engine, which management of GEBE N.V. intended to pay for in cash and in full, NAf. 22 million in liquid cash becomes available. It is therefore resolved to, pending the finalization of the audited financial statements, the budget for 2016 and the proposal for reserves, to temporarily declare an advance dividend of NAf. 11million and to reserve a decision on the remaining NAf. 11 million until the audited statements and other deliverables by management are completed.

3. Over the years GEBE has accumulated in excess of NAf. 35 million in reserves in managing the water distribution on Sint Maarten for and behalf of the government of Sint Maarten. GEBE failed to submit its multi-annual investment plan, liquidity plan, budget plan, and financial plan for approval, which as per agreement had to be presented annually for approval by government. It is therefore hereby resolved to instruct GEBE to immediately remit NAf. 20 million of these accumulated water management reserves to government. The shareholder of GEBE agrees with and ratifies the remittance of these reserves to government."

1.2 The resolution of the Shareholder boils down to an instruction to NV GEBE to pay the amount of – ultimately- **31 million guilders** in –interim- dividend, based on certain factual considerations. Next, an instruction to enter into a finance agreement for the acquisition of a generator/motor for the amount of 22 million.

1.3 The water management reserves consist of profits declared in the past that were not paid out, but reserved for specific purposes/obligations. The request to immediately remit 20 million from these reserves constitutes a request to pay out –saved- profit. Since this request has not been made in an annual shareholders meeting, it constitutes a request for so-called interim dividend.

1.4 Please note that in this opinion I have not analyzed the correctness of the factual representations/premises made by the Shareholder in substantiating its resolutions dated January 28, 2016. It is however, in discussing this matter with the Supervisory Board and perusing certain specific documentation, my understanding that the factual premises of the Shareholder, specifically pertaining to not having received an investment plan, budgets and financial statements, are simply put incorrect. It appears for all intent and purposes that the Shareholder has or should have been in the possession of all these documents, as is also reflected from receipt signatures and stamps thereon from the Sint Maarten Government, more specifically DIV.

1.5 After having analyzed this matter, I hereby inform the Supervisory Board as follows.

2. General

2.1 The so-called Concession Ordinance and concession given to NV GEBE clearly stipulates that income from the production and delivery of electricity to the consumers on Sint Maarten, with exception of the profits realized therewith, will be completely utilized to pay the cost of investment and operational business activities of the concession holder in favor of the persons and businesses living and respectively established on Sint Maarten. The purpose/rationale of this provision is to safeguard continuance of the business operation of NV GEBE, that caters to basic needs (especially the consumption of water) of the Sint Maarten citizens and which as such is pivotal to the Sint Maarten community.

2.2 In exercising their tasks directors of a corporation must act in accordance with the interest of a corporation and alienated companies. What specifically constitutes this interest, depends on the circumstances of each case. It is however generally deemed that this interest primarily consists of the need to promote consistent continuance and success of a corporation.

2.3 Organs of a corporation and as such the Managing Directors, Supervisory Directors and Shareholder(s) are as per article 2:7 Civil Code obliged to, in performing their duties, act diligently pertaining to the interests of all persons/stakeholders involved with the corporation (see: Supreme Court July 9, 2010, ECLI:NL:HR:2010:BM0976, NJ2010/544 (ASMI), Supreme Court July 12th,2013, ECLI:NL:HR:2013:BZ9145, NJ 2013/461 (VEB c.s./KLM) and supreme Court September 14th, 2007, ECLI:NL:HR:2007:BA4117, NJ 2007/610 (Versatel I)). This 'diligence-obligation' can entail that Managers in serving the corporations interests must procure that the persons and/or companies involved with the corporation are not unnecessary or disproportionately jeopardized/damaged.

3. <u>Declaring – interim – dividend</u>

<u>Legal framework</u>

3.1 Article 20 of the Articles of Incorporation of NV GEBE states that: "*The profits shall be added to the reserves, unless the General Shareholders 'Meeting resolves to distribute the profits, <u>after consultation with the Managing Board and the Supervisory Board</u>.*" The second paragraph of referenced article reads: "*The General Shareholders' Meeting shall decide upon the appropriation of the thus reserved amounts <u>after consulting the Managing Board and the Supervisory Board</u>.*"

3.2 Article 20 paragraph 6 states: "*The Managing Board is authorized, <u>after consultation with the Supervisory Board</u> <u>and subject to the approval of the General Shareholders' Meeting</u> to distribute interim dividends as an advance payment in anticipation of the profits to be expected.*" The 7th paragraph of this article says: "*No distributions shall be effected to shareholders if the net worth of the corporation is less than the nominal capital or if, as a result of such distribution, the net worth of the corporation should become less than the nominal capital of the corporation.*"

Application to the underlying case

3.9 A distinction must be made by law in declaring dividend and the payment of interim-dividend. NV GEBE, like most of the so-called government owned companies, has a specific provision in its charter for the payment of latter. Whilst the Shareholder of NV GEBE can declare dividend by following a certain procedure at the annual General Shareholders meeting, whereby the financial statements are discussed after approved of same, the Shareholder of Nv GEBE is not authorized to declare interim dividend. Pursuant to article 20 paragraph 6 of the Articles of Incorporation of NV GEBE only the Managing Board is authorized to remit/pay interim dividend, after approval of a proposal to that effect by the Supervisory Board and the Shareholder.

3.10 Since the Articles of Incorporation of Nv GEBE specifically designate the Managing Board of NV GEBE as the organ entitled to make interim dividend payments, the Shareholder of NV GEBE is not entitled to do such as per article 2:118 paragraph 2 Civil Code. There are good grounds to argue that because the Shareholder has not been entrusted with the right to declare interim dividend, a possible instruction from the Shareholder to the Managing Board to pay interim dividend lacks legal basis and in any case constitutes a violation of article 2:7 Civil Code. Such an instruction would namely infringe upon the independent authority of the Managing Board to determine whether or not payment of interim dividend is advisable considering the financial situation of NV GEBE and to make a proposal to that extent to the Supervisory Board and needless to say to the Shareholder.

3.11 NV GEBE does not have any acting/functioning Managing Director since December 1, 2015. There is furthermore no proposal from the Managing Board to pay out interim dividend to the Shareholder. It should be noted in this respect that the Temporary Managers also did not make interim-dividend payment proposal.

3.12 No request was in any case ever made to the Supervisory Board to approve the payment of interim dividend to the Shareholder. The Shareholder by the way never consulted with the Supervisory Board about its possible intention to declare –interim- dividend. This all, by itself, invalidates the resolution/instruction of the Shareholder of January 28, 2016 to declare 31 million guilders in –interim- dividend.

3.13 The aforementioned shows that NV GEBE can either pay dividend (i) in consultation with the Supervisory Board after discussing and approving the yearly financials, whereby logically an assessment must be made if the net result and equity of NV GEBE in a specific fiscal year justifies paying dividend or (ii) in case the Managing Board decides, pending the approval of financial statements, to propose paying interim dividend, which proposal must be approved by both the Supervisory Board and the Shareholder of NV GEBE. Clearly the rationale behind these provisions/requirements is to promote substantiated decisions/resolutions with regard to dividend payments, based on an analysis of the financial position of NV GEBE in a specific fiscal year.

3.14 Since the financial statements of NV GEBE for 2015 have not been submitted to the Shareholder for approval yet and where as such not subject of any discussion with the Shareholder to this date, it does not appear that the instruction/resolution from the Shareholder dated January 28, 2016 is premised on the –draft- financial statements 2015. A directive to pay interim dividend should be based on an –objective- in-depth analysis of financial statements, or at least draft financial statements, for a certain fiscal year. Not conducting such an analysis, as is obviously the case with the instruction/resolution of the Shareholder dated January 28th, 2016, is an indication of noncompliance with the diligence obligations.

4. <u>Instruction to enter into a loan agreement</u>

4.1 Neither the articles of incorporation of NV GEBE, nor the Civil Code and/or legislation of Sint Maarten, grants the Shareholder the right to instruct -the Managing Board of- NV GEBE to enter into specific loan agreements. The legality of such an instruction is at very best questionable. Moreover, since considerations with regard to entering into loan agreements intrinsically resolved around operational matters that are the prerogative of Managing Boards. It should in this respect also be noted that the fact that the consent of the Shareholder of NV GEBE is required for mortgaging immovable assets of NV GEBE to secure claims in excess of Naf 1.000.000. -, does not derogate to the aforementioned.

4.2 Article 8 paragraph 3 sub c of the Articles of Incorporation of NV GEBE reads: "*The encumbrance by way of mortgage and/or in any other manner of any kind of immovable property or part thereof, which belongs in ownership to the corporation regarding an amount in total exceeding one million Guilders Netherlands Antilles currency (NAf .1,000,000.--).*" This provision must be read in conjunction with the first part of referenced article 8 which states: "*...Whenever the approval of the General Shareholders' Meeting is required for a legal act in a corporation in which the corporation is a shareholder, the Managing Board shall exercise the voting rights in connection with the approval in such corporation only after having obtained the approval of the Supervisory Board...*"

4.3 The instruction of the Shareholder of NV GEBE to NV GEBE to enter into a loan agreement of 22 million guilders and subsequently pay 11 million guilders, as a result of the '*savings*' of 22 million guilders or at least not having burdened the liquidity of NV GEBE by paying 22 million guilders, constitutes a –disguised- instruction for payment of interim dividend. This interim dividend payment requirement is however not against the own-equity/profit of NV GEBE, but against its exploitation results. As stated under 2.1 above, these exploitation results are legally designated for payment of operational expenses of NV GEBE, such as the purchase of necessary equipment, e.g. generators/motors.

5. <u>Annullable decisions and null and void</u>

5.1 Article 2:21 of the Civil Code states that a decision of an organ of a corporation that is against the law or the articles of incorporation is null and void, unless the law determines otherwise. The second paragraph of same article states that decisions taken without a required quorum by the articles of incorporation, proposition, nomination or power, are also null and void. Decisions are also null and void until the required permission of another organ to validate same is possibly given.

5.2 The third paragraph of same article furthermore states that persons with a reasonable interest in compliance with a regulation that was not adhered to, can annul a decision of an organ of a corporation, amongst others if this decision is in violation of the articles of incorporation or a regulation, or in violation of the reasonability and equitability, demanded by article 2:7 of the Civil Code.

5.3 A decision that is null and void is not binding and illegal from inception. In this respect it should be noted that the decision can also be null and void because its content is against good moral customs/practice and/or the public order.

5.4 In contrast, an annullable decision is adopted legally, but can be destroyed/annulled by the judge upon request of an interested party. As long as an annullable decision has not been destroyed, it remains valid. A decision is annullable in case it violates a shareholder agreement or if for example of a corporation is bound to formalities to convey meetings wherein decisions are taken and if these formalities have been disregarded. Decisions can also be annulled if they violate the reasonability and equitability or if the best interest of the Corporation is seriously jeopardized as consequence thereof. In adjudicating whether or not the reasonability and equitability has been violated, the Court must look at all concrete facts and circumstances and evaluate all interest involved.

5.5 The statute of limitation to invoke annul -in short- illegal decisions of organs of a corporation is six (6) months, starting from the day that the disputed decision is taken. This means that interested parties have till July 28, 2016 to, if wanted, request the Court of First Instance to annul the decision of the Shareholder of NV GEBE dated January 28, 2016.

6. <u>Conclusion and recommendations</u>

6.1 The aforementioned shows that:

- there are very good grounds to argue that the instruction/resolution from the Shareholder of NV GEBE to pay in total 31 million guilders in interim dividend is null and void or should be annulled, for various reasons;
- there are very good grounds to argue that the instruction/resolution from the Shareholder of NV GEBE to enter into a loan agreement for 22 million guilders to purchase a generator/motor is null and void or should be annulled, for various reasons;

6.2 It is recommendable to convene an extraordinary shareholder's meeting as soon as possible to discuss the apparent illegality of the resolution of January 28, 2016 of the Shareholder, with the Shareholder. I understand that the Supervisory Board has already scheduled Shareholders' meetings on more than one occasion to that effect, however to no avail since the Shareholder has simply failed to respond. Nevertheless, it remains desirable to once again endeavor to, possibly whilst outlining the apparent illegality of the Shareholder's resolution in question to the Shareholder, convene an Extraordinary Shareholders' meeting, in order to exercise the best efforts to attain an overall resolution.

6.3 The Temporary Manager can, awaiting the appointment of a Managing Director of Nv GEBE, commencing at Surrey preparatory work to determine what amounts, if any, can be paid out in interim dividend to the Shareholder of NV GEBE, considering the current financial position of NV GEBE. Needless to say that it is in this respect very much advisable to obtain and advice of the external auditor/accountant, specifically when it comes to available reserves, the key performance indicators such as debts to equity ratio and existing financial and judicial commitments of NV GEBE, whereunder to its lenders.

6.4 If the Shareholder remains unwilling to participate in a shareholders meeting and/or otherwise address the issues raised with the Supervisory Board, the Supervisory Board, in keeping the best interest of NV GEBE, will have no other alternative but to seriously consider taking appropriate measures to timely annul, in so far as is legally necessary, the Shareholders' resolution/instruction of January 28, 2016.

I trust to have informed the Supervisory Board of Directors adequately herewith. Needless to say that you will find me at all times willing to elaborate further and/or answer specific questions.

Regards,

Jairo Bloem

Productie 9

SUPERVISORY BOARD OF DIRECTORS N.V. GEBE

Mr. Rene A. Richardson,	Chairman	•	rene.adrien.richardson@gmail.com	• 520-0021
Ms. Zylena Bary,	Vice Chairlady	•	barylegal@gmail.com	• 553-4141
Ms. Veronica Jansen-Webster,	Member	•	veronicawebster16@gmail.com	• 520-4945
Mr. Patrice Gumbs,	Member	•	ptgumbs62@gmail.com	• 553-0001
Mr. Edwin Gumbs,	Member	•	ed1949@lives.nl	• 587-4195

Aan Zijn Excellentie de Minister President van Sint Maarten
Government Administration Building
Philipsburg, Sint Maarten

Bestuurskantoor Sint Maarten
Datum ontv.: 25 FEB 2016

Onderwerp: Verzoek tot vrijwillig ontslag

Philipsburg, 24 februari 2016

Zijn Excellentie de Minister-President van Sint Maarten,

Uw brief nummer 5823/16 gedateerd 19 februari 2016, ontvangen op 22 februari 2016, met als onderwerp 'Verzoek tot vrijwillig ontslag' heeft de Raad van Commissarissen volledig overvallen. Uw schrijven maakt geen enkele melding van welke "ontwikkelingen rondom N.V. GEBE van het afgelopen jaar" uw Ministerraad het over heeft. Als een gevolg hiervan is het derhalve onmogelijk om objectief in te zien hoe en waarom uw Ministerraad meent "niet het vertrouwen te hebben" dat de Raad van Commissarissen zijn taak op behoorlijke wijze vervult.

Bovendien acht de Raad van Commissarissen uw verzoek om op korte termijn en wel uiterlijk op 25 februari 2016 ons vrijwillig ontslag schriftelijk in te dienen volstrekt onredelijk en onbillijk.

De Raad van Commissarissen verwijst uw Ministerraad naar artikel 12 lid 1 van de Statuten van N.V. GEBE waarin wordt vermeld dat een commissaris wordt benoemd voor een periode van vier (4) jaren, met de mogelijkheid van een verlenging van nog vier (4) jaren.

Resumerend kan de Raad van Commissarissen uw Ministerraad informeren dat wij niet aan uw verzoek kunnen voldoen om vrijwillig ontslag te nemen als commissarissen.

Volledigheidshalve wordt een kopie van dit schrijven aan de Corporate Governance Council opgestuurd.

Hoogachtend,

Rene Richardson
Voorzitter

Zylena Bary
Vice-voorzitter

Edwin Gumbs
Lid

Veronica Jansen-Webster
Lid

Patrice Gumbs
Lid

Cc. Corporate Governance Council

Produktie 10

SUPERVISORY BOARD OF DIRECTORS N.V. GEBE

Mr. Rene A. Richardson, Chairman • rene.adrien.richardson@gmail.com • 520-0021
Ms. Zylena Bary, Vice Chairlady • barylegal@gmail.com • 553-4141
Mr. Edwin Gumbs, Member • ed1949@live.nl • 587-4195

HAND DELIVERED AND PER EMAIL

The Shareholder of NV GEBE

Per The Secretariat of the Council of Ministers of Country Sint Maarten

29/04/2016

Present

Sint Maarten, April 26th, 2016

Re: Budget, financial statement, instruction to pay 31 million in interim dividend, request for resignation of Supervisory Board members and appointment Management Board Directors for NV GEBE

Honorable members of the Council of Ministers of Country Sint Maarten,

The Supervisory Board of Directors of NV GEBE (*"the Supervisory Board"*) is in receipt of the letter dated March 21, 2016 with reference number 2750-16 signed by the Prime Minister of Country Sint Maarten, with as subject: *"Handing in of the budget and financial statements."* In response thereto the Supervisory Board informs the Shareholder of NV GEBE (*"the Shareholder"*) as follows.

Handing over budget and financial statements

The 2015 operational budget and the 2015-2020 Capital Investment Plan were delivered to the Shareholder by letter dated February 3rd, 2015. The 2014 audited financial statements of NV GEBE were delivered on December 17th, 2015. The assertion by the Shareholder in its letter dated January 28, 2016 that it in short did not receive the annual budget, audited financial statements nor a multi-annual investment plan is thus factually incorrect. Please note in this respect that the 2016 operational Budget was delivered on February 16th, 2016 and the financial statements for the fiscal year 2015 must be approved on or before June 30th, 2016.

Managing Board and Temporary Manager

There are presently no functioning members of the Managing Board. NV GEBE is consequently being managed by a Temporary Manager appointed by the Supervisory Board in the person of Mr. A. Zagers, who renders reason and account to the Supervisory Board, pending the decision of the Shareholder to fill in the vacant functions of Chief Executive Officer, Chief Operating Officer and to also take follow-up decision(s) with regard to the function of Chief Financial Officer.[1]

In its letter of March 21, 2016 the shareholder wrote:

"Please be advised that pursuant to a decision taken by the Council of Ministers, the Minister of Finance has been mandated to review the financial statements of GEBE as well as to review and monitor the execution of the proposed 2016 budget of GEBE. In this regard the Minister of Finance or his appointee has been given authority by the shareholder to request and receive any documentation his Ministry might require to be able to fulfill these tasks."

The letter in question was addressed to the Supervisory Board. As the Shareholder no doubtfully knows NV GEBE is represented by law and as per articles 7 j.o. 8 paragraph 1 of its articles of incorporation in and out-of-court by its Managing Board. The Supervisory Board trusts that the Shareholder directed its letter of March 21, 2016 directly to the Supervisory Board, instead of Mr. A. Zagers, because latter in short is first and foremost not an organ of NV GEBE and secondly renders reason and account to the Supervisory Board.[2] Since the ultimate execution of the Shareholders' directive is nevertheless in the hands of Mr. Zager's as the Temporary Manager, the Supervisory Board forwarded the letter of the Shareholder of March 21, 2016 to the Temporary Manager Mr. A. Zagers. Mr. Zagers was thereby instructed to, in so far as is legally necessary, provide the Minister of Finance, the Hon. Mr. R.F. Gibson, with all documents requested. That brings us to the following.

Urgent need to realize other active/functioning Managing Board Members

The provision in the articles of incorporation that NV GEBE is managed in absence of Managing Directors by a Temporary Manager, appointed by the Supervisory Board, is a so-called emergency measure. It is clearly intended for a relatively short bridge period pending the reestablishment/resurgence of –an- active/functioning Managing Director(s). NV GEBE is, in absence of an active/functioning Managing Director being managed by –a- Temporary Manager(s) as per December 1, 2015, thus almost 5 months as per today. This is euphemistically said not a recommendable situation, moreover considering the well-known fact that the Temporary Manager is legally only entitled to take decisions that are strictly required for the proper continuity of business operation of NV GEBE. The Temporary Manager is therefore limited in the tasks that he can perform on behalf of NV GEBE.

[1] The Assignment Agreement with the existing Chief Financial Officer, Mr. Rene Gartner, was terminated with consideration of the notification term of six months and thus as per September 2nd, 2016, following and as per the directive of the Shareholder. Mr. Gartner has furthermore been placed on non-active-duty till the termination of the Assignment Agreement. Consequently, the function of Chief Financial Officer is presently materially not exercised.

[2] Although the letter in question was copied to Management it's unclear if it was sent directly to Mr. A. Zagers who after all is not a Managing Director and does not form part of the Managing Board

SUPERVISORY BOARD OF DIRECTORS N.V. GEBE

The Supervisory Board hereby wants to once again attend the Shareholder to the necessity to fill in the vacant functions for the Managing Board and to take a decision pertaining to the function of Chief Financial Officer of NV GEBE. These matters were already extensively discussed and outlined by the Supervisory Board during the Shareholders meeting of December 15, 2015 and December 17, 2015 and next during the informal meeting between all members of the Supervisory Board and the Prime Minister, the Honorable Mr. William Marlin, the Honorable Minister of VROMI and the Honorable Minister of Finance, of Friday, January 29, 2016, scheduled urgently by or on behalf of the Shareholder on that same date.

<u>Instruction to pay 31 million in interim dividend, request for resignation of Supervisory Board members</u>

The Supervisory Board procured legal advice with regard to the request of the Shareholder for NV GEBE to ultimately pay the shareholder 31 million guilders in interim dividend and also pertaining to the request for the resignation of the Supervisory Board members. For ease of purpose the Supervisory Board encloses the legal opinions as **Addenda A** and **B**, with the request to the Shareholder to please consider the content thereof literally repeated and incorporated in this letter.

The Supervisory Board once again reaches out to the Shareholder with the request to convene a General or Extraordinary shareholders' meeting to amongst others discuss all the subjects in this letter, in particular also the content of the legal opinions, as soon as possible. The Supervisory Board hereby also cautions the Shareholder that failure to obtain consensus on the subject of the legality of the instructions given by the Shareholder to NV GEBE, will result in the Supervisory Board taking the appropriate legal measures to remedy the situation at hand.

I trust to have informed the Shareholder adequately herewith, on behalf of SBOD.

Yours truly,

28/04/2016

Rene Richardson
Chairman

Produktie 11

HAND DELIVERED, with receipt confirmation AND PER EMAIL

The Supervisory Board of Directors of NV GEBE

Attn: Mr. Rene Richardson (chairman)

Present

Thursday, April 25th, 2016

Re: advice on the question if there are legitimate resignation grounds for the Supervisory Board of Directors of NV GEBE

Dear Mr. Richardson, dear Rene,

a. Introduction and to be answered legal question(s)

1.1 Our office has been requested to look further into the legality of the request of the Sint Maarten Government, in its capacity as the 100% shareholder of NV GEBE ("*the Shareholder*"), to all Supervisory Board members of NV GEBE, to in short tender their resignation. In a letter dated February 19, 2016 that was sent to the Supervisory Board of Directors of NV GEBE ("*the Supervisory Board*") on February 20, 2016, the Shareholder informed the Supervisory Board as follows:

"Geachte Voorzitter, geachte Raadslid,

De Ministerraad is van oordeel dat de ontwikkelingen rondom N.V. GEBE van het afgelopen jaar niet het vertrouwen geven dat de Raad van Commissarissen zijn taak op behoorlijke wijze vervult.

Gelet hierop wordt u hierbij verzocht onverwijld op eigen verzoek uw ontslag, uiterlijk aanstaande donderdag 25 februari, schriftelijk in te dienen.

Hoogachtend (***Addendum A***)",

1.2 The Shareholder thereby, put briefly and short, contended that the Supervisory Board and thus its members are not adequately functioning, because of 'developments around NV GEBE'. It remains unclear what developments, if any, the Shareholder is referring to. No explanation has furthermore been given regarding which actions, or lack thereof, caused or fostered referenced 'circumstances'. Thirdly, absolutely no insight is given by the Shareholder as to how or why the Supervisory Board would be responsible for these – unknown – actions, or lack thereof.

1.3 In short: the request of the Shareholder to the Supervisory Board Members of NV GEBE to tender their resignation within a by the way very short timeframe is extremely vague and devoid of substantiation. The Supervisory Board members in response thereto initially informed the Shareholder that they did not see any reason/cause to tender their resignation. More importantly, the Supervisory Board requested to convene a shareholders' meeting to discuss all relevant matters pertaining to NV GEBE, forthwith.

1.4 In a letter that was delivered to the Shareholder two days after on February 22, 2016 the Supervisory Board wrote:

"...Honorable Sirs,
The Supervisory Board of N.V. GEBE is hereby requesting the convocation of the (2015) Annual General Shareholders' meeting of NV GEBE on a date and time that is suitable to the Shareholder of NV GEBE."
The letter contains a proposal for an agenda with amongst others as subjects the letters of the Shareholder containing decisions/resolutions. The Supervisory Board wanted to discuss these letters with the Shareholder. The agenda furthermore contains as the subject 'the report of the Supervisory Board' (*Addendum B*).

1.5 Despite reminders sent by the Supervisory Board to the Shareholder, the Shareholder has not responded to the call/request of the Supervisory Board to basically sit down and discuss matters. Instead, representatives of the Shareholder or at least members of the Council of Ministers and also two (2) members of the Sint Maarten Parliament decided to proceed with making public announcements in the media, with regard to the alleged (dis)function of the Supervisory Board. The following constitutes a non-exhaustive synopsis of the, by the way, -largely- unsubstantiated, factual allegations that were thereby made:

a. the Chairlady of the Sint Maarten Parliament, the honorable Mrs. S Wescot-Williams, was quoted in article that was published in the Daily Herald on February 5, 2016 saying: "*I think it would be a right thing to do" for the board to make their positons available, she said. "I'm not* *telling them to go home. I am telling them to make their positions available," she said. The "lack of tranquility" at the company is harmful and not productive, she said at a party press conference held in Parliament House. The Coalition of Eight is "concerned" about the situation at the utilities company GEBE. "It has my full concern," she said. Wescot-Williams said some politicians, referring to United People's (UP) party leader Member of Parliament (MP) Theo Heyliger, have taken the issue at GEBE to create panic with "loose and ungrounded statements" about Government taking money from the company. GEBE employees are concerned about claims about Government wanting a large sum of money from the company, but Prime Minister William Marlin explained the situation to them on Wednesday, Wescot-Williams said."*

b. Member of the Sint Maarten Parliament, the honorable Mr. M. Lake, was quoted saying in an article that was printed in the Daily Herald on February 29th, 2016:

"GEBE has the best local professionals and engineers on the island. It's high time now we get our act together and start putting the right persons in the right positions to lead GEBE. There were too many changes in the top management positions and favoritism over the years, which just demotivated the employees. It's time to do it right and start holding management responsible and accountable for the company's performance," Lake said.

He said the issues at the company are not just about the leaking of information, but also "constant chaos and fighting and standoff with the previous and current shareholder government."

The board, the MP added, needs to stop micro-managing the company and start holding top managers and department heads accountable for not executing projects in the general interest of the people.

"GEBE should never have 30 million in already approved projects on the budget that are carried over year after year, but never executed.

"Gebe should have a five-year written investment plan and a better training and development plan for their employees. We need to bring back stability into the company by putting the right people in the right positions to take St. Maarten to the next level. I think with a new appointed team of local professionals and managers; they can take the company to the next level to better serve St. Maarten."

He said to that government "is following the right procedures and following the right process to screen the proposed names through the Corporate Governance Council and the National Security Service of St. Maarten. This is a process that could take four to six weeks. In the meantime, the current Board, based on the articles of corporation, has appointed an interim managing director from within its ranks, Mr. Zagers."

Zagers can make day-to-day decisions within the company and execute existing projects on behalf of the company. "The stories out there that GEBE doesn't have a manager who can make decisions are not true."

c. The Minister of Finance of Sint Maarten, the honorable Mr. F. Gibson, was quoted in an article published on March 10th, 2016 in the Daily Herald saying:

"Finance Minister Richard Gibson had told reporters at an earlier Council of Ministers press briefing that Government had "lost confidence" in the board. He had said at the time that the board does not conduct itself in a manner that is beneficial to the company.
The shareholder's first step was to ask the board to resign voluntarily. Failure of the board to step down would lead to the shareholder seeking advice on the dismissal of the members."

d. Previously, the honorable Mr. R. Gibson as quoted in an article published by the Daily Herald on February 25th, 2016 saying:

"Finance Minister Richard Gibson told reporters at the Council of Ministers press briefing that Government had "lost confidence" in the board. He said the board did not conduct itself in a manner beneficial to the company"

1.6 The Supervisory Board refrained, also because it is simply not appropriate for a supervisory board to make public statements, even when facing incorrect factual allegations, from reacting to the various media statements whereby ultimately the integrity, professionalism, work(ethic) and responsibility of its members were questioned, not to say attacked. This, once again based on very generic and in any case not further substantiated allegations. Certainly no substantiation/motivation premised on objectively, verifiable facts. It should in this respect be noted that referenced statements ultimately affect and because of their negative connotation tarnish the good name and reputation of NV GEBE.

1.7 Meanwhile, two (2) of the five (5) Supervisory Board Directors tendered their resignation because of the ongoing situation and more in particular the pressure put on them from or on behalf of the Shareholder. I will elaborate further on this specific matter hereunder.

1.8 The main to be answered question at hand is: are there grounds/reasons for the Supervisory Board directors to tender their resignation, under given circumstances? In the following I will outline the judicial framework wherein that question must be answered. First I will however stand still by some relevant facts in this matter as (i) directly evidenced by me, (ii) related to me and as can (iii) be evidenced from amongst others minutes of meetings of the Supervisory Board.

2. Relevant Facts

2.1 The Minutes of the Supervisory Board, letters sent and received by the Supervisory Board and discussions directly with Supervisory Board Members, during Supervisory Board Meetings show that:

(i) members of the Sint Maarten Parliament, or at least one specific member, has been calling and/or sending text messages to the Chairman of the Supervisory Board structurally, almost daily, often multiple times per day, for and a lengthy period of time till February 19th, 2016.[1] The purpose of these calls from the parliamentarian were requests regarding a wide range of specific NV GEBE related projects. The Chairman of the Supervisory Board assisted with generic information from NV GEBE, available to the general public, when possible, but mostly informed the parliamentarian in question that the matters that he was bringing forward are of an operational nature, as a consequence of which the Supervisory Board could, put shortly, regretfully not assist. These matters and the parliamentarian himself were time and again deferred to the Temporary Manager;

(ii) The parliamentarian in question was also informed on multiple occasions that the Temporary Manager is limited in the actions that he can legally take on behalf of NV GEBE. The Shareholder, ergo Government, must appoint directors and expectations should be premised on the reality of NV GEBE being managed by a Temporary Manager, who is only entitled to take the actions that are strictly necessary for the continuance of business operations[2];

(ii) at least three (3) of the in February 2016 five (5) Supervisory Board Members were specifically told by one or more Parliamentarians and members of the Council of Ministers to in short step down voluntarily, whereinafter they would be brought back as a Supervisory Board Director of NV GEBE[3];

(iii) one member of the Supervisory Board, who meanwhile also stepped down, expressed fear for retaliation, since he operates a company that renders services, also to –partially-government owned companies[4];

(iv) one member of the Supervisory Board explained that the current Minister of Finance, the Honorable Mr. R. F. Gibson, specifically told him during a personal meeting, on a specific date, place and time, that the only or real problem that Government had with the Supervisory Board was its refusal to acquiesce to the payment of the in excess 31 million guilders that the Shareholder instructed NV GEBE to pay to it. That constitutes the reason, according to Mr. R.F. Gibson, why the Shareholder decided to request all members of the Supervisory Board to tender their resignation[5];

[1] The records kept reflect this.
[2] Minutes meeting Supervisory Board
[3] Minutes of Meeting Supervisory Board of March 15th, 2016
[4] Discussion informal meeting Supervisory Board at Law Office Bloem Bonapart & Aardenburg on Monday February 29th, 2016.
[5] Minutes meeting Supervisory Board March 15th, 2016

(v) on December 15 and December 17, 2015, extraordinary shareholders' meetings were conducted. At no point in time during these meeting did the Shareholder state or indicate that the Supervisory Board or any of its members was/were not functioning properly[6];

(vi) the request by the Shareholder to the Supervisory Board members to step down dated February 19, 2016, was exactly 22 days, after the Shareholder, by resolution of January 28, 2016, instructed NV GEBE to in short pay at 31 million guilders, ultimately as interim dividend. I refer in this respect to the legal opinion dated April 14th, 2016, of our office, annexed hereto as (**Addendum C**);

(viii) on November 20th, 2015, the Supervisory Board, following the suspension of the Chief Financial Officer of NV GEBE, Mr. R. Gartner, which decision was explicitly discussed by the Supervisory Board with the Shareholder Representative of NV GEBE beforehand, appointed Mr. Curtis Haynes, as the Temporary Manager[7]. Mr. Haynes presently already renders advisory and other services to NV GEBE, through a Management Company. The resolution of the Supervisory Board entails that Mr. Haynes would suspend the services that he was providing to NV GEBE, pending the effectuation of the function of Temporary Manager. His ultimate payment would remain on the overall the same, meaning in short that he would not earn more money. The appointment by the Supervisory Board of Mr. Haynes as the Temporary Manager stumbled upon great resistance of the Shareholder or at least members of the Sint Maarten Government;

(viii) the Shareholder, or better said members of the Council of Minister, called for an informal meeting with the Chairman of the Supervisory Board to discuss the matter of the appointment of the Temporary Manager[8]. This, despite the fact that this decision is solely the prerogative of the Supervisory Board. During that informal meeting the Shareholder voiced its objection against the decision of the Supervisory Board to appoint Mr. Curtis Haynes as the Temporary Manager. The Shareholder furthermore stated that it wanted Mr. Brooks, who had been nominated on June 18th, 2015, by the Supervisory Board as a candidate for the vacant function of Chief Executive Officer of NV GEBE, to be appointed as the Temporary Manager;

(ix) The Supervisory Board clearly explained the Shareholder during referenced informal meeting that it also had considered, before appointing Mr. Curtis Haynes as the Temporary Manager, appointing Mr. Brooks. Mr. Brooks however, in the further conversations that the Supervisory Board conducted with him, displayed a very stubborn and uncooperative behavior. It was not even possible to attain consensus with him on the terms to function as a Temporary Manager.

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[6] Draft Minutes Shareholders Meeting dated December 15th and 17th, 2015
[7] Minutes Supervisory Board meeting November 20th 2015
[8] This can be evidenced from telephone records and text messages.

The Shareholder informed the Supervisory Board that it would 'take care of matters'. Mr. Brooks called the Chairman of the Supervisory Board the following day stating his agreement with a draft agreement given to him one week before (thus before the informal meeting with the Shareholder), to perform the function of Temporary Manager; please note in this respect that Mr. Brooks was unwilling to accept the draft agreement previously[9];

(x) Mr. Haynes subsequently informed the Supervisory Board that he was not willing to function as the Temporary Manager. Under given circumstances and considering that Mr. Brooks possessed the right qualifications and experience for the function, moreover that his appointment obviously met the approval of the Shareholder, the Supervisory Board resolved on November 25th, 2015 to appoint Mr. Brooks as the Temporary Manager **(Addendum D)**;

(xi) the Shareholder outlined, during referenced informal meeting its viewpoints pertaining to priorities in terms of project, for NV GEBE, to the Chairman of the Supervisory Board and a member of the Supervisory Board, who was also present during that meeting[10];

(xii) on January 11th, 2016, the Shareholder, through its representative in the person of the Honorable Minister of VROMI, Mr. A. Meyers, requested the Supervisory Board for an assessment with regard to the functioning of Mr. W. Brooks as the Temporary Manager **(Addendum E)**. This request followed the decision or at least consideration of the Shareholder during the extraordinary shareholder's meeting of December 15th and 17th 2015, to use the time period wherein Mr. Brooks functioned as the Temporary Manager, to evaluate him;

(xiii) by letter dated January 25th, 2016, the Supervisory Board provided the Shareholder, as per the request of the Shareholder, with an evaluation report of Mr. W. Brooks **(Addendum F)**. On the same date, a copy of this letter of the Supervisory Board was published on an online media site, after this document was sent to and registered with the Sint Maarten Government. Mr. Brooks resigned as the Temporary Manager of NV GEBE on January 28th, 2016, with immediate effect, after having by the way taken some remarkable decisions, last moment, such as salary increases to certain employees and the grant of certain perks to certain employees **(Addendum G)**;

(xiv) on Friday January 29th, 2016, the Shareholder called for yet another informal meeting with, this time, all Supervisory Board Members, to be conducted on the same date.[11] During that

[9] The content of the informal meeting was related by the attending Supervisory Board members to the entire Supervisory Board in their following Supervisory Board meeting.

[10] Based also thereon the Supervisory Board made the agenda for the extraordinary shareholder meeting for December 14th, 2015. The policy related matters were placed as a subject on the agenda in the letter of convocation for the meeting from the Supervisory Board dated December 4th, 2015 **(Addendum D)**.

[11] This can be evidenced from telephone records and text messages.

meeting the Shareholder asked for a copy of the letter of the honorable Mr. A. Meyers wherein the evaluation report of Mr. Brooks was requested. It appeared some representatives of the Shareholder were unware thereof. The Shareholder stated that it disapproved the fact that the rapport was leaked to an online media site media. The Supervisory Board members in return informed the Shareholder that it had requested for the evaluation report, which was made and given to it. The Supervisory Board nor any of its members sent any report to the media and also did not accept any responsibility therefore;

(xv)The Supervisory Board next informed the Shareholder that it did not have any specific candidate in mind at that point in time, to consider to appoint as a Temporary Manager. The Supervisory Board requested the Shareholder to indicate how much longer it would take for the shareholder to take a decision on the vacant functions of Chief Executive Officer and Chief Operating officer for NV GEBE. It was thereby explained by the Supervisory Board that NV GEBE had been functioning form December 1, 2015 and thus for more than 2 months with a Temporary manager and that the rationale of this function if for it to be a short lived one.

A decision by the Shareholder regarding the appointment of a director for NV GEBE would namely make the appointment of a Temporary Manager by the Supervisory Board unnecessary and legally even possible.

During that meeting the Shareholder informed the Supervisory Board that it was unable to state concretely when a director would be appointed, also because of the requisite screening by VDSM and the requiste advice from the Corporate Governance Council. The Shareholder gave the Supervisory Board into consideration to appoint Mr. Romeo Pantophlet as the Temporary Manager, in view of the fact that the Supervisory Board did not have any other candidates at that point in time;

(xv) On February 1st, 2016, the Supervisory Board resolved to appoint Mr. Andrew Zagers as the Temporary Manager, considering his expertise, educational background and ability to, put briefly and short, hit the ground running.[12] The Shareholder was informed accordingly by letter of February 3rd, 2016 (**Addendum H**);

(xvii) on January 28, 2016, the Shareholder instructed NV GEBE to in short pay out the amount of 31 million guilders in interim dividend (**Addendum I**);

(xviii) on February 19, 2016, the Shareholder requested the Supervisory Board Members to, as outlined above, step down voluntarily (see Addendum A).

[12] See minutes of meeting of the Supervisory Board dated February 1st, 2016

3. <u>All decisions taken by the Supervisory Board regarding the Managing Directors were deemed legal and sanctioned ultimately by the Shareholder, itself</u>

3.1 The Shareholder refers to, again not specified, developments around NV GEBE in its request to the Supervisory Board members to step down voluntarily. A member of Parliament spoke in this respect publicly about the dismissal and suspension of the Managing Directors of NV GEBE. For in case this is meant by the Shareholder with its referral to '*developments around NV GEBE*' the following should be noted.

Illegal resolution of the Shareholder to extend assignment agreement with Mr. R. Maduro

3.2 The Supervisory Board did not dismiss or suspend Mr. R. Maduro, an ex-Chief Operation Director of NV GEBE. The Supervisory Board refused to carry out the resolution of the Shareholder dated May 29, 2015 to extend the assignment agreement between NV GEBE and Mr. Maduro, because this agreement was in short null and void. The Shareholder namely had failed to live up to mandatory legal provisions pertaining to the appointment of a Managing Director of NV GEBE.

3.3 The decision of the Supervisory Board not to carry out the resolution of the Shareholder was validated by the Court of First Instance in its verdict dated July 16th, 2015 (**Addendum J**). By verdict dated November 3rd, 2015 the Court of First Instance subsequently annulled (in Dutch: "*ontbinden*") the disputed resolution of the Shareholder of NV GEBE dated May 29th, 2015 (Addendum **K**). It should in this respect be noted that the Supervisory Board had given the Shareholder ample opportunity to revoke the disputed resolution voluntarily and thus out-of-court. Furthermore, that whilst the Shareholder refrained to do this, thereby necessitating NV GEBE to initiate a main court procedure, it decided not to adopt any position in referenced procedure and to defer itself to the opinion of the Court. The entire matter could once again easily have been resolved by the Shareholder simply accepting in the first place, that it did not correctlty follow procedures

3.4 The Supervisory Board is bound by law (Corporate Code Sint Maarten, Corporate Governance Code Sint Maarten and Penal Code Sint Maarten) to in short act in the best interest of NV GEBE. Violation of these obligations could result in civil and penal liability for the Supervisory Board members. When the Supervisory Board detects that a resolution and/or instruction of the Shareholder is illegal and does not serve the best interest of NV GEBE, it is by law consequently obliged to point this out and to, if necessary, take the requisite actions to cancel such possible resolutions/instructions. In other words: a Supervisory Board that complies with its responsibilities by law and is worth its salt does not have a choice and simply cannot sanction illegal resolutions/instructions of the Shareholder.

Valid decision of the Supervisory Board to suspends Mr. Gartner, sanctioned by the Shareholder

3.5. On December 1st, 2015 the Supervisory Board suspended Mr. Gartner as the Chief Financial Officer of NV GEBE (**Addendum L**). This decision was preceded by numerous informal contact and meetings with the Shareholder, whereby the nonfunctioning of Mr. Gartner was discussed and the fact that the Supervisory Board considered suspending him[13].

3.6 By resolution dated February 29th, 2016, the Shareholder instructed the Supervisory Board to terminate the assignment agreement with Mr. Gartner, by notification, considering the contractual six months' termination term (**Addendum M**). The content of the that letter reflects the Shareholders' understanding and approval of the positions adopted by the Supervisory Board. Same sentiments were by the way expressed by Members of the Council of Ministers during the extraordinary shareholder's meeting on December 15 and 17th 2015 (see consideration number 16.14 and 16.15 in minutes of the Shareholders meeting which have been annexed hereto as **Addendum N**).

3.6 By letter dated March 2nd, 2016 the Supervisory Board terminated the Assignment Agreement between NV GEBE and Mr. Gartner (**Addendum O**). The Shareholder was informed accordingly. The Supervisory Board subsequently verbally informed and reminded the Shareholder representative that the vacant positions in the Managing Board must be filled.

3.7 The Supervisory Board appointed a Temporary Manager for NV GEBE within 2 days after suspending Mr. Rene Gartner as the Chief Finance Director. This decision was amended, in considering the severe request of the Shareholder and the decision of the appointed Temporary Manager not to perform the function. Within 4 days (counting the weekend) after Mr. William Brooks resigned as the Temporary Manager, the Supervisory Board appointed another Temporary Manager.

3.8 It is, simply put, incorrect to accuse the Supervisory Board of an unstable situation with regard to the Management of NV GEBE. Certainly, considering the fact that all the decisions taken by the Supervisory Board have been deemed legally valid. Next, the fact that the Supervisory Board has reminded and urged the Shareholder to take a decision on the appointment of a director for NV GEBE on numerous occasions.

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[13] See minutes of the meetings of the Supervisory Board dated October 21st, 2015, November 3rd, 2015, November 20th, 2015, and November 25th, 2015.

4. Legality of the resignation request by the Shareholder

4.1 The General Assembly of Shareholders is often referred to as the highest power, considering the limits imposed by the law and the articles of incorporation, within a Corporation. The Managing Board represents a corporation in an out-of-court. The Supervisory Board supervises and advices the Managing Board. This division of tasks also outlines the contours of the areas of tension between the organs of a corporation. Since 2004 the new Civil Code has been enriched with article 2:127 for limited liability companies. Thereby the instruction right of the General Assembly of Shareholders has been concretized.[14]

4.2 **The so-called instruction power of the General Assembly of Shareholders sees to the fact that this assembly has it in its power to act against policies that it does not consider desirable of the Managing Board. In practice this instruction power is exercised by appointing and dismissing Managing Board members.[15] The so-called 'instruction-right' goes further than the generic instruction power. Whilst instruction power sees to the possibility for the General Assembly of Shareholders to direct the Management's policy, instruction-right sees to the possibility of the General Assembly of Shareholder to give concrete binding instructions to the Managing Board, pertaining to the to be effectuated policies.**

4.3 Book 2 of the Sint Maarten Civil Code does not contain any basis for 'instruction–right' of the General Assembly of Shareholder, in contrast to the stated generic instruction power. The departure point is that the Managing Board has an independent, autonomous Management function, for which it is only responsible. It is possible for the articles of incorporation to contain provisions that boil down to a limited instruction-right. The generic instruction power is as stated possible based on the possibility to dismiss the Managing Board, regardless whether the articles of incorporation concretely give this right to the General Assembly of Shareholders.

4.4 The limits/borders of the instruction power of the General Assembly of Shareholders are given by the jurisprudence. Before providing you with an exegesis of these limitations it should be in general noted that only the General Assembly of Shareholders has instruction power. This cannot be mandated/designated to third parties. Next, instructions can only be given pertaining to general/overall policy matters, and as such not with regard to specific points of policy.

Forum Bank case law

[14] Article 2:127 Civil Code reads: "*Voor zover de statuten niet anders bepalen behoort aan de algemene vergadering van aandeelhouders, binnen de bij de wet en de statuten gestelde grenzen, alle bevoegdheid die niet aan het bestuur of aan anderen is toegekend.*"
[15] V&O December 2002, number 12 209 Vennootschap & Onderneming.

4.5 The Supreme Court in its verdict dated January 21, 1955, published in NJ 1959, 43, established the autonomous position of the Managing Board in exercising its tasks and powers granted by the law and the articles of incorporation. In that case the General Assembly of Shareholders gave Managing Board the instruction to purchase the company's own share, but the Managing Board refused to do this. The Managing Board does not have to follow concrete instructions of other organs of the company, according to the Supreme Court, in particular also not from not the General Assembly of Shareholders. This departure point remains unchanged since the Forumbank-case law. See, President of the Court of First Instance Amsterdam of December 28, 1987 (KG 1988, 37 (Amstelland)).

Ogem case law

4.6 In its verdict dated January 10, 1990 (NJ 1990, 466 (Ogem)) the Supreme Court ruled that the interests of a subsidiary are independent of the holding company and these interests cannot be unified therewith, but are colored somewhat by them. The core legal question in that case was to what extent, if any, the Managing Board of a top Holding company must intervene/take over the management policy of a subsidiary company. In that case a subsidiary company of Ogem Holding was not given enough reason and account to the Management of the holding company and was not abiding to the supervision and leadership of the Holding Company.

Court of first instance of Utrecht

4.7 In its verdict dated March 15, 2000, published in JOR 2000, 233 the Court of First Instance of Utrecht denied the claim of a shareholder for payment of dividend. In that case a shareholder of a company made a request for a temporarily balance sheet. The seller of the shares in that company namely agreed with the buyer of the shares and that company that the seller was entitled to a payment of dividends for the shares, for the first half of a certain fiscal year. The request was rejected the argument that an individual shareholder is not an organ of the company, with instruction power. Next, the court considered that the corporate nature prevents that contractual arrangements would derogate to the autonomy of the Managing Board. The Court in that case referred to the Forumbank-case law and stated that as long as the corporation remains within the boundaries of the law and its articles of incorporation, no organ must accept any instruction from another organ within the company.

Court of first instance of The Hague

4.8 In its verdict of August 7, 2002, published in JOR 2002, 173, the Court of First Instance of the Haque, Netherlands sanctioned the decision of the the Managing Board to in essence not comply with an instruction of the shareholder of that company. In that case a Dutch Corporation was requested by its American sister, to pose surety for contractual obligations of its American sister. Previously, the Dutch sister granted a significant loan to its sister and also gave surety to the American sister, in this respect. Two directors of the Dutch Corporation stated that the company would not collaborate with giving the new surety. The Managing Board stated that collaborating would jeopardize the corporate interest, because already a serious appeal was made on the financial means of the company. The holding subsequently intended to dismiss these directors. The Court of First Instance of the Hague validated the position of the directors.

Interim conclusions

4.9 The Managing and Supervisory Board are as per article 2:9 of the Civil Code at all times compelled to properly perform their tasks. This requires an independent consideration of factually expressed desires, whereby each time it must be considered if these desires are in accordance with the demands of proper management/governance. The prevailing opinion in both the jurisprudence and literature is that no organ within a company, nor any third party, has an instruction right pertaining to the management of a corporation.

See also Asser Maeijer 2-III, 2000, numbers 299 and 619.

4.10 If illegal instructions or demands are imposed on Managing or Supervisory board members, by - threatening to - dismiss these members, and/or actually realizing the dismissal, the consequence thereof is that the dismissal decision is against the reasonability and equitability. Pursuant to article 2:7 Civil Code such a decision can be annulled.

5. <u>Corporate governance</u>

5.1 Corporate Governance is defined by Mr. K. Frielink as: *"Doing things' in a proper institutional context with effective checks and balances."* Corporate governance is about the structures and processes for the direction and control of a company. Corporate governance is intended to increase the accountability of a company and to avoid massive disasters before they occur. It is held that good corporate governance helps companies operate more efficiently, improve access to capital, mitigate risk and safeguard against mismanagement.

5.2 According to the International Finance Corporation of the World Bank Group:

"It makes companies more accountable and transparent to investors and gives them the tools to respond to legitimate stakeholder concerns such as sustainable environmental and social development. Corporate governance also contributes to development. Increased access to capital encourages new investments, boosts economic growth, and provides employment opportunities."

5.3 The Organization for Economic Co-operation and Development (OECD) has issued guidelines (Guidelines on Corporate Governance of State-owned Enterprises) on this matter, which state:

"The state should act as an informed and active owner and establish a clear and consistent ownership policy, ensuring that the governance of the state-owned enterprises (SOEs) is carried out in a transparent and accountable manner, with the necessary degree of professionalism and effectiveness. (...) The government should not be involved in the day-to-day management of SOEs and allow them full operational autonomy to achieve their defined objectives. (...) The state should let SOE boards exercise their responsibilities and respect their independence."

5.4 Mr. Frielink opiniates that Government should not be involved in the daily management of the enterprise (day-to-day business) and should allow the enterprise full operational autonomy. Policies should be formulated that: make it clear how government will behave as shareholder; adopt the basic principles of transparency and public accountability; and encourage the government to adopt a professional and results-orientated position.

5.5 According to Mr. Frielink corporate governance rules came into force which were designed to protect companies from politicians, in particular from government. Government-owned companies should be kept out of the political sphere as much as possible, so that they may benefit from commercial, businesslike and market-oriented management. In doing so, they also run less of a risk of being milked or used as political toys. Public duties must be carried out by the government via law and regulations according to public law and precisely not as shareholder of a state-owned company.

6. Actions of the Supervisory Board analyzed more in-depth

6.1 Reference is made to paragraph 3 above. The Supervisory Board has (i) refused to comply with the instructions of the Shareholder to NV GEBE to have the company enter into a loan agreement for 22 million guilders, whereinafter 11 million guilders of NV GEBE would be made payable to the Shareholder. Also, (ii) with the instruction of the Shareholder to pay out 20 million guilders from the water reserves, to the Shareholder. The Supervisory Board moreover (iii) did not entertain the severe suggestion by the Shareholder, to appoint Mr. Romeo Pantophlet as the Temporary Manager.

6.2 The first two decisions of the Supervisory Board are premised on the legal opinion of our office dated April 14th, 2016 (see addendum B), the legal opinion of the law office Lexwell to NV GEBE dated January 18th, 2016 (**Addendum P**), the letter of the external auditor of NV GEBE, Price Waterhouse Coopers dated January 19th, 2016 (**Addendum Q**), the recommendation of the Temporary Manager of NV GEBE, mr. W. Brooks dated January 13th, 2016 (**Addendum R**). The content of these documents certainly justify the decision of the Supervisory Board.

6.3 In its decision of February 11th, 2008, the Joint Court of Appeals of Curaçao, Aruba, Sint Maarten, Bonaire, St. Eustatius and Saba ruled that the decision of Country Curaçao, as the one hundred percent (100%) shareholder of a corporation, to appoint a Managing Director was null and void, because the person in question did not have the requisite expertise and education to perform the vacant function[16]. In that case, the Supervisory Board had refused to carry out the resolution of the Shareholder to appoint the person in question in the vacant function.

6.4 I understand that the Supervisory Board considered appointing Mr. Romeo Pantophlet as the Temporary Manager, but decided against this, because there was simply a better candidate, meaning: a candidate with more direct experience and relevant education. The decision to appoint a Temporary Manager is the sole prerogative of the Supervisory Board. Needless to say that it can consider wishes/suggestions of the Shareholder. It is not mandatory however to follow these, also because there is no instruction-right of the shareholder in this respect. From the considerations in the minutes of the meeting of the Supervisory Board dated February 1st, 2016 it appears that the decision to appoint Mr. A. Zagers was diligently taken, after ample consideration.

7. Conclusions

7.1 The aforementioned shows that there are no -objective-grounds to dismiss the Supervisory Board Members. As such, there is by law also absolutely no obligation on the Supervisory Board Members to tender their resignation. Please note in this respect that the request from the Shareholder for the immediate resignation of all supervisory Board Members at the same time, is somewhat odd, to say the least. If all members would abide thereto, this would create a lacuna in the functioning of the

[16] Gerecht in Eerste Aanleg Curaçao van 11 februari 2008, AR 2007/594 inzake Tromp c.s. vs StIP en Selikor.

Supervisory Board and impose serious challenges when it comes to continuity of business operation and relation of information within the Supervisory Board, going forward.

7.2 Pursuant to article 11 of the National Ordinance Corporate Governance Code the Sint Maarten Government must request the Corporate Governance Council advise before taking a decision on possibly dismissing all members of the Supervisory Board. The Sint Maarten Government is entitled to put aside the advice of the Corporate Governance Council, provided that it motivates this appropriately. Once again, any resolution of the Sint Maarten Government, even if its premised on an advice from the Corporate Council in its capacity as the Shareholder of NV GEBE, must meet the requirements of articles 2:7 and 2:21 and further of our Civil Code. Any decision that violates the reasonability and equitability can be annulled, in court.

8. Recommendations

8.1 it is recommendable for the Supervisory Board to:

(i) once again write the Shareholder, with the request to convene a General or extraordinary shareholder's meeting to discuss the content of the underlying opinion, and the other opinions and advices with regard to the disputed resolutions/instructions of the Shareholder, as soon as possible. The Shareholder should thereby be given a deadline to either respond, more in particular to state that it cancels its disputed resolutions/instructions. In case the Shareholder remains unresponsive and or simply fails to comply with the requests, NV GEBE should take the appropriate legal measures to annul the disputed decisions by the Shareholder, forthwith[17];

(ii) the Supervisory Board can also consider, in case it feels -put briefly and shortly- unduly pressured by the Shareholder to take decisions that violate the best interest of NV GEBE, to request the Public Prosecutor of Sint Maarten to conduct a so-called survey into the business of NV GEBE.

I trust to have informed the Supervisory Board of Directors adequately herewith. Needless to say that you will find me at all times willing to elaborate further and/or answer specific questions.

[17] The statue of limitations to annul these decisions is 6 months, counting from January 28th, 2016.

Regards,

Jairo Bloem

Addendum A

PRIME MINISTER OF SINT MAARTEN
MINISTER-PRESIDENT VAN SINT MAARTEN

Postal address:
Government of Sint Maarten

Ministry of General Affairs
Government Administration
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Aan: De Raad van Commissarissen N.V. GEBE
T.a.v. Dhr. Rene Richardson, Voorzitter
Mw. Zylena Bary, Vice-voorzitter
Mw. Veronica Jansen-Webster, Lid
Dhr. Patrice Gumbs, Lid
Dhr. Edwin Gumbs, Lid
PERSOONLIJK OVERHANDIGD

Datum: FEB 19 2016

Onderwerp: Verzoek tot vrijwillig ontslag

5823/16

Geachte Voorzitter, geachte Raadslid,

De Ministerraad is van oordeel dat de ontwikkelingen rondom N.V. GEBE van het afgelopen jaar niet het vertrouwen geven dat de Raad van Commissarissen zijn taak op behoorlijke wijze vervult.

Gelet hierop wordt u hierbij verzocht onverwijld op eigen verzoek uw ontslag, uiterlijk aanstaande donderdag 25 februari, schriftelijk in te dienen.

Hoogachtend,

MINISTER-PRESIDENT VAN SINT MAARTEN

William Marlin

Cc. Ministerraad

Bestuurskantoor Sint Maarten
Datum ontv.: 22 FEB 2016

SUPERVISORY BOARD OF DIRECTORS N.V. GEBE

Mr. Rene A. Richardson,	Chairman	rene.adrien.richardson@gmail.com	520-0021
Ms. Zylena Bary.	Vice Chairlady	barylegal@gmail.com	553-4141
Ms. Veronica Jansen-Webster,	Member	veronicawebster16@gmail.com	520-4945
Mr. Patrice Gumbs.	Member	ptgumbs62@gmail.com	553-0001
Mr. Edwin Gumbs,	Member	ed1949@live.nl	587-4195

Philipsburg, February 22nd, 2016

To the Shareholder of N.V. GEBE
Attn.: Honorable Prime Minister W. Marlin and Minister A.C. Meyers
Government Administration Building
Philipsburg, Sint Maarten

Subject: Annual General Shareholders' Meeting of NV GEBE

Honorable Sirs,

The Supervisory Board of N.V. GEBE is hereby requesting the convocation of the (2015) Annual General Shareholders' meeting of NV GEBE on a date and time that is suitable to the Shareholder of NV GEBE.

The Supervisory Board suggests the following Agenda Points for the Annual General Shareholders' meeting of NV GEBE:

1) Opening;
2) Appointment of the Chairman, Secretary and Minute-Taker of the Annual General meeting of Shareholders;
3) Verification shares present and written proxies;
4) Approval of the Agenda;
5) Approval of minutes dated February 5, 2015;
6) Financial Statements 2014 of NV GEBE;
   a) Management report.
   b) Supervisory Board report.
   c) Q&A session.
   d) External Auditors Report.
   e) Q&A session.
   f) Approval of the financial statements of 2014.
   g) Acquittal and Discharge of the Supervisory Board for Supervision Conducted during 2014.
   h) Acquittal and Discharge of the Managing Board for management conducted during 2014.
   i) Allocation of Profits.

Mr. Rene A. Richardson,	Chairman	rene.adrien.richardson@gmail.com	520-0021
Ms. Zylena Bary,	Vice Chairlady	barylegal@gmail.com	553-4141
Ms. Veronica Janson-Webster,	Member	veronicawebster16@gmail.com	520-4945
Mr. Patrice Gumbs,	Member	ptgumbs62@gmail.com	553-0001
Mr. Edwin Gumbs,	Member	ed1949@live.nl	587-4195

7) NV GEBE 2016 Budget;
8) Appointment CEO, COO and possibly CFO;
9) Resolutions and letters Shareholder with reference numbers 2341B/15, 2341G/15 and 2341H /15;
10) Round Robin;
11) Closing.

For any additional information, please contact Ms. Madelien Henriquez at go2-oss@caribserve.net or via +1 (721) 5544118.

Respectfully,

Rene A Richardson
Chairman of the Supervisory Board of Directors

Cc: Council of Ministers
Members of the Supervisory Board of NV GEBE
Temporary Manager NV GEBE

Addendum C

HAND DELIVERED, with receipt confirmation AND PER EMAIL
The Supervisory Board of Directors of NV GEBE
Attn: Mr. Rene Richardson (chairman)

Present

Thursday, April 14, 2016

Re: Advice on resolution of the Shareholder dated January 28th, 2016

Dear Mr. Richardson, dear Rene,

1. Introduction and relevant facts

1.1 The Supervisory Board of Directors of NV GEBE, hereinafter: "*the Supervisory Board*" requested our office advise with regard to the instruction/resolution of the Shareholder of NV GEBE dated January 28, 2016. The Shareholder thereby resolved:

"1. To approve the request of management and Board of Directors of N.V. Gemeenschappelijke Electriciteitsbedrijf Bovenwindse Eilanden (GEBE) to purchase the Wartsila Dual Fuel Generator Set of 11.3 MWe on a turnkey delivery basis for a sum of EURO 10.342.000, with a downpayment of 15% at the signing of the turnkey delivery contract. The balance of the purchase price to be financed by a local financial institution on a long term basis in accordance with the conditions outlined in the letter from the sha reholder to GEBE under reference #23418/15.

2. To declare a temporary dividend in the amount of NAf. 11 million payables immediately to the shareholder in view of the fact that no annual budget, no audited financial statements nor investment plan have yet been submitted to the shareholder for approval, and by financing the remaining balance of the purchase price of the Wartsila engine, which management of GEBE N.V. intended to pay for in cash and in full, NAf. 22 million in liquid cash becomes available. It is therefore resolved to, pending the finalization of the audited financial statements, the budget for 2016 and the proposal for reserves, to temporarily declare an advance dividend of NAf. 11million and to reserve a decision on the remaining NAf. 11 million until the audited statements and other deliverables by management are completed.

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3. Over the years GEBE has accumulated in excess of NAf. 35 million in reserves in managing the water distribution on Sint Maarten for and behalf of the government of Sint Maarten. GEBE failed to submit its multi-annual investment plan, liquidity plan, budget plan, and financial plan for approval, which as per agreement had to be presented annually for approval by government. It is therefore hereby resolved to instruct GEBE to immediately remit NAf. 20 million of these accumulated water management reserves to government. The shareholder of GEBE agrees with and ratifies the remittance of these reserves to government."

1.2 The resolution of the Shareholder boils down to an instruction to NV GEBE to pay the amount of – ultimately- **31 million guilders** in –interim- dividend, based on certain factual considerations. Next, an instruction to enter into a finance agreement for the acquisition of a generator/motor for the amount of 22 million.

1.3 **The water management reserves consist of profits declared in the past that were not paid out, but reserved for specific purposes/obligations. The request to immediately remit 20 million from these reserves constitutes a request to pay out –saved- profit. Since this request has not been made in an annual shareholders meeting, it constitutes a request for so-called interim dividend.**

1.4 Please note that in this opinion I have not analyzed the correctness of the factual representations/premises made by the Shareholder in substantiating its resolutions dated January 28, 2016. It is however, in discussing this matter with the Supervisory Board and perusing certain specific documentation, my understanding that the factual premises of the Shareholder, specifically pertaining to not having received an investment plan, budgets and financial statements, are simply put incorrect. It appears for all intent and purposes that the Shareholder has or should have been in the possession of all these documents, as is also reflected from receipt signatures and stamps thereon from the Sint Maarten Government, more specifically DIV.

1.5 After having analyzed this matter, I hereby inform the Supervisory Board as follows.

2. General

2.1 The so-called Concession Ordinance and concession given to NV GEBE clearly stipulates that income from the production and delivery of electricity to the consumers on Sint Maarten, with exception of the profits realized therewith, will be completely utilized to pay the cost of investment and operational business activities of the concession holder in favor of the persons and businesses living and respectively established on Sint Maarten. The purpose/rationale of this provision is to safeguard continuance of the business operation of NV GEBE, that caters to basic needs (especially the consumption of water) of the Sint Maarten citizens and which as such is pivotal to the Sint Maarten community.

2.2 In exercising their tasks directors of a corporation must act in accordance with the interest of a corporation and alienated companies. What specifically constitutes this interest, depends on the circumstances of each case. It is however generally deemed that this interest primarily consists of the need to promote consistent continuance and success of a corporation.

2.3 Organs of a corporation and as such the Managing Directors, Supervisory Directors and Shareholder(s) are as per article 2:7 Civil Code obliged to, in performing their duties, act diligently pertaining to the interests of all persons/stakeholders involved with the corporation (see: Supreme Court July 9, 2010, ECLI:NL:HR:2010:BM0976, NJ2010/544 (ASMI), Supreme Court July 12th,2013, ECLI:NL:HR:2013:BZ9145, NJ 2013/461 (VEB c.s./KLM) and supreme Court September 14th, 2007, ECLI:NL:HR:2007:BA4117, NJ 2007/610 (Versatel I)). This 'diligence-obligation' can entail that Managers in serving the corporations interests must procure that the persons and/or companies involved with the corporation are not unnecessary or disproportionately jeopardized/damaged.

3. Declaring – interim – dividend

Legal framework

3.1 Article 20 of the Articles of Incorporation of NV GEBE states that: "*The profits shall be added to the reserves, unless the General Shareholders 'Meeting resolves to distribute the profits, after consultation with the Managing Board and the Supervisory Board.*" The second paragraph of referenced article reads: "*The General Shareholders' Meeting shall decide upon the appropriation of the thus reserved amounts after consulting the Managing Board and the Supervisory Board.*"

3.2 Article 20 paragraph 6 states: "*The Managing Board is authorized, after consultation with the Supervisory Board and subject to the approval of the General Shareholders' Meeting to distribute interim dividends as an advance payment in anticipation of the profits to be expected.*" The 7th paragraph of this article says: "*No distributions shall be effected to shareholders if the net worth of the corporation is less than the nominal capital or if, as a result of such distribution, the net worth of the corporation should become less than the nominal capital of the corporation.*"

3.3 Article 20 paragraph 8 finally states: "*unless otherwise resolved by the General Shareholders' Meeting, dividends shall be paid ultimately thirty (30) days after having been declared*"

3.4 Pursuant to article 2:118 paragraph 1 of the Civil Code the General Assembly (shareholder) or another organ designated by the articles of incorporation of a corporation, decides immediately together with the approval of the financial statements about the retention of profit as per the financial statements and making other payments against the corporation's equity, which follows from the financial statements.

3.5 **Contrary to the Netherlands it is not required in Sint Maarten for the Managing Board to approve the decision of a shareholder taken in the general yearly shareholders meeting to pay dividend. The Managing Board and Supervisory Board must however be consulted in Sint Maarten about an intention of the Shareholder to either reserve profit or declare dividend, after having approved the financial statements of a corporation in an annual shareholders meeting.**

3.6 **In the Netherlands the Managing Board must as stated approve such decisions. It can only refuse to give such approval, if it knows or has good reason to suspect that the corporation will not be able to continue paying its debts, after the dividend payment. In case a Managing Board agrees to a dividend payment in the Netherlands, whereinafter the corporation is no longer capable to meet its payables, the Managing Directors that knew or should have known this, become personally and severely liable towards the unpaid creditors. Moreover, it is also possible to claim back dividends paid to shareholders in the Netherlands which do not meet referenced requirements.[1]**

3.7 The second paragraph of article 2;118 of the Civil Code stipulates that the General Assembly or another organ designated in the articles of incorporation of the Corporation, can decide to make interim payments in an ongoing financial year, against a previous financial year, of which the financial statements must still be approved.

3.8 Importantly, article 2:118 paragraph 5 of the Civil Code prohibits payment to a shareholder, another person or company entitled to profit, in case the equity of the company is negative or will become negative as a consequence of the payment. A resolution/instruction to make such a payment lacks legal effect and is null and void.

[1] Although the quoted legislation in question is not applicable on Sint Maarten, it certainly reflects on what constitutes good/best business practices and reasonable and equitable actions/decisions.

Application to the underlying case

3.9 A distinction must be made by law in declaring dividend and the payment of interim-dividend. NV GEBE, like most of the so-called government owned companies, has a specific provision in its charter for the payment of latter. Whilst the Shareholder of NV GEBE can declare dividend by following a certain procedure at the annual General Shareholders meeting, whereby the financial statements are discussed after approved of same, the Shareholder of Nv GEBE is not authorized to declare interim dividend. Pursuant to article 20 paragraph 6 of the Articles of Incorporation of NV GEBE only the Managing Board is authorized to remit/pay interim dividend, after approval of a proposal to that effect by the Supervisory Board and the Shareholder.

3.10 Since the Articles of Incorporation of Nv GEBE specifically designate the Managing Board of NV GEBE as the organ entitled to make interim dividend payments, the Shareholder of NV GEBE is not entitled to do such as per article 2:118 paragraph 2 Civil Code. There are good grounds to argue that because the Shareholder has not been entrusted with the right to declare interim dividend, a possible instruction from the Shareholder to the Managing Board to pay interim dividend lacks legal basis and in any case constitutes a violation of article 2:7 Civil Code. Such an instruction would namely infringe upon the independent authority of the Managing Board to determine whether or not payment of interim dividend is advisable considering the financial situation of NV GEBE and to make a proposal to that extent to the Supervisory Board and needless to say to the Shareholder.

3.11 NV GEBE does not have any acting/functioning Managing Director since December 1, 2015. There is furthermore no proposal from the Managing Board to pay out interim dividend to the Shareholder. It should be noted in this respect that the Temporary Managers also did not make interim-dividend payment proposal.

3.12 No request was in any case ever made to the Supervisory Board to approve the payment of interim dividend to the Shareholder. The Shareholder by the way never consulted with the Supervisory Board about its possible intention to declare –interim- dividend. This all, by itself, invalidates the resolution/instruction of the Shareholder of January 28, 2016 to declare 31 million guilders in –interim- dividend.

3.13 The aforementioned shows that NV GEBE can either pay dividend (i) in consultation with the Supervisory Board after discussing and approving the yearly financials, whereby logically an assessment must be made if the net result and equity of NV GEBE in a specific fiscal year justifies paying dividend or (ii) in case the Managing Board decides, pending the approval of financial statements, to propose paying interim dividend, which proposal must be approved by both the Supervisory Board and the Shareholder of NV GEBE. Clearly the rationale behind these provisions/requirements is to promote substantiated decisions/resolutions with regard to dividend payments, based on an analysis of the financial position of NV GEBE in a specific fiscal year.

3.14 Since the financial statements of NV GEBE for 2015 have not been submitted to the Shareholder for approval yet and where as such not subject of any discussion with the Shareholder to this date, it does not appear that the instruction/resolution from the Shareholder dated January 28, 2016 is premised on the –draft- financial statements 2015. A directive to pay interim dividend should be based on an –objective- in-depth analysis of financial statements, or at least draft financial statements, for a certain fiscal year. Not conducting such an analysis, as is obviously the case with the instruction/resolution of the Shareholder dated January 28th, 2016, is an indication of noncompliance with the diligence obligations.

4. <u>Instruction to enter into a loan agreement</u>

4.1 Neither the articles of incorporation of NV GEBE, nor the Civil Code and/or legislation of Sint Maarten, grants the Shareholder the right to instruct -the Managing Board of- NV GEBE to enter into specific loan agreements. The legality of such an instruction is at very best questionable. Moreover, since considerations with regard to entering into loan agreements intrinsically resolved around operational matters that are the prerogative of Managing Boards. It should in this respect also be noted that the fact that the consent of the Shareholder of NV GEBE is required for mortgaging immovable assets of NV GEBE to secure claims in excess of Naf 1.000.000. -, does not derogate to the aforementioned.

4.2 **Article 8 paragraph 3 sub c of the Articles of Incorporation of NV GEBE reads: "*The encumbrance by way of mortgage and/or in any other manner of any kind of immovable property or part thereof, which belongs in ownership to the corporation regarding an amount in total exceeding one million Guilders Netherlands Antilles currency (NAf .1,000,000.--).*" This provision must be read in conjunction with the first part of referenced article 8 which states: "*...Whenever the approval of the General Shareholders' Meeting is required for a legal act in a corporation in which the corporation is a shareholder, the Managing Board shall exercise the voting rights in connection with the approval in such corporation only after having obtained the approval of the Supervisory Board...*"**

4.3 The instruction of the Shareholder of NV GEBE to NV GEBE to enter into a loan agreement of 22 million guilders and subsequently pay 11 million guilders, as a result of the '*savings*' of 22 million guilders or at least not having burdened the liquidity of NV GEBE by paying 22 million guilders, constitutes a –disguised- instruction for payment of interim dividend. This interim dividend payment requirement is however not against the own-equity/profit of NV GEBE, but against its exploitation results. As stated under 2.1 above, these exploitation results are legally designated for payment of operational expenses of NV GEBE, such as the purchase of necessary equipment, e.g. generators/motors.

5. Annullable decisions and null and void

5.1 Article 2:21 of the Civil Code states that a decision of an organ of a corporation that is against the law or the articles of incorporation is null and void, unless the law determines otherwise. The second paragraph of same article states that decisions taken without a required quorum by the articles of incorporation, proposition, nomination or power, are also null and void. Decisions are also null and void until the required permission of another organ to validate same is possibly given.

5.2 The third paragraph of same article furthermore states that persons with a reasonable interest in compliance with a regulation that was not adhered to, can annul a decision of an organ of a corporation, amongst others if this decision is in violation of the articles of incorporation or a regulation, or in violation of the reasonability and equitability, demanded by article 2:7 of the Civil Code.

5.3 A decision that is null and void is not binding and illegal from inception. In this respect it should be noted that the decision can also be null and void because its content is against good moral customs/practice and/or the public order.

5.4 In contrast, an annullable decision is adopted legally, but can be destroyed/annulled by the judge upon request of an interested party. As long as an annullable decision has not been destroyed, it remains valid. A decision is annullable in case it violates a shareholder agreement or if for example of a corporation is bound to formalities to convey meetings wherein decisions are taken and if these formalities have been disregarded. Decisions can also be annulled if they violate the reasonability and equitability or if the best interest of the Corporation is seriously jeopardized as consequence thereof. In adjudicating whether or not the reasonability and equitability has been violated, the Court must look at all concrete facts and circumstances and evaluate all interest involved.

5.5 The statute of limitation to invoke annul -in short- illegal decisions of organs of a corporation is six (6) months, starting from the day that the disputed decision is taken. This means that interested parties have till July 28, 2016 to, if wanted, request the Court of First Instance to annul the decision of the Shareholder of NV GEBE dated January 28, 2016.

6. <u>Conclusion and recommendations</u>

6.1 The aforementioned shows that:

- there are very good grounds to argue that the instruction/resolution from the Shareholder of NV GEBE to pay in total 31 million guilders in interim dividend is null and void or should be annulled, for various reasons;
- there are very good grounds to argue that the instruction/resolution from the Shareholder of NV GEBE to enter into a loan agreement for 22 million guilders to purchase a generator/motor is null and void or should be annulled, for various reasons;

6.2 It is recommendable to convene an extraordinary shareholder's meeting as soon as possible to discuss the apparent illegality of the resolution of January 28, 2016 of the Shareholder, with the Shareholder. I understand that the Supervisory Board has already scheduled Shareholders' meetings on more than one occasion to that effect, however to no avail since the Shareholder has simply failed to respond. Nevertheless, it remains desirable to once again endeavor to, possibly whilst outlining the apparent illegality of the Shareholder's resolution in question to the Shareholder, convene an Extraordinary Shareholders' meeting, in order to exercise the best efforts to attain an overall resolution.

6.3 The Temporary Manager can, awaiting the appointment of a Managing Director of Nv GEBE, commencing at Surrey preparatory work to determine what amounts, if any, can be paid out in interim dividend to the Shareholder of NV GEBE, considering the current financial position of NV GEBE. Needless to say that it is in this respect very much advisable to obtain and advice of the external auditor/accountant, specifically when it comes to available reserves, the key performance indicators such as debts to equity ratio and existing financial and judicial commitments of NV GEBE, whereunder to its lenders.

6.4 If the Shareholder remains unwilling to participate in a shareholders meeting and/or otherwise address the issues raised with the Supervisory Board, the Supervisory Board, in keeping the best interest of NV GEBE, will have no other alternative but to seriously consider taking appropriate measures to timely annul, in so far as is legally necessary, the Shareholders' resolution/instruction of January 28, 2016.

I trust to have informed the Supervisory Board of Directors adequately herewith. Needless to say that you will find me at all times willing to elaborate further and/or answer specific questions.

Regards,

Jairo Bloem

Addendum D

TIJDELIJKE OVEREENKOMST VAN OPDRACHT

De ondergetekenden:

1. de naamloze vennootschap **N.V. GEMEENSCHAPPELIJK ELECTRICITEITSBEDRIJF BOVENWINDSE EILANDEN**, gevestigd op Sint Maarten, geregistreerd in het Handelsregister bij de Kamer van Koophandel van Sint Maarten onder nummer **21**, hierna te noemen de '**Vennootschap**', hierbij vertegenwoordigd door de Raad van Commissarissen ('RvC'),

   en

2. De heer **William Godfrey Brooks / Global Energy & Management Consultants**, geboren op **6 September 1963** te **Sint Maarten** en wonende op Sint Maarten aan de/te **Hope Road # 32**, hierna ook te noemen de '**Opdrachtnemer**';

In aanmerking nemende:

- dat de Vennootschap aan de Opdrachtnemer wenst op te dragen de werkzaamheden van Tijdelijke Bestuurder ex artikel 8:11 van de statuten van de Vennootschap;

- dat het gewenst is nadere afspraken in dat kader vast te leggen in onderstaande overeenkomst.

Verklaren te zijn overeengekomen als volgt:

Duur van de overeenkomst

1. Deze overeenkomst vangt aan op 3 december 2015 en duurt voort totdat de Aandeelhouder van de vennootschap ex artikelen 7 lid 2 en 8 lid 11 van de statuten van de vennootschap een directeur benoemd. Deze overeenkomst eindigt op dat moment van rechtswege, zonder dat een der partijen een opzegtermijn in acht dient te nemen. Voorts eindigt deze overeenkomst in elk geval van rechtswege op de laatste kalenderdag van het jaar waarin de Opdrachtnemer de zestig (60) jarige leeftijd heeft bereikt.

2. In het kader van deze overeenkomst zal de Opdrachtnemer door de RvC met inachtneming van de statutaire bepalingen van de Vennootschap tijdelijk als Bestuurder worden benoemd met ingang van 1 december 2015.

Functie en taak

3. De Opdrachtnemer zal de functie van Tijdelijke Bestuurder vervullen. De Opdrachtnemer zal zich bij de vervulling van zijn werkzaamheden dienen te houden aan de wet, de statuten van de Vennootschap en het Directiereglement van de Vennootschap. De Opdrachtnemer zal in het bijzonder alleen de aangelegenheden die noodzakelijk zijn om de bedrijfsvoering van de Vennootschap gaande te houden uitvoeren.

4. De werkzaamheden zullen voornamelijk op Sint Maarten worden uitgevoerd, doch de Opdrachtnemer erkent en aanvaardt dat de aard van de werkzaamheden met zich meebrengen dat hij ook geacht wordt deze waar nodig te verrichten.

5. De Opdrachtnemer zal conform de wet, de statuten en het Directie Reglement van de Venootschap dienen te rapporteren aan de Raad van Commissarissen en aan de Algemene Vergadering van de Aandeelhouders van de Vennootschap. Het Directie Reglement is analoog toepassing op de Tijdelijke Bestuurder en aldus de Opdrachtnemer. De Opdrachtnemer dient zijn werkzaamheden naar beste vermogen uit te voeren en de belangen van de Vennootschap te behartigen en hierbij de zorgen van een goed opdrachtnemer in acht te nemen. De Opdrachtnemer zal zich voorts zowel in de uitoefening van zijn werkzaamheden als daarbuiten onthouden van handelingen of gedragingen, die het aanzien van de Vennootschap of enige andere gelieerde onderneming zouden kunnen schaden.

6. De werkzaamheden van de Opdrachtnemer zijn vastgelegd in een afzonderlijke functieomschrijving (Bijlage 1). Deze functieomschrijving kan te allen tijde, waaronder uitdrukkelijk mede wordt verstaan in geval van herstructurering, en volledig ter discretie van de Raad van Commissarissen en/of de Algemene Vergadering van Aandeelhouders van de Vennootschap, worden gewijzigd voor werkzaamheden op vergelijkbaar niveau. De Opdrachtnemer is gehouden conform de statuten van de Vennootschap gevolg te geven aan verantwoorde verleende aanwijzingen van de Raad van Commissarissen van de Vennootschap omtrent de uitvoering van de opdracht.

7. De Opdrachtnemer dient de Raad van Commissarissen en de Algemene Vergadering van Aandeelhouders van de Vennootschap op de hoogte te houden van zijn werkzaamheden alsmede verantwoording van de wijze waarop hij zijn werkzaamheden uitvoert.

8. De Opdrachtnemer is gehouden de opdracht zelf in persoon te verrichten.

9. De Opdrachtnemer zal de werkzaamheden gedurende tenminste veertig (40) uur per week uitvoeren, in beginsel van maandag tot en met vrijdag, van 7.30 am tot 12.00 pm en van 1.00 pm tot 4.30 pm. De Opdrachtnemer erkent echter dat gelet op zijn functie de Opdrachtnemer in voorkomende gevallen (al dan niet op verzoek van de Vennootschap) ook buiten voornoemde tijdstippen werkzaamheden zal dienen te verrichten. Bij de vaststelling van de managementvergoeding alsook de overige voorwaarden van de Opdrachtnemer is hiermee rekening gehouden en de Opdrachtnemer heeft dan ook geen recht op een extra vergoeding voor meer gewerkte uren.

Managementvergoeding

10. De Vennootschap is aan de Opdrachtnemer een vast compensatie verschuldigd van Naf 22.500.- per maand, uit te betalen. De opdrachtnemer is zelf verantwoordelijk om de verschuldigde belastingen en sociale premies hierover te voldoen. Partijen onderkennen dat de Vennootschap opgaaf zal doen van onderhavige Opdrachtovereenkomst aan de Belastinginspectie van Sint Maarten.

11. Indien de Opdrachtnemer niet in staat is om de werkzaamheden uit te voeren wegens ziekte of ongeval, zal de Vennootschap de managementvergoeding *pro rato* inkorten, met de door de Opdrachtnemer niet gewerkte uren, uitgaande van 40 zelfstandige dienstverleningsuren per week.

Overige (onkosten)vergoedingen

12. Aan de Opdrachtnemer wordt een mobile telefoon ter beschikking gesteld die wordt gebruikt ter uitoefening van zijn werkzaamheden. De kosten van deze mobiele telefoon worden tot het bedrag van *ƒ* 500.- per maand door de Opdrachtgever bekostigd. De Opdrachtnemer is verantwoordelijk om zijn managementvergoeding te bruteren, met het bedrag van de telefoonkostenvergoeding.

13. In het kader van de zelfstandige uitoefening van de werkzaamheden kan het voorkomen dat de Opdrachtnemer bijzondere onkosten moet maken, ten behoeve van de Vennootschap. Ter bevordering van een efficiënte bedrijfsvoering zal de Vennootschap daartoe aan de Opdrachtnemer een company credit card zal verstrekken, met een limiet van USD 5,000.00. De Opdrachtnemer verplicht zich om de company credit card slechts voor zakelijke doeleinden te gebruiken, slechts indien strikt noodzakelijk en binnen redelijke grenzen. Alle kosten gemaakt met de company credit card dienen door de Opdrachtnemer verantwoord te worden door middel van het overleggen van bonnen/facturen en 'expense reports' binnen een week na het verkrijgen van de credit card statement, aan de van de Vennootschap. Kosten door de Opdrachtnemer gemaakt die niet aan de hierin genoemde voorwaarden voldoen, zullen voor rekening van de Opdrachtnemer zijn en zullen worden verrekend met het eerstvolgende management-of onkostenvergoeding waar de Opdrachtnemer recht op zal verkrijgen.

14. Bij het maken van dienstreizen door de Opdrachtnemer naar het buitenland heeft de opdrachtnemer recht op een dagvergoeding (exclusief hotel kamerkosten). Hotel kamerkosten met de eventuele belastingen komen apart voor rekening van de Vennootschap. Dienstreizen naar het buitenland van de Opdrachtnemer worden tijdig gemeld aan de Raad van Commissarissen en volgens het vastgestelde reisbeleid van de Vennootschap.

Auto

15. De vennootschap zal aan de Opdrachtnemer een Ford Explorer ter beschikking stellen. Kosten in verband met eventuele verkeersovertredingen door opzet of bewuste roekeloosheid van de Opdrachtnemer zelf, komen volledig voor rekening van de Opdrachtnemer. De fiscale gevolgen van het gebruik van de auto voor zowel bedrijf- als privédoeleinden door de Opdrachtnemer komen volledig voor rekening van de Opdrachtnemer. De Opdrachtnemer is dus verantwoordelijk voor de brutering in het kader van zijn inkomstenbelasting van het persoonlijk en zakelijk gebruik van de Ford Explorer.

Nevenfuncties

16. Partijen onderkennen het belang voor de Opdrachtnemer om al zijn beschikbare werktijd in te zetten ten behoeve van de Vennootschap. De Opdrachtnemer verbindt zich, mede

ter betuiging van zijn instemming met de gestelde noodzaak tot het zich voltijd inzetting ten behoeve van de Vennootschap, om zonder schriftelijke toestemming van de voorzitter van de Raad van Commissarissen geen nevenfuncties, bezoldigd of onbezoldigd, te aanvaarden dan wel diensten voor derden verrichten, in eigen beheer dan wel door middel van een bedrijf.

Geheimhouding en teruggave eigendommen

21. De Opdrachtnemer zal zowel gedurende als na een eventuele beëindiging van deze overeenkomst, om welke reden dan ook, strikte geheimhouding betrachten over alles wat bij de uitoefening van zijn werkzaamheden te zijner kennis komt of is gekomen in verband met zaken, belangen en cliënten van de Vennootschap zomede de met haar gelieerde ondernemingen, behoudens enige wettelijke verplichting tot openbaarmaking.

22. Alle goederen, daaronder begrepen schriftelijke stukken en fotokopieën daarvan, welke de Opdrachtnemer verkrijgt tijdens de duur van deze overeenkomst, zijn en blijven eigendom van de Vennootschap. De Opdrachtnemer is gehouden deze goederen op de dag waarop de overeenkomst eindigt of bij schorsing of op non-actief stelling door de wederom aan de Vennootschap ter beschikking te stellen.

Beëindiging van de overeenkomst

23. Partijen kunnen deze overeenkomst te allen tijde opzeggen met inachtneming van een opzeggingstermijn van 1 maand. Daarnaast bestaat voor de Vennootschap de mogelijkheid om zonder inachtneming van een opzegtermijn de overeenkomst te beëindigen in geval zich een dringende reden voordoet.

24. Deze overeenkomst eindigt van rechtswege in de volgende gevallen:
    a) bij benoeming door de Aandeelhouder van een Bestuurder voor de Vennootschap;
    b) bij het bereiken van de zestig (60) jarige leeftijd door de Opdrachtnemer, mocht deze overeenkomst dan nog van kracht zijn, en dan wel op de laatste kalenderdag van het jaar waarin de Opdrachtnemer de zestig (60) jarige leeftijd heeft bereikt;
    c) door overlijden van de Opdrachtnemer;
    d) ingeval van faillissement van een der partijen;
    e) ingeval de Opdrachtnemer bij besluit van de Algemene Vergadering van Aandeelhouders of van de RvC wordt ontslagen.

Fiscale voorschriften

25. De Opdrachtnemer is geheel verantwoordelijk voor alle fiscale gevolgen voor de betaling door Vennootschap aan de Opdrachtnemer van de managementvergoeding en overige (onkosten)vergoedingen.

Toepasselijk recht en bevoegde rechter

26. Op deze overeenkomst is het recht van Sint Maarten van toepassing. Eventuele

geschillen voortvloeiende of verband houdende met deze overeenkomst zullen worden voorgelegd aan de bevoegde rechter in Sint Maarten.

Aldus in tweevoud opgemaakt en ondertekend op Sint Maarten op 1 december 2015.

Dec. 3, 2015 — 3-12-2015

De Vennootschap — De Opdrachtnemer

Ondertekend door: R.A. Richardson

Titel: Chairman SBED N.V. GEBE

E.W. Gumbs

Addendum E

Minister of Housing, Spatial Planning, Environment & Infrastructure

ST. MAARTEN

Angel Meyers
Minister

Clem Labega Square
P.O. Box 943
Philipsburg
St. Maarten

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F: +1721 53-7935
E: angel.meyers@sintmaartengov.org
W: http://www.sintmaartengov.org

Philipsburg January 11, 2016

The Supervisory Board of Directors (SBOD) of NV GEBE
Present

Attention: Mr. Rene Richardson, Chairperson of SBOD of NV GEBE
Reference: performance report of William Godfrey Brooks

Dear Mr. Richardson,

By letter date June 18 2015, the SBOD of NV GEBE presented to the Shareholder of NV GEBE a binding nomination to appoint Mr. William Godfrey Brooks as Chief Executive Officer (Director) of NV GEBE, in accordance with article 7 sub 4 of the Articles of Incorporation of NV GEBE.

In the interim the SBOD has appointed Mr. Williams Godfrey Brooks as Temporary Manager of NV GEBE in accordance with article 8 sub 11 of the Articles of Incorporation N.V. GEBE. Further NV GEBE entered into a Temporary Assignment Agreement with Mr. Brooks for the function of Temporary Manager effective December 3, 2015. The job description of the Temporary Manager forms and integral part of the Assignment Agreement entered into with Mr. Brooks.

On behalf of the Shareholder of NV GEBE I herewith request the Board of NV GEBE to present the Shareholder of NV GEBE with a written report specifically outlining the level of performance and functioning of Mr. William Brooks in his capacity of Temporary Manager as of December 5, 2015 until present taking into consideration the job description of Mr. Brooks. The performance report is to be provided no later than Thursday January 14, 2016 to the Shareholder Representative of NV GEBE.

Sincerely,

Minister Angel Meyers,
Shareholder Representative of N.V. GEBE

Addendum F

SUPERVISORY BOARD OF DIRECTORS N.V. GEBE

Mr. Rene A. Richardson,	Chairman	rene.adrien.richardson@gmail.com	520-0021
Ms. Zylena Bary,	Vice Chairlady	barylegal@gmail.com	553-4141
Ms. Veronica Jansen-Webster,	Member	veronicawebster16@gmail.com	520-4945
Mr. Patrice Gumbs,	Member	ptgumbs62@gmail.com	553-0001
Mr. Edwin Gumbs,	Member	ed1949@live.nl	587-4195

HAND DELIVERED AND PER EMAIL

The Honorable Mr. A. Meyers

Minister VROMI

Present

Sint Maarten, January 25th, 2016

Re: Performance report Mr. William Brooks

Dear Mr. Meyers,

The Public Entity Country Sint Maarten in its capacity of the sole shareholder of NV GEBE, hereinafter to be referred to as: "the Shareholder", requested the Supervisory Board of Directors of NV GEBE ('SBOD") by letter dated January 11, 2016 for a performance report on the Temporary Manager, Mr. William Brooks. This request followed what was discussed during the shareholders meeting of NV GEBE of December 15th and 17th, 2015. In that meeting the Shareholder stated that it wanted to make use of the unique opportunity/circumstance following the appointment by SBOD ex article 8 paragraph 11 of the articles of incorporation of NV GEBE of Mr. William Brooks as the Temporary Manager, to in short determine if Mr. William Brooks is a suitable candidate for a Director function within NV GEBE.[1]

Mr. William Brooks has been appointed as the Temporary Manager by SBOD on December 3, 2015. A copy of his Assignment Agreement, with exhibits is annexed hereto as **Addendum A** and forms an inseparable part of this letter. To date, SBOD conducted three (3) formal meetings with Mr. William Brooks as the Temporary Manager, namely on December 14, 2015, January 14, 2016 and January 21, 2016. There has moreover been

[1] As is known, SBOD nominated Mr. William Brooks on June 18th, 2015 for the vacant function of Chief Executive officer of NV GEBE.

frequent contact between Mr. William Brooks and members of SBOD, in particular my person as the Chairman of SBOD. One and other also in conformity with the Corporate Governance Code that in short requires frequent contact between the Chairman of SBOD and the Managing Directors and/or legal and/or factual representatives of NV GEBE.

The Audit Committee of SBOD is furthermore frequently appraised by the Internal Audit Department of NV GEBE of relevant events that take place within NV GEBE, as such also complaints and positions by – senior – Management of NV GEBE, also in particular on the functioning of Mr. William Brooks. When relevant, these matters are subsequently discussed within SBOD. Mr. William Brooks has subsequently, again in relevant cases/circumstances, been requested by SBOD to render reason and account.

Following the formal and informal contact and discussions with Mr. William Brooks SBOD was able to make some preliminary assessments based on actual performance, something that was not possible when considering who to nominate for the vacant function of Chief Executive Officer for NV GEBE.
The preliminary assessments of SBOD are as follows:

(i) Mr. William Brooks displays proper technical knowledge for the relevant business affairs of NV GEBE;
(ii) Mr. Brooks has so far shown an adequate working discipline;
(iii) Mr. William Brooks has largely been able to, when asked for reason and account, explain his actions in a coherent manner;
(iv) Contrary to the presently suspended Chief Financial Officer, Mr. Rene Gartner, Mr. Brooks has shown to at least understand complicated issues and so far maintained consistent positions, instead of constantly flip-flopping that SBOD regretfully became accustomed to when dealing with the suspended Chief Financial Officer, Mr. Rene Gartner;
(v) Despite the fact that SBOD outlined the restrictions that are inherent to the function of Temporary Manager, Mr. William Brooks has, from starters, taken a lot of actions and decisions that violate the limitations of his function. He acts and continues acting as if he has been permanently appointed as a Director of NV GEBE;
(vi) In a relatively short period of time Mr. Brooks has taken several appointment decisions, e.g. Mr. B. Kingsale as the Human Resource Manager, Mr. K. Chittick as the Manager of the Power Plant, Mr. E. Brooks as Interim Distribution Manager of NV GEBE that are certainly not required for the

continued functioning of NV GEBE. These appointments constitute a violation of the competency of Mr. William Brooks as the Temporary Manager of NV GEBE;

(vii) The appointments made by Mr. Brooks, in particular his appointment of his brother as the Interim Distribution Manager of NV GEBE, which went accompanied with the decision not to extend the contract of the person who was performing that function, namely Mr. G. Williams, shows clear characteristics of favoritism, not to say nepotism;

(viii) It appears, despite some generic explanation given by Mr. Brooks, that no procedures were followed by Mr. William Brooks in coming to his appointment decisions. It is unclear based on what criteria, if any, these decisions were taken. In particular, the appointment of Mr. E. Brooks as the Interim Distribution Manager is questionable, considering previous warnings issued by NV GEBE to the person in question for failing to adequately perform same function. Furthermore, no justifiable/plausible explanation has been given as to why these appointment decisions were – urgently – necessary to safeguard the business continuity of NV GEBE;

(ix) during the shareholders' meeting on December 15, 2015, Mr. William Brooks told the Shareholder that it had or was misusing the funds of NV GEBE, or NV GEBE itself for that matter, for its projects. This statement was inappropriate, to say the least and indicative of a lack of understanding as to how to properly conduct business affairs, or simply an unwillingness to do so. SBOD has noticed that this goes accompanied with an extremely stubborn and not compromising demeanor, that impairs solution finding and is in any case unfitting of a Chief Executive Officer;

(x) Mr. William Brooks so far has shown an unwillingness and in any case great reluctance to understand the need for generic and more specific projects established by the Shareholder for NV GEBE. These projects were discussed several times by SBOD with Mr. William Brooks to also be able to assess his willingness and capability to realize these projects and therewith the general policy of the Shareholder, if and when he is possibly appointed as a Director of NV GEBE. Again, Mr. William Brooks has significantly different concepts and visions for NV GEBE that are -largely- not in alignment with the position by the Shareholder, SBOD and the articles of incorporation of NV GEBE, for that matter;

(xi) specific advises, not to say instructions of SBOD, to handle long-standing matters, were not, at least not expeditiously followed up;

(xii) Mr. Brooks has so far selectively and abruptly excluded certain persons within NV GEBE from his discussions and decision-making process in ongoing matters, whilst bringing in new persons to handle these matters. These decisions do not only violate his assignment as the Temporary

Manager, they result in unrest and sentiments within -senior- Management and other employees of NV GEBE of being specifically targeted or excluded by Mr. William Brooks, for personal instead of objective business reasons.;

(xiii) Mr. William Brooks maintained budget posts for work that was already carried out, e.g. business plan for NV GEBE;

(xiv) Mr. William Brooks has finally taken some decisions or initiated the process of taking decisions that evidently require the consent of SBOD, without however consulting with SBOD beforehand. As such, the senior relief program of NV GEBE was canceled by Mr. William Brooks, whilst one of the specific policy projects for NV GEBE, as per the directives of the Shareholder is to further develop this program. Mr. Brooks is aware hereof. Another somewhat controversial decision or at least preliminary decision of Mr. William Brooks is the purchase of a company vehicle for his brother, Mr. E. Brooks, for an amount that nota bene exceeds the Naf 50,000. - limit for which a Managing Director can enter into transactions, without previous consent of SBOD. It's unclear whether or not this decision has already been taken in final form, or whether the decision is presently still being prepared. Regardless. the necessity and also ethical nature of such a – considered- decision remain questionable, to say the least.

Conclusion

Before taking the decision to appoint Mr. Brooks as a Temporary Manager, SBOD conducted various discussions with Mr. Brooks. The generic impressions of NV GEBE of Mr. William Brooks based - possibly - on his past performance was that he used to act in a somewhat arrogant, stubborn, dismissive and uncompromising manner. Since none of the members of SBOD where in function during the previous tenure of Mr. William Brooks as Chief Executive officer of NV GEBE, these 'statements' were taken with a cautionary grain of salt. SBOD however did specifically discuss them with Mr. William Brooks, in order to make its own preliminary assessment and more importantly ensure that Mr. William Brooks was aware of these matters. Next, to promote a better functioning of Mr. Brooks as Temporary Manager.

The core purpose of SBOD for discussing these issues, alongside with the specific job requirements of Mr. William Brooks, was to in short promote a better functioning of Mr. William Brooks and appraise him of the perceived sensitivities when it comes to the manner in which he directed NV GEBE in the past. Mr. Brooks's response thereto was in short that the lessons of the past were learned and that he was very much willing to move forward with addressing the core matters of NV GEBE, in an open and transparent manner, thereby respecting the various functions, positions and procedures in NV GEBE. This all, whilst maintaining open communication lines.

However, the actions of Mr. William Brooks within a short period of time, to a significant degree actually confirm the generic impressions about his functioning in the past, as related to SBOD by various key persons within the organization of NV GEBE and as discussed, as stated, specifically with Mr. William Brooks before his appointment as the Temporary Manager.
With the knowledge that SBOD presently has of the actual functioning of Mr. William Brooks, SBOD would, if asked right now by the Shareholder to take a decision on the nomination for the vacant function of CEO, not nominate Mr. William Brooks for that position.

I trust to have informed the Shareholder adequately herewith, on behalf of SBOD.

Yours truly,

25/01/2016

Rene Richardson
Chairman

Addendum G

Supervisory Board of Directors (NV GEBE)

Attn.: Mr. Rene Richardson, Chairman

Philipsburg

January 28, 2016

Subject: resignation as interim managing director of NV GEBE

Dear Mr. Richardson,

In reference to the meeting held with the Council of Ministers this morning, and the turn of events that have taken place, I hereby submit my letter of resignation as Interim Managing Director of NV GEBE, effective January 29, 2016.

All property of NV GEBE presently in my possession will be delivered to the Secretariat in the presence of the Head of the Safety, Security and Environmental Health Department, today.

In the meantime, I will await the ratification of my appointment as the Chief Executive Officer of NV GEBE.

Hoping to have informed you sufficiently, I remain

Sincerely,

ir William G. Brooks

cc: Council of Ministers

Addendum H

SUPERVISORY BOARD OF DIRECTORS N.V. GEBE

Mr. Rene A. Richardson,	Chairman	rene.adrien.richardson@gmail.com	520-0021
Ms. Zylena Bary,	Vice Chairlady	barylegal@gmail.com	553-4141
Ms. Veronica Jansen-Webster,	Member	veronicawebster16@gmail.com	520-4945
Mr. Patrice Gumbs,	Member	ptgumbs62@gmail.com	553-0001
Mr. Edwin Gumbs,	Member	ed1949@live.nl	587-4195

HAND DELIVERED AND PER EMAIL

The Honorable Mr. Angel Meyers (Minister of VROMI and Shareholder Representative for NV GEBE)

Present

Wednesday, February 03, 2016

Honorable Minister Meyers,

As is known, Mr. William Brooks resigned as the Temporary Manager on Thursday, January 28, 2016 as per Friday, January 29, 2016. This resignation followed a shareholders meeting of NV GEBE wherein the performance report made by the Supervisory Board of Directors of NV GEBE, hereinafter: "*the Supervisory Board*" was discussed. This performance report followed the request of the Shareholder of NV GEBE ("*the Shareholder*") dated January 11, 2016 that on its turn was premised on the considerations of the Shareholder as duly noted in the minutes of the shareholder meetings of December 15 and 17, 2015. The Supervisory Board will elucidate further hereunder on the immediate resignation of Mr. William Brooks and more in particular irregular and questionable decisions taken by latter.

Directly following the shareholders meeting of Thursday, January 28, 2016, the Supervisory Board conducted an informal meeting. During that meeting the Supervisory Board decided to call a meeting with Mr. William Brooks for Monday, February 1, 2016 to discuss the 2016 budget and his incorrect decisions/actions as the Temporary Manager of NV GEBE. The Supervisory Board learned after its informal meeting that Mr. Brooks resigned later that afternoon as the Temporary Manager of NV GEBE, as per Friday, January 29, 2016.

During its meeting of February 1, 2016, the Supervisory Board considered various candidates for the function of the Temporary Manager, amongst others Mr. Andrew Zagers. The main criteria for appointing a Temporary Manager were someone with: (i) requisite experience in the electricity and water production/distribution business, (ii) direct knowledge of operational and administrative matters of NV GEBE, (iii) affinity with the business of NV GEBE, (iv) knowledge and understanding of its culture and as such (v) ability to put short and briefly: 'hit the ground running'. The fact that Mr. Zagers has been substituting for various directors for years, in their absence, also played an important role in the decision of the Supervisory Board. Fact of the matter is that Mr. Zagers has signatory powers on the operational accounts of NV GEBE and close involvement with payroll and other important payment operational matters. All of this is important to safeguard the proper continuity of the business of NV GEBE.

The Supervisory Board appointed Mr. Andrew Zagers with unanimous consent on Monday February 1st, 2016 as the Temporary Manager of NV GEBE, pending the appointment by the Shareholder of a director for NV GEBE, in the existing vacant functions of Chief Executive Officer, Chief Operational Officer and/or a final decision by the Shareholder of NV GEBE pertaining to the (dis)continuation of the Assignment Agreement between NV GEBE and Mr. Rene Gartner.

Please note that Mr. Zagers only expressed a willingness to perform the function of Temporary Manager for a brief period of time. The definite appointment by the Shareholder of a director for NV GEBE and/or decision on the (dis)continuation of the Assignment Agreement between NV GEBE and Mr. Gartner, remains therefor a pressing matter. In this respect it should be noted that the Temporary Manager of NV GEBE is limited in what he/she can legally realize. As per the Articles of Incorporation of NV GEBE, the Temporary Manager is only entitled to undertake the actions that are really necessary to safeguard the business continuity of NV GEBE; nothing more and nothing less.

The function of a Temporary Manager is inherently one for a short period of time. Fact of the matter is that the Supervisory Board appointed a Temporary Manager on December 3rd, 2015. NV GEBE is being managed on the overall for more than two (2) months by a Temporary Manager. This is, euphemistically said, not an ideal situation and one that in the opinion of the Supervisory Board hampers decision-making that is, although not necessary directly required for the continued proper operation of NV GEBE, nevertheless of the utmost importance for the company and its stakeholders. That brings me to the following.

The former Temporary Manager of NV GEBE, Mr. William Brooks, made some poor choices, to put this softly, during his almost two (2) months' tenure as a Temporary Manager. His last decision before resigning as a Temporary Manager, only adds to the controversy. The Shareholder should know that one of the last actions of Mr. William Brooks before conducting a meeting with the Managers of NV GEBE, was to increase the salary of his brother who is employed with NV GEBE, Mr. Emmanuel Brooks.[1] The Supervisory Board meanwhile established

[1] Mr. William Brooks took this decision shortly before convening a meeting with the Managers of NV GEBE at 1400 hrs. on Thursday, January 28, 2016. The Supervisory Board understood/learned from several Managers of NV GEBE that Mr. Brooks informed them

that the procedures as laid down in the Collective Labor Agreement, which regulates the appointment decisions by the Managing Board of NV GEBE, were severely and completely disregarded by Mr. William Brooks. Moreover, that the vehicle purchased by Mr. William Brooks for the function in which he placed his brother, Mr. Emmanuel Brooks, was not only not-budgeted, the acquisition price therefor exceeded the limitations for which Mr. William Brooks was entitled to commit NV GEBE, without previous consent of the Supervisory Board.

It should be noted that during the shareholders meeting of Thursday, January 28, 2016 Mr. William Brooks informed the Shareholder that there exists a situation of breach of trust between him and the Supervisory Board. Remarkably, when asked by one of the members of the Council of Ministers, how he would then function, if appointed as the Chief Executive Officer of NV GEBE, Mr. William Brooks responded by stating that in that case there would not be any problem, since he would be in a "*fixed position*"

Mr. William Brooks was, or should have been, aware of the illegal nature of his decisions. Not only because of his experience in the past as a director of NV GEBE, but more in particular because the Supervisory Board elaborately and on multiple occasions outlined the restrictions of his functioning to him. The Supervisory Board will inform Mr. William Brooks by separate letter about these matters and the fact that the Supervisory Board, again in its meeting of February 1, 2016, resolved to instruct the newly appointed Temporary Manager to reverse all the illegal decisions taken by Mr. William Brooks. The Shareholder will be copied in this letter.
The rules and regulations within NV GEBE serve the purpose of fostering check and balance and preventing misuse/abuse. They consequently should be maintained.

During the shareholders meeting of Thursday, January 28, 2016 members of the Council of Minister questioned why the Supervisory Board did not discuss the content of the performance report beforehand with Mr. William Brooks. As was meanwhile explained, whilst the literal wording of the performance report was not discussed beforehand with Mr. William Brooks, the majority content thereof was amply discussed in the three (3) meetings conducted in less than two (2) months by the Supervisory Board with Mr. Brooks. Moreover, in various informal meetings and telephone discussions between the Chairman of the Supervisory Board and Mr. Brooks. Mr. Brooks was thus in short well aware of the position of the Supervisory Board when it comes to his performance, or for a better word: the lack thereof.

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during that meeting that the Shareholder in short wants to plunder NV GEBE and that the Supervisory Board wants to micromanage him, because he has not yet been appointed as the Chief Executive Officer.

The purpose for the requested performance report was for the shareholder to further consider the nomination previously made by the Supervisory Board; a nomination that logically could not be premised by the Supervisory Board on actual performance considerations. The performance report was thus a so-called internal communiqué between two (2) organs of NV GEBE, namely the Supervisory Board and the Shareholder. This document was not, at least not primarily, intended to be used in possible decision-making by the Supervisory Board with regard to Mr. Brooks. Consequently, there was no need, within all reasonability, to discuss the literal wording of this document with Mr. Brooks beforehand.

Please note in this respect that the articles of incorporation of NV GEBE, contrary to what is required as per those articles and the law for decision-making on (dis)continuation of the functioning of directors of NV GEBE, do not require hearing Temporary Managers in order to allow them to give reason and account before possibly deciding on whether or not to terminate such appointments. Nevertheless, the Supervisory Board diligently heard Mr. William Brooks on multiple occasions, thereby giving him the possibility to explain himself on his decisions and actions.

Finally, the Supervisory Board also wants to use this opportunity to request clarification for the following. The Supervisory Board has been addressing its letters to the Shareholder to you, in your capacity as the Shareholder Representative, as per the National Decree dated April 2012. Please confirm whether or not this is the right manner to address the Shareholder, or if the letters to the Shareholder should otherwise be addressed to the Chairman of the Council of Ministers, namely the Prime Minister, the Hon. Minister William Marlin. The Honorable Minister Marlin will for good order sake be copied in the content of this letter.

I trust to have informed the Shareholder of NV GEBE adequately herewith on behalf of SBOD.

Yours truly

Feb. 03, 2016

Rene Richardson
Chairman

c.c. The honorable Prime Minister Mr. William Marlin

Addendum I

PRIME MINISTER OF SINT MAARTEN
MINISTER-PRESIDENT VAN SINT MAARTEN

Postal address:
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To: The Supervisory Board of Directors of N.V. GEBE
Att. Mr. Rene Richardson, Chairman

Interim Managing Director
Att. Mr. Ir. Williams Brooks

P.O. Box 123
PRESENT
Via e-mail: rene.adrien.richardson@gmail.com
brooks.william@.nvgebe.com

Date: January, 28 2016
Reference: 2341#/15
Subject: Resolution of Shareholders meeting January 28, 2016
Attachment(s): --

Dear Mr. Richardson and Mr. Brooks,

In reference to our extraordinary shareholders meeting January 28, 2016, you are hereby informed of the resolution taken by the shareholder of which a copy has been attached.

Sincerely,

PRIME MINISTER OF ST. MAARTEN

William Marlin

Cc. Council of Ministers

RESOLUTION

OF THE SHAREHOLDERS

OF N.V. GEMEENSCHAPPELIJKE ELECTRICITEITSBEDRIJF BOVENWINDSE EILANDEN

Taking into consideration:

the extraordinary meeting of shareholders of N.V. Gemeenschappelijke Electriciteitsbedrijf Bovenwindse Eilanden held on December 15, with a continuation on December 17 and January 28, 2016 in the Administration building at Clem Labega Square

the correspondence between the Shareholder and the Management and Supervisory Board of Directors of N.V. Gemeenschappelijke Electriciteitsbedrijf Bovenwindse Eilanden (GEBE) dated among which January 7, 2016 with reference #2341b/15.

RESOLVED:

1. To approve the request of management and Board of Directors of N.V. Gemeenschappelijke Electriciteitsbedrijf Bovenwindse Eilanden (GEBE) to purchase the Wartsila Dual Fuel Generator Set of 11.3 MWe on a turnkey delivery basis for a sum of EURO 10.342.000, with a downpayment of 15% at the signing of the turnkey delivery contract. The balance of the purchase price to be financed by a local financial institution on a long term basis in accordance with the conditions outlined in the letter from the shareholder to GEBE under reference #2341B/15.

2. To declare a temporary dividend in the amount of NAf. 11 million payable immediately to the shareholder in view of the fact that no annual budget, no audited financial statements nor investment plan have yet been submitted to the shareholder for approval, and by financing the remaining balance of the purchase price of the Wartsila engine, which management of GEBE N.V. intended to pay for in cash and in full, NAf. 22 million in liquid cash becomes available. It is therefore resolved to, pending the finalization of the audited financial statements, the budget for 2016 and the proposal for reserves, to temporarily declare an advance dividend of NAf. 11 million and to reserve a decision on the remaining NAf. 11 million until the audited statements and other deliverables by management are completed.

3. Over the years GEBE has accumulated in excess of NAf. 35 million in reserves in managing the water distribution on Sint Maarten for and behalf of the government of Sint Maarten. GEBE failed to submit its multi-annual investment plan, liquidity plan, budget plan, and financial plan for approval,

which as per agreement had to be presented annually for approval by government. It is therefore hereby resolved to instruct GEBE to immediately remit NAf. 20 million of these accumulated water management reserves to government. The shareholder of GEBE agrees with and ratifies the remittance of these reserves to government.

4. It is further resolved that management of GEBE executes the above resolutions.

THE SHAREHOLDER OF

N.V. GEMEENSCHAPPELIJK ELECTRICITEITSBEDRIJF BOVENWINDSE EILANDEN

ON BEHALF OF THE COUNCIL OF MINISTERS

THE PRIME MINISTER OF SINT MAARTEN, Mr. W.V. MARLIN

January 28, 2016

respective the Secretary and Treasurer of the Supervisory - Board. --

6. The Vice-Chairman shall act as Chairman of the --------- Supervisory board whenever the Chairman is precluded from - acting. --

7. The meetings of the Supervisory Board shall be chaired - by the Chairman of the Supervisory Board and in case the -- latter should be absent or precluded from officiating, by - the Vice-Chairman and in case of absence of both, by a ---- person to be designated for that purpose by the meeting. -- The proceedings at the meeting of the Supervisory Board --- shall be recorded in minutes by the person designated for - that purpose by the chairman of the meeting. --------------

8. The following persons are not eligible for appointment - in the capacity of Supervisory Director: -----------------

a. Persons employed by the corporation; ------------------
b. Ministers and Deputy Ministers of the Netherlands ------ Antilles; ---
c. The Lt.-Governor of the Island Territories Sint Maarten, Sint Eustatius and Saba. -------------------------------
d. Members of the Parliament of the Netherlands Antilles -- and of the Island Council of the Island Territories ---- Sint Maarten, Sint Eustatius and Saba. -----------------
e. Ministers of the Netherlands Antilles or Commissioners - of the Island Territory of Sint Maarten, Sint Eustatius and Saba. ---
f. Members of other governmental bodies within the Kingdom of the Netherlands. ------------------------------------

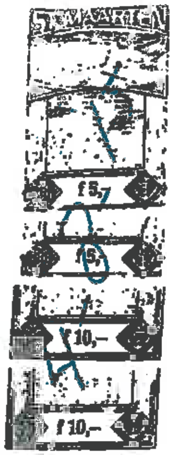
If a Supervisory Director should accept one of the above -- mentioned functions, he shall retire from his function as - Supervisory Director by the operation of law, as of the --- date on which his new official status commences. ---------- Moreover are not eligible for appointment as Supervisory -- Director any persons, who represent such interests as to -- make a conflict of interest likely, whereby there might --- arise contravention with the proper execution of his tasks and duties as Supervisory Director. ----------------------

9. Experts with the following background should be -------- appointed in the Supervisory Board: ----------------------

- a person with a technical background; ------------------ (electro-technical/structural engineering); -------------
- a person with a financial background; -------------------
- a person with a legal background. -----------------------
- a person with a business economics/commercial background;
- a person with a human resource background; --------------

Supervisory Directors should be persons who may be expected to possess such qualifications as to be able to render a --

Addendum J



In naam van de Koning

Zaaknummer: KG 2015/98
Datum: 16 juli 2015
Uitspraaknr: 70

GERECHT IN EERSTE AANLEG VAN SINT MAARTEN

Vonnis in kort geding

In de zaak van:

De naamloze vennootschap
Gemeenschappelijk Electriciteitsbedrijf Bovenwindse Eilanden N.V.,
h.o.d.n. N.V. GEBE,
gevestigd en kantoorhoudende in Sint Maarten,
eiseres in conventie, gedaagde in reconventie,
gemachtigde: mr. J.G. Bloem,

tegen:

Romelio MADURO,
wonende in Sint Maarten,
gedaagde in conventie, eiser in reconventie,
gemachtigden: mrs. S.H.M. Ibrahim en N. de la Rosa.

Partijen zullen hierna ook worden aangeduid als **Gebe** respectievelijk **Maduro**.

1. Verloop van het kort geding

Op 18 juni 2015 heeft Gebe een inleidend verzoekschrift ingediend, met producties. Op 24 juni 2015 heeft Maduro een eis in reconventie ingediend. De behandeling heeft plaatsgevonden op 25 juni 2015. Daarbij waren aanwezig de leden van de Raad van Commissarissen van Gebe (Raad van Commissarissen), te weten de heer
R. Richardson (voorzitter), mevrouw Z. Bary, mevrouw V. Webster-Jansen en de heer E. Gumbs, allen bijgestaan door mr. Bloem voornoemd. Maduro is in persoon verschenen, bijgestaan door mrs. Ibrahim en De la Rosa voornoemd. Partijen hebben hun respectieve standpunten (nader) toegelicht aan de hand van pleitnotities en voorafgaand aan de behandeling ingediende producties.

Nu de grondslag van de vordering ziet op de geldigheid van het benoemingsbesluit van Maduro, welk besluit genomen is door de aandeelhoudster, het Land Sint Maarten, heeft het Gerecht het noodzakelijk geacht informanten op te laten roepen die het Gerecht een toelichting kunnen geven over de totstandkoming en inhoud van het benoemingsbesluit. Hiertoe zijn verschenen drs. Bas van den Bosch, mr. Lineke Haandrikman en mr. Angelique Gumbs, allen van de afdeling Legal Affairs van het Land.

Vonnis is nader bepaald op heden.

2. Vorderingen en geschil tussen partijen

2.1. In conventie

Gebe vordert dat het Gerecht bij vonnis uitvoerbaar bij voorraad:

Primair:

- Maduro beveelt om, hangende de vaststelling van de rechtsgeldigheid van het benoemingsbesluit, geen bestuursdaden te verrichten namens Gebe, op straffe van een dwangsom van USD 100.000,00 per dag;
- Maduro de toegang te ontzeggen tot de burelen van Gebe, op straffe van een dwangsom van USD 100.000,00 per dag;
- Maduro beveelt om binnen 48 uur na betekening van het in deze te wijzen vonnis de in productie 22 opgesomde goederen aan Gebe te verstrekken, op straffe van een dwangsom van USD 1.000,00 per dag;
- Gebe machtigt om hangende de vaststelling van de rechtsgeldigheid van het benoemingsbesluit Maduro te doen uitschrijven als bestuurder van Gebe in de registers van de Kamer van Koophandel;
- Maduro veroordeelt in de proceskosten;

Subsidiar:

- Maduro beveelt om, hangende de non actiefstelling dan wel schorsing van 11 juni 2015 door de Raad van Commissarissen van Maduro, geen bestuursdaden te verrichten namens Gebe, op straffe van een dwangsom van USD 100.000,00 per dag,
- Maduro beveelt om binnen 48 uur na betekening van het in deze te wijzen vonnis de in productie 22 opgesomde goederen aan Gebe te verstrekken, op straffe van een dwangsom van USD 1.000,00 per dag;
- Maduro veroordeelt in de proceskosten.

2.2. In reconventie

Maduro vordert dat het Gerecht, bij vonnis uitvoerbaar bij voorraad, Gebe veroordeelt tot tijdige doorbetaling van het honorarium en bijkomstige emolumenten van Maduro, volgens de overeenkomst van opdracht, kosten rechtens.

2.3. Aan haar vordering (in conventie) legt Gebe -kort gezegd- het volgende ten grondslag. Gebe stelt dat het benoemingsbesluit van 29 mei 2015 (het benoemingsbesluit) van de aandeelhoudster tot benoeming van Maduro tot 2 jaar als bestuurder van Gebe nietig is ex artikel 2:21, lid 2 van het Burgerlijk wetboek (BW). De reden daartoe is dat niet is voldaan aan de statutaire vereiste van de bindende voordracht van de Raad van Commissarissen met de namen van ten minste twee personen, aldus Gebe.

2.4. Volgens Gebe was zowel de aandeelhoudster als Maduro voor de benoeming bekend met onderbouwde bezwaren van de Raad van Commissarissen tegen de aanstelling van Maduro. Deze bezwaren vinden hun grondslag in (financiële) onregelmatigheden en toerekenbare tekortkomingen begaan door Maduro bij de uitvoering van zijn per 31 mei 2015 van rechtswege beëindigd werkverband. Dit werkverband, zo begrijpt het Gerecht, was gestoeld op de overeenkomst van opdracht met Maduro die per 31 mei 2015, na verloop van de overeengekomen periode van 3 jaren, van rechtswege is geëindigd.

2.5. Volgens Gebe is het benoemingsbesluit overigens genomen terwijl het verslag de veiligheidsscreening van Maduro nog niet voorhanden lag.

2.6. Gebe heeft voorts gesteld dat Maduro op 2 juni 2015 een cheque heeft achtergelaten ter betaling van USD 68.600,00 aan SXM Services Provider en dat hij die cheque vervolgens heeft laten vernietigen/annuleren en een nieuwe cheque heeft laten uitschrijven voor betaling van het bedrag van USD 20.600,00. Volgens Gebe was de eerste cheque in strijd met artikel 8, lid 2 van de statuten van Gebe, waaruit volgt dat bestuurders slechts voor het bedrag van Naf. 50.000,00 rechtshandelingen mogen aangaan. Kennelijk realiseerde Maduro dat de eerste betaling de toestemming van de Raad van Commissarissen behoefde en besloot die betaling op te delen in deelbetalingen teneinde de kwestie alsnog aan het toezicht van de Raad van Commissarissen te onttrekken, aldus nogmaals Gebe.

2.7. Gebe verwijst voorts naar een brief van 5 juni 2015 van Maduro aan de medewerkers van Gebe, waarin hij aankondigde voor twee jaren te zijn benoemd tot bestuurder van Gebe. Nu Maduro weigert om, hangende de beslechting van de rechtsgeldigheid van het benoemingsbesluit, geen bestuursdaden te verrichten, heeft Gebe spoedeisend belang bij het gevorderde.

2.8. Maduro heeft, niettegenstaande een sommatie van 11 juni 2015 om zaken van Gebe terug te geven, slechts een aantal zaken van Gebe geretourneerd, behalve een mobiele telefoon, een iPad, kantoorsleutels en 2 credit cards (master card black en master card gold).

2.9. Voor zover noodzakelijk heeft de Raad van Commissarissen van Gebe Maduro geschorst met ingang van 11 juni 2015.

2.10. Ter gelegenheid van de behandeling heeft Gebe voorts gesteld dat het benoemingsbesluit ook nietig dan wel vernietigbaar is, wegens strijdigheid met zowel de Landsverordening Corporate Governance Code als de Corporate Governance Code zelf. Ten slotte heeft Gebe gesteld dat het benoemingsbesluit onbevoegd is genomen, nu dit door de hele Minsterraad en niet slechts door een Minister als aandeelhoudersvertegenwoordiger heeft moeten plaatsvinden.

2.11. Maduro heeft de stellingen van Gebe betwist en stelt op zijn beurt -kort gezegd- dat er sprake is van een voortgezette contractuele relatie en dat hij daardoor belang heeft bij zijn vordering (in reconventie).

2.12. De stellingen van partijen zullen hierna, en voor zover van belang, worden beoordeeld.

3. Beoordeling

3.1. Gelet op de samenhang van de vordering in reconventie met de vordering in conventie zullen de geschillen gezamenlijk worden behandeld

3.2. Door Maduro is aangevoerd dat Gebe geen spoedeisend belang heeft bij diens vorderingen, nu hij sinds zijn schorsing geen bestuursdaden heeft verricht. Het Gerecht zal hieraan voorbij gaan, nu het spoedeisend belang reeds in de aard van de vordering ligt besloten.

3.3. Het meest verstrekkende standpunt in deze is dat het benoemingsbesluit van 29 mei 2015 door de aandeelhoudster nietig is. Bij de beoordeling hiervan zal het Gerecht, gelet op het karakter van de procedure, moeten nagaan of deze stelling voorshands aannemelijk is.

3.4. Conform de statuten van Gebe wordt een managing director (bestuurder) benoemd door de Aandeelhoudersvergadering na een bindend voordracht van de Raad van Commissarissen waarbij minstens twee kandidaten worden genoemd (artikel 7, lid 2 en lid 4 van de statuten). Indien na vier maanden, nadat er een vacature van een bestuurder is ontstaan, de Raad van Commissarissen geen voordracht heeft gedaan, staat het de aandeelhoudersvergadering vrij om een bestuurder te benoemen (artikel 7, lid 4, derde zin van de statuten). De aandeelhoudersvergadering is bevoegd om bij meerderheid van stemmen het bindend karakter van de voordracht te ontnemen (artikel 7, lid 4, vierde zin van de statuten). De vergoeding en andere voorwaarden van de benoeming worden bepaald door de aandeelhoudersvergadering, na daartoe gedane voorstel van de Raad van Commissarissen, en worden schriftelijk vastgesteld in een contract met Gebe (artikel 7, lid 9 van de statuten).

3.5. Uit het benoemingsbesluit van 29 mei 2015 volgt dat de overeenkomst met Maduro is verlengd met twee jaren en dat een concept van een overeenkomst voor die periode aan de aandeelouder dient te worden voorgelegd ter "ratification and or approval" door de Raad van Commissarissen. Uit genoemd besluit volgt voorts dat "the Board of Supervisory Directors and the Board of Managing Directors of GEBE have been given the opportunity to cast an advisory vote on the following decision".

3.6. Voorop zij gesteld dat het Gerecht voorshands ervan uit gaat dat de heer M.F.A. Gumbs, a.i. Minister of Housing, Spatial Planning, Environment & Infrastructure" bevoegd is geweest om genoemd besluit te nemen als de aandeelhoudersvertegenwoordiger van Gebe. Het Gerecht concludeert daartoe gelet op het Landsbesluit LB 13/0820 waarnaar gerefereerd wordt in de kop van het besluit en gelet op hetgeen, desgevraagd door de rechter, zijdens de informanten van het Land als onvoldoende betwist naar voren is gebracht. Zijdens het Land is immers toegelicht dat, ondanks de regeerakkoord waarin is bepaald dat de Raad van Ministers "will be responsible for all matters related to decision-making regarding appointments, representations and functionaries of all government-owned companies, foundations and government entities", de daartoe strekkende besluiten van overheidswege nog in de maak zijn en dat het Lansbesluit LB 13/0820 nog niet is ingetrokken. Gelet hierop zal het Gerecht dit standpunt van Gebe, dat overigens tardief is gesteld, immers pas ter gelegenheid van de behandeling, passeren.

3.7. Ter zake de rechtsgeldigheid van het besluit van 29 mei 2015, het volgende. Uit strekking van de door beide partijen ingenomen standpunten volgt dat Maduro's aanvankelijke benoemingstermijn als bestuurder per 31 mei 2015 afliep. Uit zowel artikelen 1, 2, 3 en 26 onder f van de overeenkomst van opdracht tussen Gebe en Maduro, waarvan de inhoud niet is betwist, volgt bovendien dat de contractuele relatie tussen partijen onlosmakelijk verbonden is aan de benoeming van Maduro als bestuurder. Hiervan uitgaande en aangezien de overeenkomst in ieder geval tot en met 31 mei 2015 geldig was, dient het besluit van 29 mei 2015 waarin is besloten over de verlenging van de overeenkomst met Maduro eveneens te worden gezien als een tot zijn herbenoeming als bestuurder.

3.8. Bij gebrek aan andersluidende regels in het statuut van Gebe, gaat het Gerecht er voorts vanuit dat bij de herbenoeming van een bestuurder dezelfde benoemingsprocedure geldt als ware er een vacature bestaat. Een andersluidende conclusie zou niet stroken met de algemeen aanvaarde en, in geval van Gebe, statutair bepaalde controle- en adviesbevoegdheden van een Raad van Commissarissen en zal de Raad van Commissarissen buiten spel zijn in geval van een reeds zittende bestuurder. Het voorgaande brengt met zich dat het Gerecht er voorshands vanuit gaat dat voor de herbenoeming van Maduro een bindende voordracht van de Raad van Commissarissen statutair was voorgeschreven.

3.9. De vraag die thans beantwoording behoeft, is of de aandeelhoudster uit de uitlatingen van de Raad van Commissarissen heeft kunnen of mogen afleiden dat zij Maduro ter herbenoeming als bestuurder heeft voorgedragen. Deze vraag beantwoordt het Gerecht op voorhand ontkennend en wel om de navolgende redenen.

3.10. Alhoewel de Raad van Commissarissen per brief van 26 februari 2015 aan de aandeelhoudster heeft geadviseerd om de overeenkomst van Maduro, na ommekomst van de periode tot 31 mei 2015 met twee jaren te verlengen, hem een performance bonus toe te kennen over de termijn tot en met mei 2014 en om bevestiging hiervan heeft gevraagd, heeft de Raad van Commissarissen per brief van 15 mei 2015 de aandeelhoudster als volgt geïnformeerd: "(...) We urgently inform you that after our advice to you and your decision to extend the agreement, we have discovered that Mr. Maduro has been committing serious misconduct in executing his duties of COO and President of the Company. The misconduct committed by Mr. Maduro is of such serious nature that, had we been aware of this before, we would certainly not have considered advising the Shareholder to extend the present agreement which terminates on May 31st, 2015."De brief gaat verder door een viertal voorbeelden aan te halen waaruit "the gross misconduct" bestaat. Per brief van 26 mei 2015, derhalve voordat het litigieus besluit werd genomen, informeert de Raad van Commissarissen de aandeelhoudster als volgt: (...) We hasten to call on you pertaining to the following. On May 15, 2015, the Supervisory Board of N.V. GEBE conveyed our position not to offer Mr. Maduro a new contract as COO in light of the disturbing fact that came to light after our initial position to renew his contract for two (2) years. The Board hereby also wishes to confirm the Shareholder's endorsement of the Board's decision not to extend said agreement with the COO of N.V. GEBE. For completeness sake, the Board hereby submits the following supporting documents outlining said disturbing facts that lead to our decision not to renew: (...). Deze brief gaat verder met de beschrijving van de bijbehorende bijlagen en sluit af met het volgende: "Finally, the board is aware that continuity is needed in N.V. GEBE and the board has already discussed options moving forward". Niet is betwist dat deze brief, inclusief bijlagen, op 26 mei 2015 is afgeleverd bij het Bestuurskantoor. Het Gerecht gaat er daarom vanuit dat de aandeelhoudster in ieder geval kennis heeft moeten dragen van de inhoud van deze brief, inclusief bijlagen.

3.11. Voor zover in de brief van 26 februari 2015 een bindende voordracht tot herbenoeming van Maduro moet worden gelezen, dient reeds op voorhand uit de uitdrukkelijke inhoud van de brieven van 15 mei 2015 en 26 mei 2015 te volgen dat de Raad van Commissarissen de voordracht op basis van met bijlagen gemotiveerde gronden heeft ingetrokken. Hierdoor is het niet aannemelijk geworden dat de "advisory vote" van de Raad van Commissarissen, zoals genoemd in het benoemingsbesluit, betrekking kan hebben gehad op de toen nog ten faveure van de verlenging van Maduro's contract geldende voordracht van de Raad van Commissarissen van 26 februari 2015. Aan het verweer van Maduro dat aan de aandeelhoudster de bevoegdheid toekomt om het bindend karakter van een voordracht te ontnemen en dat een besluit in dit kader een aan de aandeelhoudster voorbehouden recht is, ex artikel 7, lid 4, vierde zin, gaat het Gerecht voorbij, nu er, zoals reeds beoordeeld, ten tijde van het besluit niet aannemelijk is geworden dat er sprake was van een geldende voordracht van de Raad van Commissarissen.

3.12. Bij gebrek aan nadere statutaire regels om een bestuurder buiten een geldende voordracht van de Raad van Commissarissen om te (her)benoemen, oordeelt het Gerecht op voorhand dat het benoemingsbesluit in strijd is genomen met de statuten van Gebe en derhalve nietig is ex artikel 2:21, lid 2 BW. Het zonder een geldende voordracht van de Raad van Commissarissen nemen van het besluit behelst een fundamenteel totstandkomingsgebrek dat door de wet met de nietigheid is gesanctioneerd.

3.13. Dat deze nietigheid aan Maduro kan worden tegengeworpen volgt reeds uit de omstandigheid dat uit zijn overeenkomst van opdracht met Gebe volgt dat zijn contractuele relatie afhankelijk is van zijn benoeming. Op voorhand kan derhalve niet worden gesteld dat Maduro met ingang van 1 juni 2015 nog bestuurder is van Gebe.

3.14. Hetgeen Gebe voor het overige heeft gesteld ter zake de rechtsgeldigheid van het benoemingsbesluit kan, gelet op het voorgaande, onbesproken blijven.

3.15. Het voorgaande brengt eveneens met zich dat Gebe belang heeft bij haar primaire vorderingen ter zake het verrichten van bestuursdaden, de ontzegging van de toegang tot de kantoren van Gebe en de uitschrijving van Maduro als bestuurder uit de registers van de Kamer van Koophandel. Nu eveneens, zoals ter gelegenheid van de behandeling door Gebe is gesteld, bekend is dat Gebe een bodemprocedure heeft geëntameerd tegen het Land ter zake de rechtsgeldigheid van het benoemingsbesluit, zullen die vorderingen tot zoverre worden toegewezen, met dien verstande dat het bevel en ontzegging zullen gelden zolang er nog niet bij onherroepelijk geworden rechterlijke uitspraak in de bodemprocedure is beslist over de rechtsgeldigheid van het benoemingsbesluit. De machtiging tot uitschrijving van Maduro kan ongeclausuleerd worden toegewezen. Mocht het benoemingsbesluit alsnog bij onherroepelijk geworden rechterlijke uitspraak rechtsgeldig worden beoordeeld, dient Maduro opnieuw te worden ingeschreven in de daartoe bestemde registers van de Kamer van Koophandel. Alhoewel Maduro ter gelegenheid van de behandeling heeft gezegd dat de kansen zeer miniem zullen zijn dat hij bestuursdaden zou verrichten, maakt deze beoordeling niet anders, nu hij voorshands niet als bestuurder heeft te gelden en derhalve geen bestuursdaden mag verrichten en evenmin naar derden toe de indruk mag wekken bestuurder te zijn. Uit diens verklaring distilleert het Gerecht evenwel de bereidheid van Maduro om zich te houden aan de in deze te geven bevel, waardoor het Gerecht geen dwangsom zal opleggen.

3.16. Gebe heeft eveneens gevorderd om Maduro te bevelen om een aantal zaken die hij nog in bezit zou hebben aan Gebe te retourneren. Uit de door Maduro overgelegde producties is het voldoende aannemelijk dat hij intussen de gevorderde mobiele telefoon, kantoorsleutels en 2 credit cards (master card black en master card gold) heeft geretourneerd. Ten aanzien van de iPad heeft hij aangevoerd dat die zich bevindt op het kantoor van Gebe. Nu dit niet verder door Gebe is betwist, zal deze vordering worden afgewezen aangezien Gebe daar geen belang meer bij heeft.

3.17. Nu het Gerecht op voorhand heeft beoordeeld dat Maduro niet langer bestuurder is van Gebe, kan er geen sprake zijn van een voortgezette contractuele relatie met hem. Reeds hierom dient zijn vordering tot doorbetaling van hetgeen hem op basis van de overeenkomst van opdracht was verschuldigd te worden afgewezen.

3.18. Dat aan hem enige betaling toekomt gelet op de aan hem gegeven schorsing, het volgende. De schorsing is aan hem op voorwaardelijke gronden gegeven, zo begrijpt het Gerecht, voor zover zijn benoeming (voorshands) geldig zou worden bevonden. Nu dat niet het geval is, dient zijn vordering ook hierom te stranden.

Proceskosten

3.19. Als de grotendeels in het ongelijk gestelde partij zal Maduro in de proceskosten worden veroordeeld. Gelet op de samenhang tussen de vorderingen, zal het Gerecht de proceskosten in de reconventionele zaak matigen tot nihil.

4. Beslissing in kort geding

Het Gerecht

In conventie

- beveelt Maduro om, zolang er nog niet bij onherroepelijk geworden rechterlijke uitspraak is beslist over de rechtsgeldigheid van het benoemingsbesluit, geen bestuursdaden te verrichten namens Gebe;

- ontzegt Maduro, zolang er nog niet bij onherroepelijk geworden rechterlijke uitspraak is beslist over de rechtsgeldigheid van het benoemingsbesluit, de toegang tot de kantoren van Gebe;

- machtigt Gebe om Maduro te doen uitschrijven als bestuurder van Gebe uit de daartoe bestemde registers van de Kamper van Koophandel;

- verklaart dit vonnis tot zover uitvoerbaar bij voorraad;

- wijst af het meer of anders gevorderde;

In reconventie

- wijst de vordering af;

In conventie en in reconventie

- veroordeelt Maduro in de kosten van dit geding aan de zijde van Gebe, tot aan deze uitspraak begroot op NAf. 770,50 aan verschotten, waaronder Naf. 450,- aan griffierechten, en NAf. 1.500,00 aan salaris gemachtigde;

- verklaart de proceskostenveroordeling eveneens uitvoerbaar bij voorraad.

Dit vonnis is gewezen door mr. M.J. de Kort, rechter in het Gerecht in eerste aanleg van Sint Maarten en in aanwezigheid van de griffier in het openbaar uitgesproken op 16 juli 2015.

w.g. J.F.M. Becker   w.g. M.J. de Kort

Uitgegeven voor eerste grosse ten verzoeke aan
de gemachtigde van: eiseres in conv. ged. in reconv.
te Sint Maarten op 10 augustus 2015.
de griffier van het Gerecht in Eerste Aanleg
zittingsplaats Sint Maarten

Gemeenschappelijk Hof van Justitie
ARUBA - CURACAO - ST. MAARTEN
BONAIRE - ST. EUSTATIUS - SABA

Addendum K

Vonnis van 3 november 2015
Zaaknummer: AR 2015/85
Vonnisnr. 202

GERECHT IN EERSTE AANLEG VAN SINT MAARTEN

Vonnis

in de zaak van

de naamloze vennootschap
N.V. GEMEENSCHAPPELIJK ELEKTRICITEITSBEDRIJF BOVENWINDSE EILANDEN N.V.,
gevestigd te Sint Maarten,
eiseres,
gemachtigde: mr. J.G. Bloem,

tegen

de publiekrechtelijke rechtspersoon
HET LAND SINT MAARTEN,
zetelende te Sint Maarten,
gedaagde,
gemachtigde: mr. R.F. Gibson jr.

Eiseres wordt aangeduid als "Gebe". Gedaagde wordt aangeduid als "het Land".

1. De procedure

Het verloop van de procedure blijkt uit:

- het verzoekschrift met producties d.d. 24 juni 2015,
- de akte houdende intrekking van de zaak door oorspronkelijk eiseres sub 2,
- de conclusie van antwoord.

Hierna is vonnis bepaald.

2. Het geschil en de beoordeling

Blijkens de conclusie van antwoord voert het Land geen verweer en refereert zij zich aan het oordeel van het Gerecht.

De vordering houdt in dat het Gerecht het benoemingsbesluit van de 100% aandeelhouder van Gebe, te weten het Land, vernietigt en dat alle rechtshandelingen verricht door Maduro namens N.V. GEBE na 31 mei 2015 tevens vernietigd worden. Daartegen wordt geen verweer gevoerd en dit zal dus worden

Addendum L

SUPERVISORY BOARD OF DIRECTORS N.V. GEBE

Mr. Rene A. Richardson,	Chairman	rene.adrien.richardson@gmail.com	520-0021
Ms. Zylena Bary.	Vice Chairlady	barylegal@gmail.com	553-4141
Mr. Kelvin Bloyden,	Member	kelvin.bloyden@live.com; kelvin.bloyden@wib-bank.net	520-0148
Ms. Veronica Jansen-Webster,	Member	veronicawebster16@gmail.com	520-4945
Mr. Patrice Gumbs,	Member	ptgumbs62@gmail.com	553-0001
Mr. Edwin Gumbs.	Member	ed@gumbs.nl	587-4195

DELIVERED AND PER EMAIL

Mr. R. Gartner

Present

Sint Maarten, December 1st, 2015

Re: *suspension, with maintenance of pay, for two (2) months starting December 1st, 2015 and thus ending February 1st, 2016 and alternative placement on non-active duty as per December 1st, 2015 till February 1st, 2016.*

Dear Mr. Gartner,

On behalf of the Supervisory Board of Directors of NV GEBE ("SBOD") I request your urgent attention in captioned matter.

SBOD resolved to suspend you for the limited time period of two months, starting December 1st 2015 and thus ending on February 1st, 2016. You are hereby alternatively placed on non-active-duty as per December 1st, 2015 till February 1st, 2016. Please note that NV GEBE will continue paying your regular compensation during your suspension and/or placement on non-active duty. The willingness of NV GEBE to pay your contractual compensation during the suspension and alternative placement on non-active duty cannot be construed or interpreted as an obligation by NV GEBE to pay you any (notification) compensation in case of a possible termination of your Assignment Agreement.

As you know, SBOD represents NV GEBE in case of conflicting interests with a member of the Managing Board. SBOD is as per article 7, paragraph 6 of the Articles of Incorporation of NV GEBE specifically entitled to

Voor ontvangst
Ren. C
Dec 1 2015

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N.V. GEBE ST. MAARTEN

suspend a –statutory- director, after given the person in question the opportunity to be heard thereon. On Friday, October 30, 2015, Tuesday, November 3rd, 2015 and Friday, November 20th, 2015, you were heard by SBOD on its announced intention to suspend you and alternatively place you on non-active duty. You were given ample opportunity to give reason and account. A copy of the minutes of those meetings is annexed hereto as Addendum A, B and C and form an inseparable part hereof.

Meanwhile, SBOD considered your feedback and placed this next to all the other explanation given by you to date, during the various meetings conducted with you by SBOD. In these meetings your shortcomings were extensively discussed. SBOD finds that there are compelling reasons to immediately take disciplinary measures, as announced, against you. These reasons are further outlined in the overview annexed hereto as Addendum D, which also forms an inseparable part of this letter. SBOD refers you for brevity sake to the content thereof, most of which is well known to you.

SBOD intends to request the Shareholder of NV GEBE to terminate your Assignment Agreement. You will be maintained informed about the decision of the Shareholder of NV GEBE. Please note in this respect that as per the Articles of Incorporation of NV GEBE you will be called to attend a meeting with the Shareholder, in case latter decides to consider terminating the Assignment Agreement with you, following receipt of the motivated recommendation that SBOD will make.

You are hereby requested to immediately and in any case on or before 14.00 hrs. on December 1st, 2015, turn in the company car to the office of NV GEBE and all other belongings of NV GEBE that are presently in your possession. The goods that must be returned are listed in the overview annexed hereto as Addendum E. This overview forms an inseparable part of this letter.

The usage of the company car is a so-called cost compensation and does not form part of your salary. As such, also as an independent service provider, you are not entitled to continue using the company vehicle whilst suspended and/or placed on non-active-duty.

NV GEBE realizes that you paid one third (1/3) of the sale and purchase price for referenced company vehicle. This decision or better said compromise was reached to resolve the problem that you caused, by failing to

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N.V GEBE ST. MAARTEN

SUPERVISORY BOARD OF DIRECTORS N.V. GEBE

abide to the restrictions set clearly in your Assignment Agreement, dated September 4, 2014, pertaining to purchasing a company vehicle and the statutory maximum expenditure limit that you have as a Managing Director of NV GEBE. You made commitments towards a third party for amounts that exceeded referenced restrictions/limits, thereby exposing NV GEBE to claims from this third-party.

Since you have invested one third (1/3) of the purchase price of the company vehicle that by law you are not allowed to use during your suspension and placement on non-active duty, NV GEBE proposes the following equitable solution. NV GEBE is willing to pay you one third (1/3) of the present fair market value of the vehicle and in return you relinquish/waive all possible claims that you might have on NV GEBE, for having paid part of the purchase price of this vehicle. Alternatively, NV GEBE is also willing to allow you to purchase the vehicle by paying two third (2/3) of the fair market value thereof.

The aforementioned proposal to settle the matter regarding claims for partial payment of the purchase price of the company vehicle expires within one week, and thus on December 8th, 2015. In case you do not accept any of the two (2) given options to resolve this matter, NV GEBE will take requisite legal decisions to properly compensate you for your partial payment towards the purchase price of the company vehicle.

I trust to have informed you adequately herewith.

Sincerely,

1 Dec. 2015

Rene Richardson
Chairman

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N.V. GEBE ST. MAARTEN

Addendum M

EXTRAORDINARY GENERAL MEETING OF SHAREHOLDERS OF THE LIMITED LIABILITY COMPANY N.V. GEBE

MEETING HELD IN PHILIPSBURG, SINT MAARTEN ON February 29, 2016

Name of Shareholder(s):	Number of Shares:	Number of Votes:	Signature(s)
Government of St. Maarten	100%	100%	Present at meeting:
			Minister Meyers
			Ms. Chantale Groeneveldt

MINUTES OF EXTRAORDINARY GENERAL MEETING OF SHAREHOLDERS OF THE LIMITED LIABILITY COMPANY N.V. GEBE

Mr. Angel Meyers acts as Chairman - having been designated as such by the meeting. Ms. Chantale Groeneveldt is appointed as secretary of the meeting.

The Chairman after having acknowledged that the whole capital is represented at the meeting, ascertained that the meeting may address and vote on any matter coming before the meeting.

The meeting proposes:

In accordance with respectively:

- The recommendation of the Supervisory Board of Directors (SBOD) of N.V. GEBE as further outlined in its letters dated December 15, 2015 and December 23, 2015, whereby the SBOD recommends to the shareholder of NV GEBE to dismiss Mr. R. Gartner as Chief Financial Officer (CFO) of N.V. GEBE and to terminate the Assignment Agreement between R. Gartner and N.V. GEBE due to severe and structural shortcomings on Gartner's behalf as further outlined in aforementioned letters, the suspension letter of December 1, 2015 and attachments, and Minutes of the meetings of SBOD of Friday October 30, 2015, Tuesday November 3, 2015 and Friday November 20, 2015;
- The Extraordinary General Meeting of Shareholders of N.V. GEBE of January 26, 2016 during which meeting Mr. Gartner was heard on (i) the recommendation of the SBOD of N.V. GEBE to dismiss R. Gartner, in accordance with article 7 sub 5 of the Articles in Incorporation of N.V. GEBE and (ii) the attached exhaustive grounds for suspension and dismissal;
- The Advice of the Corporate Governance Council (CGC) dated February 12, 2016 whereby the CGC concludes that the correct procedures were followed in accordance with the Corporate Governance Regulation, Book 2 of the Civil Code and the Articles of Incorporation of N.V. GEBE. The CGC further concludes that the relationship between R. Gartner and N.V. GEBE is irreparably disturbed and therefore the CGC has no

objection against the dismissal of R. Gartner as statutory director of N.V. GEBE by the Shareholder of N.V. GEBE with observance of a notice period of six (6) months;

- Based on the attached grounds of dismissal and the hearing held during the General Meeting of Shareholders of N.V. GEBE of January 26, 2015 it can be concluded that the (non) actions constitute severe and structural shortcomings committed by Mr. Gartner and the latter has grossly neglected his duties arising out of the Assignment Agreement, Articles of Incorporation of N.V. GEBE and the law. This aforementioned has ultimately led to a irreparable disrupted working relationship between Management and Board of Supervisory Directors of N.V. GEBE and Mr. R. Gartner and thus warrants grounds for termination of the Assignment Agreement and dismissal of R. Gartner as CFO of N.V. GEBE;
- The decision of the Council of Ministers of December 17, 2015 to explore the possibility to dismiss R. Gartner as CFO of N.V. GEBE and to terminate the Assignment Agreement between R. Gartner and N.V. GEBE with due observance of a notice period of six (6) months in accordance with article 24 of the Assignment Agreement dated September 4, 2014, which negotiations were unsuccessful;
- The decision of the Council of Ministers of February 25, 2016 to authorize the Shareholder Representative to proceed with the dismissal of R. Gartner as statutory director (CFO) of N.V. GEBE and to authorize the SBOD of N.V. GEBE to terminate the Assignment Agreement between R. Gartner and N.V. GEBE with due observance of a notice period of six (6) months in accordance with article 24 of the Assignment Agreement dated September 4, 2014.

Resolves:

- To dismiss Rene Gartner as Statutory Director (Chief Financial Officer) of the Managing Board of N.V. GEBE effective March 1, 2016 and based on article 7 sub 5 of the Articles of incorporation of N.V. GEBE;
- To empower the Supervisory Board of Directors to sign the relevant documents to finalize the dismissal of Ms. Rene Gartner as Statutory Director (Chief Financial Officer) of the Managing Board of N.V. GEBE and to empower the Supervisory Board of Directors of N.V. GEBE to effectuate the termination of the Assignment Agreement with due observance of a notice period of six (6) months.

The abovementioned resolution is unanimously adopted by the meeting.

No further matters coming before the meeting the Chairman adjourns the meeting.

THE CHAIRMAN

29/2/16

Mr. Angel Meyers

THE SECRETARY

29/2/16

Ms. Chantal Groeneveldt

Bloem Bonapart & Aardenburg
Attorneys at Law | Advocaten

Addendum N

16.14. The Shareholder agreed to terminate the relationship where Mr. Gartner is rendering services and give him the settlement for 6 months.

16.15. It was agreed that the Shareholder would arrange the Shareholders meeting in which Mr. Gartner would receive the opportunity to be heard by the Shareholder; the Shareholder being represented by the entire Council of Ministers or by the Minister of VROMI.

16.16. Ms. Bary noted that Mr. Gartner has the right to be heard but he may try to request to postpone the hearing keeping 1 February 2016 in mind.

17. Nominations pending appointment CEO and COO for NV GEBE

17.1. Prime Minister Marlin noted that there had been a nomination request for the CEO since 14 June 2015 and a proposal for a COO 25 September 2015.

17.2. Prime Minister Marlin suggested that the Shareholder takes a look at the nomination as the appointed interim manager was proposed for one of the positions; Prime Minister Marlin suggested giving Mr. Brooks another 2 weeks to acclimatize and also give the Supervisory Board the opportunity to see if the decision that was taken is comfortable.

17.3. The Supervisory Board and the Council of Ministers agreed that they get back to this point in January 2016.

18. Open Floor / Closing

18.1. The Supervisory Board confirmed to the Council of Ministers that Mr. Brooks would present the 2016 Budget before 31 January 2016.

18.2. The Council of Ministers agreed that this meeting would be adjourned to deal with the appointments of the CEO and COO on Thursday 28 January 2016 at 10.00 am.

18.3. The Council of Ministers agreed to schedule the Annual General Shareholders Meeting in which the 2016 Budget would be established in February 2016; after the 2016 Budget was received.

18.4. Prime Minister Marlin adjourned the General Shareholder Meeting of NV GEBE of 17 December, 2015 at 1.57 pm to 28 January 2016 at 10.00 am.

Bloem Bonapart & Aardenburg
Attorneys at Law | Advocaten

Addendum O

SUPERVISORY BOARD OF DIRECTORS N.V. GEBE

Mr. Rene A. Richardson,	Chairman	•	rene.adrien.richardson@gmail.com	• 520-0021
Ms. Zylena Bary,	Vice Chairlady	•	barylegal@gmail.com	• 553-4141
Ms. Veronica Jansen-Webster,	Member	•	veronicawebster16@gmail.com	• 520-4945
Mr. Patrice Gumbs,	Member	•	ptgumbs62@gmail.com	• 553-0001
Mr. Edwin Gumbs,	Member	•	ed1949@gumbs.nl	• 587-4195

DELIVERED PER EMAIL

Mr. Rene Gartner

Present:

Sint Maarten, 02 March 2016

Re: *Termination Service Agreement with N.V. GEBE*

Dear Mr. Gartner,

On behalf of the Supervisory Board of Directors of NV GEBE and in this specific case NV GEBE itself I inform you as follows.

Reference is made to the enclosed resolution of the shareholder of NV GEBE of February 29, 2016 in which the following was decided: 'To dismiss Rene Gartner as Statutory Director (Chief Financial Officer) of the N.V. GEBE effective March 1, 2016 ....'.

This letter serves to notify you that your service agreement is hereby terminated, with consideration of a termination term of six months and consequently as per September 2nd, 2016.
You are moreover hereby instructed to return all company belongings back as soon as possible and in any case before March 8, 2016. The justification for terminating your service agreement through notification follows sufficiently from the content of the enclosed resolution of the Shareholder and the extensive correspondence between the Supervisory Board of Directors of NV GEBE and your person.
NV GEBE refers for brevity sake to the content of those documents.

Yours truly,

March 2, 2016

Rene Richardson
Chairman SBOD NV GEBE

Addendum P

lexwell
ATTORNEYS AT LAW
M.O. Kortenoever
M.M.N.C. Schellekens
W.J. Nelissen
J.P. Westra
R. Wouters

Falcon Drive 2
Harbour View
P.O. Box 1020
Philipsburg
Sint Maarten, D.W.I.

Tel: (+1 721) 5424670
Fax: (+1 721)5424693
www.lexwell.net

Trade register
number 7679

N.V. GEBE
Attn: Mr. William Brooks
Walter Nisbeth Road #35
Philipsburg
St. Maarten

St. Maarten, January 18, 2016

Re: Letter of Prime Minister

Dear Mr. Brooks,

The decision of the Council of Ministers regarding our request to forego on a bidding procedure for the purchase of the new Wartsila generator, as stated in the letter of the Prime Minister of January 7, 2016 with reference DIV: B2341/15, has been reviewed and we can advise you as follows.

The request made by NV GEBE to obtain permission from government to forego on a bidding procedure for the purchase of the new Wartsila generator was based on article 10 paragraph 5 of the Concession of June 2010. That article prescribes that the purchase and/or installation of equipment necessary for the production of electricity needs to be tendered in an economical and transparent manner. The exemption was requested to the minister of VROMI as the regulator under the Concession Ordinance and the Concession itself. There is no requirement for NV GEBE or its Managing Board to request an exemption for the bidding process from its shareholder. The government as shareholder has no role in approving or rejecting the purchase of the Wartsila generator and whether or not the purchase is done through a bidding process. These decisions are entirely up to the Managing Board and only require permission from the Supervisory Board of Directors. The request for exemption for the tender procedure was only directed to the government as regulator under the Concession Ordinance and the Concession, based on the mentioned article in the Concession.

In the response to that request, the Prime Minister states that the Council of Minister grants approval to deviate from the tender procedure, but it is conditional to certain specified conditions. The conditions mentioned by the Prime Minister however have no

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ATTORNEYS AT LAW

relevance to the requirement of the Concession, that the purchase and/or installation of equipment necessary for the production of electricity needs to be tendered in an economical and transparent manner. The conditions specified are an attempt by the shareholder to influence and instruct the Managing Board how it manages NV GEBE, which is not allowed under the corporate structure, while other conditions relate to declaring dividend by the shareholder and resolving pending issues between NV GEBE and government regarding the water management agreement. The latter conditions may be of importance for the government as a shareholder and contracting party of NV GEBE, and these may also be of importance to NV GEBE, they should not influence in any way the decision whether or not the purchase of the new Wartsila generator should be tendered. The government, by virtue of the Minister of VROMI, as regulator under the Concession Ordinance and the Concession should respond to the request for exemption for the tender procedure. The only relevant conditions the Minister of VROMI may set or raise in its decision regarding the requested exemption need to relate to economical and transparency issues. Since none of the conditions mentioned in the letter of the Prime Minister have to do with economical or transparency issues related to the purchase of the Wartsila generators, the Minister of VROMI should unconditionally agree to the exemption.

The fact that the Prime Minister raises issues as shareholder of NV GEBE and as contracting party under the water management agreement, nevertheless should be addressed by NV GEBE but separately from the issue to the purchase of the Wartsila engine. I understand that PriceWaterhouseCoopers will provide an advice regarding these issues and how NV GEBE may respond to these issues.

Kind regards,

Mark Kortenoever

Addendum Q

pwc

To the Managing Board and the Board of Supervisory Directors of
N.V. Gemeenschappelijk Electriciteitsbedrijf Bovenwindse Eilanden
Attn. Ir. W. Brooks
St. Maarten

19 January 2016

Reference: PvV/PP/67.381.0/42517

Dear Mr. Brooks,

In our meeting of 12 January 2016 we have discussed the requests and conditions stated in the decision of the Council of Ministers regarding your request to forego on a bidding procedure for the purchase of the new Wartsila generator, as stated in the letter of 7 January 2016 with reference DIV:B2341/15. In this letter we provide you with those comments and concerns as previously discussed, in writing. We will not address the question whether the Council of Ministers (or the Minister VROMI), in its capacity of regulator under the concession granted to NV GEBE, is authorised to include the conditions as stated in above-mentioned decision. This question will be separately addressed by Lexwell Attorneys.

External financing versus cash payment of the acquisition

The Council of Ministers instructs NV GEBE to seek financing for 85% of the cost of the acquisition of the generator instead of paying for the acquisition with available (excess) cash. The current rate of return on deposits is very low compared to the expected finance costs of an unsecured bank loan (even when considering the tax effect). In addition, it is not certain that financing can be obtained while it will be time-consuming to make the necessary loan arrangements. Therefore, it would be an unfavourable decision for the Company to seek external financing for the proposed acquisition.

Distribution of Retained earnings (including water reserves)

The letter of the Council of Ministers calls for a payment to Government to be charged to the retained profits of the Water Company (mentioned in NV GEBE's financial statements as water reserves) as well as an advance payment on to be declared dividend.

During the period late 2014 – mid 2015, NV GEBE was in the process, with the former Minister of Finance, to make a payment on the retained profits of the water reserve and settle all outstanding issues, setting a new electricity tariff to be charged to the Water Company and negotiating a new management contract (including a possible transfer of the Water Company to NV GEBE) for the management of the Water Company. In that process an amount of ANG 5 million has already been paid (late 2014) anticipating a settlement of all outstanding issues as per that date. Unfortunately a final agreement on this settlement was never reached. The ANG 5 million is currently a short term receivable on the Government awaiting the final agreement.

When discussing paying out part of the reserves[1], several matters need to be considered:

- Short term and long term financial sustainability of the company.
- Borrowing capacity of the company, taking into account the huge investments to be made in the near future. All assets have been already pledged and a new loan would be unsecured (except for the acquired asset).
- Conditions mentioned in the current loan agreements. The loan agreements include stipulations on the minimum amount of Equity, the required Debt Service Coverage Ratio and Equity- Asset Ratio.
- Assumptions made in current tariff structure. The current tariff structure is based on the assumption that no dividend is being paid out. Already a reduction of ANG 4 cts per KwH on the base rate needed is provided leading to decreasing financial performance of the company.
- Minimum amount of cash required by management to be able to cover the current liabilities and unexpected expenses (hurricane, engine failure, etc).

Settlement of old outstanding receivables and payables

The outstanding issues included settlement of old outstanding receivables and payables between the Government and NV GEBE, of which an updated list is attached in the appendix.

This matter becomes very urgent since the possible impairment of the receivable from Government entities for water and electricity bills amounts to ANG 10.2 million and the receivable for Streetlights is ANG 1.3 million, totalling ANG 11.6 million as per December 31, 2015. The only reason why an impairment correction on the total receivable from Government has not been made in the prior year was the expected settlement discussed above.

In absence of a settlement, an impairment correction can be expected. In addition, the recoverability of the ANG 5 million prepaid on the settlement needs to be reconsidered and maybe also this receivable considered uncollectable. The resulting impairment loss would lead to a huge negative result in 2015 and possible breach of the current loan covenants.

Water reserves as per December 31, 2014

The water reserves as per December 31, 2014 amount to ANG 39,051,000.

When calculating these reserves, numerous assumptions have been made, in absence of detailed stipulations in the water management agreement. The most important being the absence of allocation of the effect of the implementation of IAS 19, the accounting standard for employee benefits. These effects have not been allocated to the water operations in the past awaiting a new water management

[1] The water reserves have been included in the Company's retained earnings and are included in the calculation of ratios for the determination whether the Company is in compliance with the conditions stated in the loan agreement. As a result, payment of retained profits of the Water Company will have the same effect as declaring a dividend.

agreement dealing with this matter. In short, an amount of ANG 13.9 million (estimate) on employee benefits provision was not charged to the Water operations. Therefore a correction to the water reserves was proposed as is show in the appendix.

It becomes clear from this overview, that maybe NV GEBE could agree to distribution of the water reserves amounting to ANG 13 million or 18 million, but only under certain conditions, of which settlement of old outstanding balances is one.

Given the settlement and the amount of ANG 5 million already paid in Dec 2014, the remaining cash payment would be zero (if only ANG 13 million can be distributed) or ANG 5 million (if a distribution of ANG 18 million is possible), when considering settlement of the outstanding invoices up to Dec 31, 2014 only[2].

Dividend payment

The letter of the Prime Minister calls for an advance payment of dividend of approximately ANG 10 million. The declaration and payment of dividend are subject to the same constraints as listed above (section Distribution of Retained earnings). It is the shareholders prerogative to declare dividends, ideally in consultation with the management of the Company. As stated above, the applicable base rate was established ANG 4 cts below the required base rate assuming that NV GEBE would not have to pay dividends.

In addition, declaring an additional dividend now will seriously impact the Company's borrowing capacity and may make it impossible to execute (all of) the projects the shareholder is asking NV GEBE to execute. At a minimum, it will increase the borrowing cost related to these projects and consequently the price to be charged to the consumers.

In order to be able to pay (an annual) dividend it could be proposed to increase the base rate with ANG 4 cts and develop a dividend policy regulating the calculation of declarable dividends. Developing a dividend policy takes time and needs careful consideration in order not to jeopardize the future of the company. Such a policy should take into account the investments required to keep the Company running and improve its performance and enable it to execute the projects required to improve the standard of living on St. Maarten.

As per the articles of association, the payment of (interim or advance) dividends is subject to certain regulations. A (interim or advance) dividend is established in a shareholders meeting. It is not up to management of the Company to arbitrarily make advance payments on to be declared dividends.

Proposal

In order to explain the current situation and financial relationship between NV GEBE and Government, we advise NV GEBE to approach Government with a proposal to discuss a payment of part of the water reserves and possible dividend that includes the following items:

- New water management agreement (including a possible transfer of the Water Company to NV GEBE);

---

[2] Settlement of 2015 invoices for electricity and water sales as well as Streetlights not included.

- New electricity tariff to be charged to the Water operations;
- Settlement of outstanding balances, including invoices for electricity and water consumptions;
- Adjustment of the base rate so that GEBE will be able to pay annual dividends in a sustainable manner and the development of a dividend policy;

We trust to have informed you sufficiently.

Yours sincerely,

Petra Pupping
petra.pupping@an.pwc.com
T: +(1-721) 542 2379
F: +(1-721)542 4788

Paul R. van Vliet
paul.r.van.vliet@an.pwc.com

Enclosure

Oorspronkelijke (draft) overeenkomst May 2015

	Bedrag ANG'000	Bedrag ANG'000
Water reserves per 31 december 2013		35,692
Af:		
Restant reserve zoals overeengekomen	7,000	
Vrijval ten behoeve van GEBE	14,783	
Totaal		21,783
Beschikbaar voor Land St. Maarten		13,909
Beschikbaar voor Land St. Maarten		13,909
Bij:		
Verschuldigde Zegelrechten	1,019	
Overige te betalen bedragen aan overheid	496	
Totaal		1,515
Af:		
Rekeningen straat verlichting	677	
Rekeningen water en electra	7,508	
Saldo te betalen en ontvangen belastingen etc. (zie bij	1,650	
Te ontvangen waterverliezen	589	
Totaal		10,424
Saldo te betalen op basis van settlement		5,000
Af: reeds betaald 23 december 2014		(5,000)
Resteerd nog te betalen		-

Bijlage optie A

	Bedrag ANG'000	Bedrag ANG'000
Water reserves per 31 december 2014		39,051
Af:		
Restant reserve zoals voorgesteld	12,000	
Correctie IAS 19 (allocatie naar water van employee benefits 25% van total)	13,941	
Totaal		25,941
Beschikbaar voor Land St. Maarten		13,111
Beschikbaar voor Land St. Maarten		13,111
Bij:		
Verschuldigde Zegelrechten	1,019	
Overige te betalen bedragen aan overheid	496	
Totaal		1,515
Af:		
Rekeningen straat verlichting (31 dec 2015)	1,345	
Rekeningen water en electra (31 dec 2015)	10,281	
Saldo oude te betalen en ontvangen belastingen etc. (zie bijlage)	1,650	
Te betalen profit tax 2014	(3,976)	
Te ontvangen waterverliezen	589	
Totaal		9,889
Saldo te betalen op basis van settlement		4,737
Af: reeds betaald 23 december 2014		(5,000)
Resteerd nog te betalen		(264)

Bijlage optie B

	Bedrag ANG'000	Bedrag ANG'000
Water reserves per 31 december 2014		39,051
Af:		
Restant reserve zoals voorgesteld	7,000	
Correctie IAS 19 (allocatie naar water van employee benefits 25% van total)	13,941	
Totaal		20,941
Beschikbaar voor Land St. Maarten		18,111
Beschikbaar voor Land St. Maarten		18,111
Bij:		
Verschuldigde Zegelrechten	-	
Overige te betalen bedragen aan overheid	-	
Totaal		-
Af:		
Rekeningen straat verlichting (31 dec 2015)	1,345	
Rekeningen water en electra (31 dec 2015)	10,281	
Saldo oude te betalen en ontvangen belastingen etc. (zie bijlage)	1,650	
Te betalen profit tax 2014	(3,976)	
Te ontvangen waterverliezen	589	
Totaal		9,889
Saldo te betalen op basis van settlement		8,222
Af: reeds betaald 23 december 2014		(5,000)
Resteerd nog te betalen		3,222

Bijlage optie C

	Bedrag ANG'000	Bedrag ANG'000
Water reserves per 31 december 2014		39,051
Af:		
Restant reserve zoals voorgesteld	7,000	
Correctie IAS 19 (allocatie naar water van employee benefits 25% van total)	13,941	
Totaal		20,941
Beschikbaar voor Land St. Maarten		18,111
Beschikbaar voor Land St. Maarten		18,111
Bij:		
Verschuldigde Zegelrechten	-	
Overige te betalen bedragen aan overheid	-	
Totaal		-
Af:		
Rekeningen straat verlichting (31 dec 2014)	1,000	
Rekeningen water en electra (31 dec 2014)	8,848	
Saldo oude te betalen en ontvangen belastingen etc. (zie bijlage)	1,650	
Te betalen profit tax 2014	(3,976)	
Te ontvangen waterverliezen	589	
Totaal		8,111
Saldo te betalen op basis van settlement		10,000
Af: reeds betaald 23 december 2014		(5,000)
Resteerd nog te betalen		5,000

Overzicht uitstaand Saldo GEBE volgens de Ontvanger inclusief correcties

		Jaar	Periode	Naf	
Loonbelastin. Naheffing plus DW kosten	12/29/2012	2010	13	72,142.78	Bezwaar ingediend (41541), moet niet worden betaald.
Factuur	10/7/2013	2013	4	1,053.07	Onbekend
Factuur	11/1/2013	2013	10	280,000.00	Concession fee indexering
Factuur	2/7/2014	2013	12	294,840.00	Concession fee indexering
WB naheffing	7/26/2013	2011	40	505.00	Boete wegens te late indiening Moet betaald worden.
WB naheffing	5/26/2014	2012	40	1,000.00	Boete wegens te late indiening. Moet betaald worden.
WBR	3/17/2010	2008	13	(3,427,488.00)	
Loonbelasting controle, naheffing	7/19/2006	2001	12	160,556.00	GEBE akkoord, moet betaald worden
Loonbelasting controle, naheffing	7/13/2006	2002	12	167,362.00	GEBE akkoord, moet betaald worden
Loonbelasting controle, naheffing	7/19/2016	2003	12	157,750.00	GEBE akkoord, moet betaald worden
Loonbelasting controle, naheffing	7/19/2016	2004	12	192,374.00	GEBE akkoord, moet betaald worden
Loonbelasting controle, naheffing		2005	12	150,000.00	GEBE akkoord, moet betaald worden
Loonbelasting controle, naheffing	7/19/2006	2006	6	309,959.00	GEBE akkoord, moet betaald worden
Erfpacht				8,003.16	?
AVBZ, controle naheffing		2001	12	7,508.00	GEBE akkoord, moet betaald worden
AVBZ, controle naheffing		2002	12	7,517.00	GEBE akkoord, moet betaald worden
AVBZ, controle naheffing		2003	12	6,478.00	GEBE akkoord, moet betaald worden
AVBZ, controle naheffing		2004	12	7,018.00	GEBE akkoord, moet betaald worden
AVBZ, controle naheffing		2005	12	7,574.00	GEBE akkoord, moet betaald worden
AVBZ, controle naheffing		2006	12	15,406.00	GEBE akkoord, moet betaald worden
AVBZ DW				75.74	Incasso kosten controle aanslagen, moet betaald worden.
AVBZ DW				154.06	Incasso kosten controle aanslagen, moet betaald worden.
Loonbelasting DW		2005	12	1,500.00	Incasso kosten controle aanslagen, moet betaald worden.
WB	8/30/2012	2009	40	52,500.00	Aangifte WB ingediend, geen belasting te betalen. Niet betalen
WB DW	8/30/2012			525.00	Incasso kosten. Zie hierboven, niet betalen.
Ambulance dienst	8/30/2012	2003	10	275.00	?
DW	8/30/2012			40.00	?
AVBZ	8/30/2012	1997	3	19,691.00	Periode aanslagen, is bezwaar gemaakt of zou moeten worden. Niet betalen.
AVBZ	8/30/2012	2003	1	3,342.00	Periode aanslagen, is bezwaar gemaakt of zou moeten worden. Niet betalen.
AVBZ	8/30/2012	2003	2	3,110.00	Periode aanslagen, is bezwaar gemaakt of zou moeten worden. Niet betalen.
AVBZ	8/30/2012	2006	1	29,724.00	Periode aanslagen, is bezwaar gemaakt of zou moeten worden. Niet betalen
AVBZ	8/30/2012	2006	6	15,641.00	Periode aanslagen, is bezwaar gemaakt of zou moeten worden. Niet betalen
AVBZ	8/30/2012	2009	11	29,972.00	Periode aanslagen, is bezwaar gemaakt of zou moeten worden. Niet betalen.
AVBZ	8/30/2012	2011	7	33,710.00	Periode aanslagen, is bezwaar gemaakt of zou moeten worden. Niet betalen
Erfpacht		2012	3	30.00	?
Erfpacht		2012	6	10.00	?
Totaal te vorderen van Ontvanger				(1,390,142.69)	

NB ToT aanslagen buiten beschouwing gelaten

Correcties voor bedragen die niet betaald moeten worden.

Loonbelastin. Naheffing plus DW kosten	(72,142.28)
WB	(52,500.00)
WB DW	(525.00)
AVBZ	(135,190.00)
Gecorrigeerd totaal te vorderen van ontvanger	(1,650,499.97)

Addendum R

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N. V. GEMEENSCHAPPELIJK ELECTRICITEITSBEDRIJF BOVENWINDSE EILANDEN

The Power to Serve

Supervisory Board of Directors
Attn.: Mr. Rene Richardson Chairman
Philipsburg

Your reference	Our reference	Date
	MB/16-01-007	January 13, 2016

Subject: comments on letter from PM to purchase new electric power generator

Dear Mr. Richardson,

The decision of the Council of Ministers regarding our request to forego on a bidding procedure for the purchase of the new Wartsila generator, as stated in the letter of 7 January 2016 with reference DIV:B2341/15, has been reviewed and below our response and comments are discussed.

The request made by NV GEBE to obtain permission from government to forego on a bidding procedure for the purchase of the new Wartsila generator was based on article 10 paragraph 5 of the Concession of June 2010. That article prescribes that the purchase and/or installation of equipment necessary for the production of electricity needs to be tendered in an economical and transparent manner. The exemption was requested to the minister of VROMI as the regulator under the Concession Ordinance and the Concession itself. There is no requirement for NV GEBE or its Managing Board to request an exemption for the bidding process from its shareholder. The government as shareholder has no role in approving or rejecting the purchase of the Wartsila generator and whether or not the purchase is done through a bidding process. These decisions are entirely up to the Managing Board and only require permission from the Supervisory Board of Directors. The request for exemption for the tender procedure was only directed to the government as regulator under the Concession Ordinance and the Concession, based on the mentioned article in the Concession.

In the response to that request, the Prime Minister states that the Council of Minister grants approval to deviate from the tender procedure, but it is conditional to certain specified conditions. The conditions mentioned by the Prime Minister however have no relevance to the requirement of the

Concession, that the purchase and/or installation of equipment necessary for the production of electricity needs to be tendered in an economical and transparent manner. The conditions specified are either an attempt by the shareholder to influence and instruct the Managing Board how it manages NV GEBE, which is not allowed under the corporate structure, while other conditions relate to declaring dividend by the shareholder and resolving pending issues between NV GEBE and government regarding the water management agreement. The latter conditions may be of importance for the government as shareholder and contracting party of NV GEBE, while these are also of importance to NV GEBE, they should not influence in any way the decision whether or not the purchase of the new Wartsila generator should be tendered. The government, by virtue of the Minister of VROMI, as regulator under the Concession Ordinance and the Concession should respond to the request for exemption for the tender procedure. The only relevant conditions the Minister of VROMI may set or raise in its decision regarding the requested exemption need to relate to economical and transparency issues. Since none of the conditions mentioned in the letter of the Prime Minister have to do with economical or transparency issues related to the purchase of the Wartsila generators, the Minister of VROMI should unconditionally agree to the exemption.

The fact that the Prime Minister raises issues as shareholder of NV GEBE and as contracting party under the water management agreement, nevertheless should be addressed by NV GEBE but separately from the issue to the purchase of the Wartsila engine. The response to these issues could be as follows.

External financing versus cash payment of the acquisition

The current rate of return on deposits is very low compared to the expected finance costs of an unsecured bank loan (even when considering the tax effect). Therefore, it would be an unfavourable decision for the Company to seek external financing for the proposed acquisition.

Distribution Water Reserves

NV GEBE was in the process, with the former Minister of Finance, to make a payment on the retained profits of the water reserve and settle all outstanding issues, setting a new electricity tariff to be charged to the Water

B

Company and negotiating a new management contract (including a possible transfer of the Water Company to NV GEBE) for the management of the Water Company. In that process an amount of ANG 5 million was paid (late 2014) anticipating a settlement of all outstanding issues as per that date. Unfortunately a final agreement on this settlement was never reached. The ANG 5 million is currently a short term receivable on the Government awaiting the final agreement.

When discussing paying out part of the reserves, several matters need to be considered:

- Short term and long term financial sustainability of the company.
- Borrowing capacity of the company, taking into account the huge investments to be made in the near future. All assets have been already pledged and a new loan would be unsecured (except for the acquired asset).
- Conditions mentioned in the current loan agreements. The loan agreements include stipulations on the minimum amount of Equity, the required Debt Service Coverage Ratio and Equity- Asset Ratio.
- Assumptions made in current tariff structure. The current tariff structure is based on the assumption that no dividend is being paid out. Already a reduction of ANG 4 cts per KwH on the base rate needed is provided leading to decreasing financial performance of the company.
- Minimum amount of cash required by management to be able to cover the current liabilities and unexpected expenses (hurricane, engine failure, etc).

Settlement of old outstanding receivables and payables

The outstanding issues included settlement of old outstanding receivables and payables between the Government and NV GEBE, of which an updated list is attached in the appendix.

This matter becomes very urgent since the possible impairment of the receivable from Government entities for water and electricity bills amounts to ANG 10.2 million and the receivable for Streetlights is ANG 1.3 million, totalling ANG 11.6 million as per December 31, 2015. The only reason why an impairment correction has not been made in prior year was the expected settlement discussed above.

In absence of a settlement, an impairment correction of approximately ANG 10 mln can be expected. In addition, the recoverability of the ANG 5 million prepaid on the settlement needs to be reconsidered and maybe also this receivable considered uncollectable. An ANG 15 million impairment loss would lead to a huge negative result in 2015 and possible breach of the current loan covenants.

Water reserves as per December 31, 2014

The water reserves as per December 31, 2014 amount to ANG 39,051,000. When calculating these reserves, numerous assumptions have been made, in absence of detailed stipulations in the water management agreement. The most important being the absence of allocation of the effect of the implementation of IAS 19, the accounting standard for employee benefit. These effects have not been allocated to the water operations in the past awaiting a new water management agreement dealing with this matter. In short, an amount of ANG 13.9 mln (estimate) on employee benefits provision was not charged to the Water operations. Therefore a correction to the water reserves was proposed.

It becomes clear from the overview in the appendix, that GEBE could agree to distribution of the water reserves amounting to ANG 13 million/18 million, but only under certain conditions, of which settlement of old outstanding balances is one.

Given the settlement and the amount of ANG 5 million already paid in Dec 2014, the remaining cash payment would be ANG 5 million.

Dividend payment

The letter of the Prime Minister calls for an advance payment of dividend of approximately ANG 10 million. The declaration and payment of dividend are subject to the same constraints as listed above. It is the shareholders prerogative to declare dividends, ideally in consultation with the management of the Company. As stated above, the applicable base rate was established ANG 4 cts below the required base rate assuming that GEBE would not have to pay dividends.

In addition, declaring a dividend now will seriously impact the Company's borrowing capacity and may make it impossible to execute (all of) the projects the shareholder is asking GEBE to execute. At a minimum, it will increase the borrowing cost related to these projects and consequently the price to be charged to the consumers.

In order to be able to pay (an annual) dividend we would like to propose an increase in the base rate of ANG 4 cts and the development of a dividend policy regulating the calculation of declarable dividends. Developing a dividend policy takes time and needs careful consideration in order not to jeopardize the future of the company. Such a policy should take into account the investments required to keep the Company running and improve its performance and enable it to execute the projects required to improve the standard of living on St. Maarten.

As per the articles of association, the payment of (interim or advance) dividends is subject to certain regulations. A (interim or advance) dividend is established in a shareholders meeting. It is not up to management of the Company to arbitrarily make advance payments on to be declared dividends.

Proposal

NV GEBE proposes to discuss a proposal for the payment of part of the water reserves that includes the following items:

- New water management agreement (including a possible transfer of the Water Company to NV GEBE)
- New electricity tariff to be charged to the Water operations
- Settlement of outstanding balances, including invoices for electricity and water consumptions
- Adjustment of the base rate so that GEBE will be able to pay annual dividends in a sustainable manner and the development of a dividend policy

Hoping to have informed you sufficiently, we remain.

Sincerely,
Managing Board

Ir. William Brooks
Interim Managing Director

Bijlage bij Addendum op Watervoorzieningsovereenkomst (28 May 2015)

	Bedrag ANG'000	Bedrag ANG'000
Water reserves per 31 december 2013		35,692
Af:		
Restant reserve zoals overeengekomen	7,000	
Vrijval ten behoeve van GEBE	14,783	
Totaal		21,783
Beschikbaar voor Land St. Maarten		13,909
Beschikbaar voor Land St. Maarten		13,909
Bij:		
Verschuldigde Zegelrechten	1,019	
Overige te betalen bedragen aan overheid	496	
Totaal		1,515
Af:		
Rekeningen straat verlichting	677	
Rekeningen water en electra	7,508	
Saldo te betalen en ontvangen belastingen etc. (zie bijlage)	1,650	
Te ontvangen waterverliezen	589	
Totaal		10,424
Saldo te betalen op basis van settlement		5,000
Af: reeds betaald 23 december 2014		(5,000)
Resteerd nog te betalen		-

Bijlage optie A (12 Jan 2016)

	Bedrag ANG'000	Bedrag ANG'000	Bron
Water reserves per 31 december 2014		39,051	*FS 2014*
Af:			
Restant reserve zoals voorgesteld	12,000		*Voorstel*
Correctie IAS 19 (allocatie naar water van employee benefits 25% van total)	13,941		*Schatting obv FS 2014*
Totaal		25,941	
Beschikbaar voor Land St. Maarten		13,111	
Beschikbaar voor Land St. Maarten		13,111	
Bij:			
Verschuldigde Zegelrechten	1,019		*FS 2014*
Overige te betalen bedragen aan overheid	496		*FS 2014*
Totaal		1,515	
Af:			
Rekeningen straat verlichting (31 dec 2015)	1,345		*Admin GEBE*
Rekeningen water en electra (31 dec 2015)	10,281		*Admin GEBE*
Saldo oude te betalen en ontvangen belastingen etc. (zie bijlage)	1,650		*FS 2014*
Te betalen profit tax 2014	(3,976)		*FS 2014*
Te ontvangen waterverliezen	589		*FS 2014*
Totaal		9,889	
Saldo te betalen op basis van settlement		4,737	
Af: reeds betaald 23 december 2014		(5,000)	
Resteerd nog te betalen		(264)	

Bijlage optie B (12 Jan 2016)

	Bedrag ANG'000	Bedrag ANG'000
Water reserves per 31 december 2014		39,051
Af:		
Restant reserve zoals voorgesteld	7,000	
Correctie IAS 19 (allocatie naar water van employee benefits 25% van total)	13,941	
Totaal		20,941
Beschikbaar voor Land St. Maarten		18,111
Beschikbaar voor Land St. Maarten		18,111
Bij:		
Verschuldigde Zegelrechten	-	
Overige te betalen bedragen aan overheid	-	
Totaal		-
Af:		
Rekeningen straat verlichting (31 dec 2015)	1,345	
Rekeningen water en electra (31 dec 2015)	10,281	
Saldo oude te betalen en ontvangen belastingen etc. (zie bijlage)	1,650	
Te betalen profit tax 2014	(3,976)	
Te ontvangen waterverliezen	589	
Totaal		9,889
Saldo te betalen op basis van settlement		8,222
Af: reeds betaald 23 december 2014		(5,000)
Resteerd nog te betalen		3,222

PP: men zou kunnen afronden naar 5,000, verschil in afrekening van debiteuren: ongeveer 1.8 mln per jaar, dan t/m 2014 betaald. Zie versie C.

Bijlage optie C (12 Jan 2016)

	Bedrag ANG'000	Bedrag ANG'000
Water reserves per 31 december 2014		39,051
Af:		
Restant reserve zoals voorgesteld	7,000	
Correctie IAS 19 (allocatie naar water van employee benefits 25% van total)	13,941	
Totaal		20,941
Beschikbaar voor Land St. Maarten		18,111
Beschikbaar voor Land St. Maarten		18,111
Bij:		
Verschuldigde Zegelrechten	-	
Overige te betalen bedragen aan overheid	-	
Totaal		-
Af:		
Rekeningen straat verlichting (31 dec 2014)	1,000	
Rekeningen water en electra (31 dec 2014)	8,848	
Saldo oude te betalen en ontvangen belastingen etc. (zie bijlage)	1,650	
Te betalen profit tax 2014	(3,976)	
Te ontvangen waterverliezen	589	
Totaal		8,111
Saldo te betalen op basis van settlement		10,000
Af: reeds betaald 23 december 2014		(5,000)
Resteerd nog te betalen		5,000

PP: men zou kunnen afronden naar 5,000, verschil in afrekening van debiteuren: ongeveer 1.8 mln per jaar, dan t/m 2014 betaald. Zie versie C.