

## PUBLICATION SHEET

NATIONAL ORDINANCE of the 23rd of December 1997, pertaining to a revised regulation concerning the execution of postal services (National Ordinance regulating the Post 1998)

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IN THE NAME OF THE QUEEN

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THE GOVERNOR GENERAL of The Netherlands Antilles,

Having taken into consideration:

that it is desirable in connection with the intended privatization of the Postal Services, to enact a revised regulation for the execution of the postal services;

After having heard the Advisory Council, has determined the following national ordinance in mutual consultation with the Parliament.

### CHAPTER I Definitions

#### Article 1

In this national ordinance and the provisions derived from it, the following terms shall have the meaning thereby given, to wit:

- a. Minister : the Minister of Traffic and Transportation
- b. the concessionary : the legal entity that has been granted a concession pursuant to article 2, first paragraph;
- c. letters : documents and written notifications, whether or not under cover, with the exception of those that were created by means of printing or other multiplication techniques in a number of completely similar copies for the purpose of distribution thereof and which, apart from being addressed, no additions, deletions or instructions have been given;
- d. postal items : letters and other items with an address, which the concessionary is under obligation to transport, pursuant to the provision given in or by virtue of article 2, second paragraph;

- e. transportation : the concerted actions which result in the delivery of a postal item presented for mailing;
- f. the instruments of the Universal Postal Union : the Constitution (Trb. 1965, 170) inclusive of all amendments ever since incorporated and as yet to be incorporated, the General Postal Treaty and the further Agreements concluded by the members of the Universal Postal Union, as well as the rules and regulations pertaining thereto;
- g. general terms and conditions : the written stipulations drawn up by the concessionary, which are to be inserted in agreements regarding the transportation of postal items.

## CHAPTER II

### Provisions concerning the transportation of postal items

#### Article 2

1. In order to ensure a proper rendering of services regarding the mailing of postal items within The Netherlands Antilles, to and from The Netherlands and to and from Aruba, as well as to and from abroad, a legal entity to be designated by national resolution shall be granted a concession with the exclusion of all other parties, for a period of at least ten years for:
  - a. the transportation against payment of letters, each separately with a weight not exceeding 2000 grams, with the exception of the cases referred to in article 12, paragraph 2 and the cases for which exemption has been granted pursuant to article 13;
  - b. to place pillar-boxes or mail-boxes, intended for public use, at or in the vicinity of public roads;
  - c. to issue postal stamps and postal Stampings, depicting the image of the King, or else mentioning of the word "Netherlands Antilles".
2. The concessionary is under obligation to carry out transportation against payment for each and every one of letters and other addressed postal items:
  - a. in the interior up to a weight and measurements to be determined by national resolution, with general operation;
  - b. to and from The Netherlands and Aruba, as well as to and from abroad, with due observance of the applicable provisions of the instruments of the Universal Postal Union or else of other treaties, binding for The Netherlands Antilles or resolutions of organizations according to international law.
3. The concessionary shall refuse transportation of a postal item if such transportation might be in violation of any prescription by the law or should prove to be dangerous to persons and property and may refuse transportation if such might be contrary to the requirements for an effective transportation, as may be inserted in general terms and conditions.

#### Article 3

1. The concessionary, in the execution of its obligations concerning the international

transportation of postal items pursuant to this national ordinance, is under obligation to observe the obligations which are binding for The Netherlands Antilles, originating from the instruments of the Universal Postal Union or else from other treaties or resolutions of organizations according to international law.

2. The concessionary is entitled to act as postal administrator of The Netherlands Antilles for the application of the instruments of the Universal Postal Union.
3. The Minister, in mutual agreement with the Minister of General Affairs, shall issue prescriptions to the concessionary, purporting to:
  - a. safeguarding a proper application of the first paragraph;
  - b. rendering the necessary co-operation to the Minister and to the Minister of General Affairs at the preparation of treaties and resolutions as referred to in the first paragraph and in the international negotiations to be held in connection therewith.

#### Article 4

1. The concessionary may cause the obligations imposed by this national ordinance to be wholly or partially executed by a legal entity, in which the concessionary participates with at least 51 percent of the subscribed capital and in which the concessionary has the authority to appoint, suspend and dismiss the majority of the managing directors of such legal entity.
2. At the implementation of the first paragraph, the concessionary shall remain responsible to the Minister.
3. The concessionary shall therefore issue the necessary instructions to the legal entity referred to in the first paragraph, which instructions the latter is bound to follow.
4. When implementing the first paragraph, the provisions of article 7, 8, 11, 12 and 13 with regard to the concessionary, shall be similarly applicable relative to the legal entity referred to in the first paragraph.

#### Article 5

1. The terms and conditions on which the concession is granted, shall be determined by national resolution.
2. Apart from the conditions to be inserted in the concession in each particular case, the terms and conditions for the execution of the provision in article 2, second paragraph are at any rate related to:
  - a. the maintenance of a proper rendering of services;
  - b. the manner and measure of the service rendering;
  - c. the tariff structure and the adaptation of the rates and tariffs;
  - d. the secrecy requirement;
  - e. the protection of the privacy;
  - f. the periodic providing of information to the Minister for the purpose of the supervision;

- g. the duration of the concession;
  - h. the grounds for revoking the concession.
3. The terms and conditions of the concession contain merely obligations regarding the results to be obtained by the concessionary and none regarding the operational procedures for attaining such results.
  4. A resolution purporting to a determination or an amendment of the terms and conditions of the concession, shall be adopted with due observance of an entrepreneurial and a continuity-oriented operation by the concessionary.

#### Article 6

An amendment of the terms and conditions of the concession referred to in article 5, shall not become operative prior to one year after the determination of same by national resolution, unless the general interest as indicated in the resolution should urgently require otherwise or the concessionary should consent to the amendment entering into force at a sooner date.

#### Article 7

1. The concessionary shall only be liable for damages resulting from loss, damaging or delayed delivery of postal items in the interior, if the sender has availed himself/herself of the manner of transportation by which the postal item is registered in accordance with the rules and regulations relative thereto in the general terms and conditions.
2. The liability referred to in the aforementioned paragraph shall be voided, if the damage exclusively results from one or more of the following circumstances:
  - a. the nature or a defect of the transported item itself;
  - b. insufficient packaging of the transported item by a party apart from the concessionary or its subordinates;
  - c. any cause that is imputable to the sender;
  - d. an act of war or armed conflict;
  - e. withholding by order of a competent authority.
3. Claims may only be submitted by the sender. In the event the damages are suffered by a party apart from the sender, the sender has the authority by operation of the law, to submit the claim for the benefit of such party, either in his/her own name, or as the representative of the sender.
4. By means of a national resolution with general operation, the amounts shall be determined in excess of which the liability referred to in the **first** paragraph shall be null and void, by which the various **limits** of the separate amounts may be determined according to, among other things, the types of registration, as well as the nature and value of the postal item.

5. The concessionary may not exonerate itself by invoking an exclusion or restriction of its liability originating from one of the aforementioned paragraphs of this article, if the damages are a result of its own acts or omissions, intentionally committed to cause such damage, either by willful misconduct to cause such damage, or by negligence and being well aware that the damage would probably result therefrom.
6. Relative to international transportation of postal items, as referred to in article 2, second paragraph, sub b, the concessionary is only liable conform the provisions of the instruments of the Universal Postal Union, or else of other treaties and resolutions of international organizations, which are binding for the Netherlands Antilles.

#### Article 8

1. The captains of departing ships and aircraft are obliged to take charge of the transportation - against payment- of postal items and parcels, which are entrusted to them by the concessionary, to the extent transportation free of charge should not be prescribed by other statutory provisions in the law.
2. The ships and aircraft, referred to in the first paragraph shall not obtain clearance from the competent authority if their captains refuse to accept the commission referred to in the first paragraph.
3. The financial compensation, referred to in the first paragraph shall be determined in mutual agreement.
4. If no such agreement can be reached, the payment shall be determined by the Court of First Instance, with territorial jurisdiction in Curaçao, at the request of the party most ready and willing.
5. The captains of ships and aircraft are under obligation to take care of the preservation of the goods to be transported from the moment of receipt thereof until the moment of delivery.
6. The captains of ships and aircraft are obliged to deliver the items and parcels entrusted to them for transportation as soon as possible, but, at any rate, ultimately within 12 hours after their arrival at destination to the nearest post-office, unless the items and parcels should have already been claimed and handed over to an employee of the concessionary.
7. The operators of ships and aircraft are exclusively liable to the concessionary relative to the transportation. Such liability is limited to the amounts which the concessionary is legally bound to reimburse to the sender.
8. Agreements concerning postal transportation shall be concluded for periods not exceeding five years.

## Article 9

1. In order to facilitate the delivery to addressees of the postal items mailed to them, the Minister may issue rules concerning the places, measurements and other characteristics of the mail-boxes intended for such delivery.
2. Postal items, which, according to their nature and size, are suitable for delivery in the mail-boxes referred to in the first paragraph, may be considered as undeliverable, if the given address is not fitted with a mail-box that meets the requirements pursuant to the rules stated in the first paragraph.

## Article 10

Closed postal items which cannot be returned to sender, may only be opened by virtue of a Court-order issued by the Court of First Instance, with territorial jurisdiction in Curaçao, and only in view of tracing the data necessary for the return or the delivery.

## Article 11

An attachment levied on postal items which have been entrusted to the concessionary for transportation, is only permitted in the cases in which such attachment has been explicitly regulated by national ordinance.

## Article 12

1. Otherwise than pursuant to the concessions it is prohibited to transport letters, each separately weighing 2000 grams at most, against payment.
2. The first paragraph is not applicable to letters, which:
  - a. are transported within the Netherlands Antilles, to The Netherlands and to Aruba, or else abroad, in a manner which fulfills a need regarding the rendering of services relative to such transport, and which considerably exceeds the level of service rendering regarding the normal speedier transport as offered by the concessionary to the general public throughout the country, respective to the speed of delivery, the guaranty therefore and the capacity to be traced during the transport, and which:
    - 1<sup>o</sup> are transported against a higher rate of payment than the rate determined by national resolution with general operation for transportation within The Netherlands Antilles, or to The Netherlands and Aruba or abroad, and
    - 2<sup>o</sup> are transported by a carrier registered in a manner to be designated by the Minister;
  - b. are transported by order of the concessionary;
  - c. otherwise than by commercial operation are transported by order of one natural person and the members of his/her family, or of one legal entity or a subdivision thereof, provided that they originate from one single address and furthermore the conditions are met, that:

- 1° the transportation takes place within the boundaries of one insular territory of The Netherlands Antilles, or else by mutual traffic among the island territories of The Netherlands Antilles;
  - 2° the person transporting the letters is not the captain of a ship or an aircraft, or else the director of a shipping or airline company, by which the transportation is effected, nor is being employed by such captain or such company;
- d. obviously are intended to be transported by the concessionary, or else are to be delivered after transportation by the concessionary;
  - e. are exclusively related to the objects with which they are transported or else serve as receipts, bills of exchange or other commercial paper, which are transported in connection with amounts to be claimed or to be paid out thereon;
  - f. primarily contain text, made out in a writing system with signs intended for the blind;
  - g. are transported under an exemption granted pursuant to article 13, first paragraph.
- 3. It is prohibited to cause letters to be transported if such transportation should take place in violation of the first paragraph.
  - 4. The registered entity, referred to in the second paragraph sub a 2°, is under obligation to:
    - a. provide to the government officials, designated for that purpose by the minister, all information, verbally as well as written, which might be reasonably necessary for a proper supervision on the adherence to the provision of the second paragraph, sub a and
    - b. to annually pay an amount to be determined by the Minister by way of compensation for the costs involved in the registration and the supervision on the adherence to the provision of the second paragraph sub a.

### Article 13

- 1. The Minister has the authority to grant an exemption from the prohibition stated in article 12 to other parties apart from the concessionary in particular circumstances, in which the concessionary does not provide for the transportation of letters each separately weighing up to a maximum of 2000 grams, on prescriptions and restrictions to be added by the Minister, which are reasonably necessary in connection with such particular circumstances.
- 2. When implementing the first paragraph, the Minister has the authority to determine a financial compensation for such an exemption for the costs involved in granting the exemption.

## CHAPTER III

### Appeal

### Article 14

Anyone whose interests should be directly affected by a decree issued pursuant to this national ordinance, may lodge an appeal against same with the Court of First Instance.

CHAPTER IV  
**Enforcement**

Article 15

1. If the concessionary should fail to **fulfill** any of its obligation originating from this national ordinance, the Minister may issue a well-reasoned instruction in writing pertinent thereto.
2. In case of failure to follow the instruction, the Minister may levy an administrative fine on the concessionary, amounting to onehundredthousand guilders at most.
3. The Minister may claim the fine, levied pursuant to the second paragraph, increased by the costs incurred by laying the financial claim, by coercive collection measure.
4. The writ shall be served upon the violator by an instrument of the writ-server, with the costs thereof chargeable to the violator and it shall constitute an enforceable writ of execution in accordance with section 310 of the Code of Civil Procedure of The Netherlands Antilles (P.B.1932, no.57).
5. For a period of one month after the writ has been served, the writ may be opposed by bringing a suit against the State to Court.
6. The summons shall entail the stay of the execution. At the request of the State, the Court may pronounce the stay of the execution to be cancelled.

Article 16

1. Otherwise than pursuant to the concession, it is prohibited to create stamps or printed stamp images, depicting an image of the King or mentioning "The Netherlands Antilles", or to distribute same or to keep them in stock for distributing.
2. Otherwise than pursuant to the concession, it is prohibited to place pillar-boxes or letter-boxes intended for public use at or near the public roads.
3. It is prohibited to use stamps, printed stamp images, printing stamps or designations in such a way as to create the false impression that the documents or objects on which they are displayed, have been handled by the concessionary or originate from the concessionary.

Article 17

1. Any violation of the provisions of article 8, first and sixth paragraph, article 12, first paragraph and article 16, first paragraph, shall be punishable by detention up to a maximum of five months or a fine of tenthousand guilders.
2. Violation of article 12, third paragraph and 16, second and third paragraph, as well as the prescriptions and restrictions in connection with the exemption granted by virtue of

article 13, is punishable by detention of up to a maximum of two months or a fine of fivethousand guilders.

3. By a penalty up to a maximum of fivethousand guilders is punishable:
  - a. anyone, who causes an item to be transported by the concessionary, which item, by an unauthorized act, has been provided with designations, which have been determined for items for which an exemption of postage duty has been granted;
  - b. anyone, who causes an item to be transported by the concessionary, which item has not been provided with postage stamps or any other means equated therewith, the contents of which are not exclusively pertaining to public service, whereas such item has been provided with such imprints or designations as have been determined for items exclusively pertaining to public service, the postage of which is effected in a manner determined for such items;
  - c. anyone, who avails himself/herself by unauthorized use of one or more of the imprints and designations referred to sub b.
4. The objects, with which one of the violations referred to in article 16, third paragraph, has been committed are liable to be confiscated at the condemnation, insofar as they belong to the condemned.
5. The punishable acts in this national ordinance shall be considered misdemeanors.

#### Article 18

1. Apart from the officials referred to in Section 184 of the Code of Penal Procedure, the persons designated by national resolution are also in charge of investigating the acts punishable pursuant to this national ordinance. Such designation shall be published in the Curaçaosche Courant. They have authority to proceed to making arrests and searching vessels and vehicles suspected of being involved in the violation.
2. The items, suspected of being involved in the violation, shall be confiscated. The detainment of the items shall be duly notified to the addressee.
3. The confiscated items shall be handed to the addressee after completion of the penal procedure at Court, unless otherwise decided by judgement of the Court.

### CHAPTER V Further provisions

#### Article 19

In specific circumstances related to the enforcement of the international legal order or to international relations, the Minister, in mutual agreement with the Minister of General Affairs, has the authority to issue instructions to the concessionary or to the island territory regarding the transportation of mail to and from abroad.

## Article 20

The image of the King on a postage stamp or stamp imprint, is subject to the approval of the King.

## Article 21

All documentation, which are used by the concessionary in the execution of the postal services, for activities for the benefit of the users of the services or their assignees, are exempt from stamp duty, provided that the appropriate use is apparent from the documents.

## Article 22

When preparing resolutions as referred to in article 2, second paragraph, preamble sub a, article 3, third paragraph, article 5, first paragraph, article 7, fourth paragraph article 9, first paragraph, article 12, second paragraph, sub a, 2<sup>o</sup>, article 14, first paragraph or amendments of such resolutions, the Minister shall timely consult with the concessionary.

## CHAPTER VI

## Amendments of other national resolutions

## Article 23

The National Ordinance, regulating the Post 1958 (P.B. 1958, no.61) shall be revoked.

## Article 24

The Code of Penal Procedure of The Netherlands Antilles shall be amended as follows:

- a. In Section 4, preamble and sub secondly, the words: "or pursuant to article 2, first paragraph, sub c of the National Ordinance regulating the Post 1998" shall be inserted between the words: "in the name of the state" and "issued".
- b. In Section 222, preamble and sub firstly, the words: "or pursuant to article 2, first paragraph, sub c of the National Ordinance regulating the Post 1998" shall be inserted between the words: "in the name of the state" and "issued".
- c. In Section 227 the words: "or pursuant to article 2, first paragraph, sub c of the National Ordinance regulating the Post 1998" shall be inserted between the words: "in the name of the state" and "issued".
- d. In Sections 388, 389 and 391, the words: "or a person employed at" shall be inserted between the words: "government officials" and "any public institution of transport".

## Article 25

The National Ordinance on the Postal Savings Bank (P.B. 1958, no.62) shall be amended as follows:

a. Article 2 shall read as follows:

## Article 2

1. The administration of the Postal Savings Bank is entrusted to a legal entity, designated for that purpose by national resolution.
  2. The management of the administration of the Postal Savings Bank is entrusted to a managing director, who represents the Postal Savings Bank at Court and otherwise.
  3. In the event of absence or prevention from officiating, the director shall be substituted by a deputy-director.
  4. The managing director and his deputy shall be appointed, suspended and dismissed by national resolution, on the recommendation of the Minister of Traffic and Transportation.
- b. In the articles 3, second paragraph, article 4, sixth paragraph, article 9, first paragraph and article 14, first paragraph, the words: "the Minister in charge of the care for the affairs of the Postal Services" shall be replaced by the words: "the Minister of Traffic and Transportation".
- c. Article 12 shall read as follows:

## Article 12

1. The Postal Savings Bank, shall at any rate avail itself of the postal facilities of the concessionary, referred to in article 2, first paragraph of the National Ordinance, regulating the Post 1998, for the execution of its operational activities, which facilities have been designated by the Minister, after consultation with the Postal Savings Bank and the aforementioned concessionary.
  2. The legal relations between the Postal Savings Bank and Post Nederlandse Antillen N.V., concerning the utilization of the designated postal facilities, shall be stipulated by agreement.
- d. In article 14 the words: "the director of the Postal Services" shall be replaced by: "the legal entity, referred to in article 2, first paragraph".

CHAPTER VII  
Transitional and final provisions

## Article 26

1. Legal procedures which were initiated prior to the date on which this national ordinance becomes operative, and which have not yet been completed on said date,

shall be adjudicated with due observance of the provisions of the National Ordinance regulating the Post 1958 and the provisions derived therefrom.

2. In pending lawsuits involving the Postal Services, the concessionary shall replace the Prime Minister as of the date on which this national ordinance becomes operative.

Article 27

This national ordinance shall become operative on a date to be proclaimed by national resolution.

Article 28

This national ordinance may be cited as: National Ordinance regulating the Post 1998.

Given in Curaçao on December 23rd, 1997  
J.M. SALEH

The Minister of Traffic and Transportation a.i.  
M.A. POURIER

The Minister of Justice a.i.  
M.A. POURIER

Issued on the 31st of December, 1997  
The Minister of General Affairs  
M.A. POURIER

*The above is a true and unaltered translation of the original text of the legal instrument, drawn up in the Dutch language.*