GENERAL MEMORANDUM

AMENDMENTS TO CURAÇAO COMPANY LAW

EFFECTIVE 1 JANUARY 2012

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Introduction

Late 2011 the Curaçao Parliament (*Staten*) adopted a number of legislative proposals, including a proposal to amend certain provisions of Book 2 of the Curaçao Civil Code containing Curaçao company law.

It has long been uncertain when the proposed changes would become effective, but in late December 2011 a National Decree was signed whereby the new company law has become effective as per 1 January 2012.

This memo addresses some of the amendments to the Curaçao Civil Code which have now become effective (hereinafter collectively referred to as the "**2012 Amendments**") which may be relevant for Curaçao legal entities in general[1]. For a detailed overview of the 2012 Amendments as these may apply to any specific company and for any other questions relating thereto please contact your local contact at one of the STvB offices.

Background

In 2004 a revolutionary new company law was drafted by a committee under the auspices of Mr. G.C.A. Smeets, a former member of our firm, and was introduced in the Netherlands Antilles (which was then still a separate jurisdiction) in the form of a new Book 2 Civil Code (the "**2004 Amendments**"). The 2004 Amendments essentially replaced most parts of the then applicable Commercial Code that dated from 1948. This new company law was well received and has proven to be very effective in practice. After some minor amendments in 2004 and 2005 the legislator in 2011 has seen reason for a more complete revision of Book 2 in order to further modernize company law as applicable in Curaçao.

Below you will find listings of the 2012 Amendments which we feel are of general importance to Curaçao companies. The listings will generally follow the numbering of the articles of Book 2, and where necessary, certain cross-references may be made. As the 2012 Amendments with respect to capital companies (the limited liability company (*naamloze vennootschap* or "**NV**") and the private limited liability company (*besloten vennootschap* or "**BV**")) are by and large equally effective for both NVs and BVs, this memo will deal with the changes as these affect NVs. Please note however that the listings do not purport to be a complete listing of all applicable amendments to Curaçao company law or Book 2 of the Curaçao Civil Code.

TITLE 1. GENERAL PROVISIONS

Articles of association, company agreement and company regulations and ranking among them (Article 1 and Article 127)

The 2004 Amendments introduced the concept of a shareholders agreement directly into the

[1] For the avoidance of doubt, the 2012 Amendments as discussed in this memorandum only apply to company law. It is not expected that the 2012 Amendments will have any effect on the taxation of any Curaçao companies and as such any discussion of tax consequences is not within the scope of this memo.

Curaçao Civil Code, allowing for the possibility within the law to give corporate effect to arrangements set forth between shareholders in a private agreement concluded between all shareholders and the company itself. As a result of such an agreement, corporate actions in violation of any such agreement could be nullified by any interested party.

The 2004 Amendments also introduced the concept of company regulations (*reglement*) into the law. Company regulations are explicit regulations (*reglementen*) set out pursuant to the law or the articles by a corporate body providing for further organisatory rules for the legal entity. Company regulations, if properly drafted, can have a similar effect as a shareholders agreement.

Under the 2012 Amendments the concept of a "company agreement" (*vennootschappelijke overeenkomst*) is introduced. A company agreement is a written agreement specifically referred to as company agreement to which apart from the company all shareholders are a party whilst the articles provide that bearer shares and bearer notes cannot be issued. Apart from the contractual obligations pursuant to such an agreement, the company agreement also has corporate effect which means that it has the same force as provisions of the articles of association subject to the ranking provided in article 1. The 2012 Amendments however provide certain further requirements in order for a company agreement to be afforded corporate effect, such as requirements (i) for the articles of association to contain a specific provision allowing the company to enter into a company agreement; (ii) for the issue of bearer shares and bearer notes by a company for which a company agreement is in effect to be prohibited by the company's articles of association; (iii) for the agreement to be in writing and executed by all managing directors and supervisory directors in office; (iv) for each shareholder and the company itself to be a party to the company agreement; (v) for mandatory registration with the commercial register in Curaçao that a company agreement is in effect (the text of the company agreement does not have to be filed).

If there is a company agreement in place then a person acquiring shares will automatically become a party to that agreement, and a shareholder will cease to be a party to the agreement if he disposes of his shares albeit that liability under the agreement may continue to apply for a limited period of time to such shareholder.

The term shareholders agreement is now solely used to describe an agreement between shareholders to regulate their powers as shareholders that is effective between them as such (i.e. not vis-à-vis third parties, see articles 127/227 below).

The 2012 Amendments have however provided a list of items which must mandatorily be addressed and provided for the in articles of association of a company which are filed with the Commercial Register in Curaçao and thus publicly available. These include the division of capital into various classes of shares, the permitted issue of fractional shares, the determination of the financial year of the company, the division of duties between the general and executive board (if so provided), the implementation of a supervisory board, the authority to suspend managing directors by the supervisory board (if one has been implemented), the authority to inspect annual accounts, and the determination of the remuneration of members of the supervisory board by another corporate body than the general meeting.

It has furthermore been clarified in the law that any deviations from provisions of the law (insofar as permitted) must be set forth in writing in the articles of association, a company agreement or in company regulations. In addition, a specific provision regarding the hierarchy of these formative documents has been included, whereby the articles of association rank highest, a company

agreement subsequent highest and company regulations lowest. Provisions of a lower ranking formative document are null and void to the extent they conflict with a higher ranking formative document.

As a result of the coming into effect of the 2012 Amendments, shareholders agreements that are currently in place and under the 2004 Amendments were given corporate effect no longer have corporate effect. For those companies that are a party to a shareholders agreement it must be assessed whether the agreement should be replaced by a company agreement that meets the requirements for company agreements under the revised law. This may also require an amendment of the articles of association.

Management authority (Article 8)

The 2012 Amendments explicitly provide that limitations in respect of management authority can result from the law, the articles of association, a company agreement or company regulations.

Representation (Article 10)

Except for limitations resulting from the law or the articles of association a legal entity is represented by its managing board (*bestuur*). If there is more than one managing director in office, the legal entity is represented by any managing director acting individually to the extent the articles of association do not provide otherwise.

To the extent the articles do not prohibit this, a limitation of the authority to represent the company can be held against a counter party that (a) knew the limitation or without further investigation should have been aware of the limitation, or (b) could have been aware of the limitation by consulting the public records of the commercial register in Curaçao.

Article 10 section 4, however, provides that a counterparty may rely on a written statement from the board that a legal entity will not invoke any specific limitation of the authority to represent the legal entity.

Conflicts of interest (Article 11)

The new general rule as stipulated under the 2012 Amendments is as follows: in a transaction with or legal proceedings against a managing director a legal entity is represented by the supervisory board. If there is no supervisory board, the entity is represented by the general meeting of shareholders or by a person appointed for that situation by the general meeting of shareholders. For a foundation, such appointment is made by the court at the request of an interested party.

The provision of Article 11 under the 2004 Amendments which provided that, in the event of a conflict of interest, the general meeting at all times could set aside the articles of association and appoint an individual to represent the company has been deleted in the 2012 Amendments. The now deleted provision created too much uncertainty in dealing with potential conflicts of interest and as such this is a welcome amendment.

Pursuant to article 11 section 2 under the 2012 Amendments, the general rule as provided in article 11 section 1 can be deviated from in the articles of association or pursuant to company regulations adopted by the general meeting pursuant to the articles of association. It should be noted that many current articles of association of Curaçao companies reflect the provisions of the 2004 Amendments and as a result, the general meeting of such companies can still set aside the articles of association and appoint an individual to represent the company in the event of a conflict of interest.

It should also be noted that a conflict of interest is only deemed to exist under quite narrowly defined circumstances, being the entering into a transaction with a managing director or in the event of legal proceedings against a managing

director. A qualitative conflict of interest, for example where a managing director sits on the board of two group entities that are performing certain intercompany transactions, is not considered a conflict of interest in the sense of article 11.

Alternate managing directors (Article 12)

The provision that an alternate managing director in all respects must be seen as a managing director has been deleted under the 2012 Amendments. It has also been clarified that the appointment of an alternate managing director can at all times be revoked by the corporate body that has appointed the alternate managing director.

The reason for this change is that under the old law it could be argued that an alternate managing director would be equally liable even for the period that he would not be in function. This could lead to undesired consequences. Liability of alternate managing directors for NVs and BVs is regulated by articles 13 section 8 and 23 section 8 providing for liability of such persons that have acted as if they are managing directors.

Ultra vires (Article 13)

Subsequent to the 2012 Amendments, a foundation no longer can exclude the possibility to invoke ultra vires in its articles of association. This is a mandatory provision of law that is immediately applicable to all foundations, and as such a provision in the articles of association of a foundation predating the 2012 Amendments which excludes the possibility to invoke ultra vires is considered void.

Furthermore, the provision that a company must invoke ultra vires within six months after the action concerned was deleted as a result of the 2012 Amendments. This means that as a result of the 2012 Amendments the general statute of limitations provisions of Book 3 Civil Code apply. These provide that nullity of actions can be invoked for a period of three years after the relevant action took place.

The general meeting of a legal entity, not being a foundation, can confirm that a certain action was not ultra vires or can waive the right to invoke ultra vires in respect of a certain action. A counterparty of the legal entity may rely on a written statement in this respect from the managing board or a managing director addressed to such counterparty.

Liability in the event of bankruptcy (Article 16)

As result of the 2012 Amendments the mere fact that the annual accounts of a company have not been prepared in a timely fashion is, in and of itself, no longer sufficient to create the rebuttable suspicion that a bankruptcy is a result of obvious improper management, which can result in personal liability of managing directors.

In addition, liability vis-à-vis the bankrupt estate of a company for any shortfall is limited to such shortfall that arose in the period starting three years before the bankruptcy or a suspension of payments that occurred prior to such bankruptcy.

Supervisory board (Article 19)

The 2012 Amendments now allow that legal entities can be appointed as supervisory directors, unless the legal entity where the supervisory director is appointed carries out an enterprise as described in the Curaçao Commercial Register Ordinance (*Handelsregisterverordening*).

Also in the event that an entity has implemented a one-tier board consisting of a general board and an executive board, as provided for in article 18, a supervisory board can be implemented. This means that under the 2012 Amendments, there are now four types of board structures available to Curaçao entities, being (i) the one-tier board consisting solely of a managing board; (ii) the one-

tier board comprised of a general board and an executive board; (iii) the two-tier board consisting of a managing board and a supervisory board; and (iv) the two-tier board consisting of a managing board comprised of a general board and an executive board and a supervisory board.

Liquidation (Article 31)

Under the 2004 Amendments it was generally accepted that the liquidation procedure for an entity ended once the liquidator had no knowledge of further assets. Under the 2012 Amendments liquidation terminates only once the liquidator has published an announcement in the Curaçao Gazette and informed the holders of registered shares and creditors that there are no more assets in the liquidated company known to the liquidator.

Written expressions (Article 36)

The 2012 Amendments now provide that a written expression is an expression made by exploit, telegram, telex, telefax, e-mail or other text communicating means. A provision was also added stipulating that the articles of association can limit the use of electronic communication means.

TITLE 2. THE FOUNDATION

Name and further obligations (Article 51)

The name of a private foundation may also contain the abbreviation S.P.F. or SPF instead of *Stichting Particulier Fonds* or Private Foundation in full.

The articles of a foundation can now also contain provisions that persons that are a participant (*deelnemer*) or associated person (*aangeslotene*) of the foundation have certain obligations vis-à-vis the foundation as set out in the articles.

The specific investigation proceedings relating to the foundation were deleted because general investigation proceedings have been included in the law under the 2012 Amendments (see Title 8).

Annual accounts (Article 58)

For a large foundation, the provisions for the large company in respect of financial statements are now equally applicable.

TITLE 5. THE LIMITED LIABILITY COMPANY (*NAAMLOZE VENNOOTSCHAP* OR "NV")

Share capital (Article 100)

The rule under the 2004 Amendments was that at least one share with full voting rights and sharing in the profits, or one share with full voting rights *and* one share sharing in the profits had to be outstanding at any time. Under the 2012 Amendments at least so many shares must be outstanding so that in respect of any topic brought before a general meeting voting rights can be exercised, and simultaneously at least one share that shares in the profit must be outstanding. This allows voting rights on various topics to be allocated to specific classes of shares.

Name (Article 102 section 1)

The abbreviation of a *naamloze vennootschap* may be NV or N.V.

Par value of shares (Article 102 section 2)

A clarification has been added under the 2012 Amendments that the par value of shares (if one has been assigned to a class) can be expressed in one or more foreign currencies, provided that per class of shares the same currency is used.

Possibility to include personal liability of shareholders in the articles (Article 102 sections 5 through 8)

Article 102 has been revised under the 2012 Amendments to reflect provisions relating to the

private limited liability company (BV) that should equally apply for the NV. These primarily regard allowing the articles of association to provide for personal liability for certain holders of (certain classes of) shares.

As a result of the 2012 Amendments the articles of association can now provide that holders of registered shares or of certain classes of registered shares in an NV will be personally liable, either jointly or severally, for specific debts of the company. In the event that provisions for such liability are included in the articles of association, interested parties (i.e. creditors of such debts) will also have the right to inspect the shareholders register.

Any resolution to amend the articles as a result of which such personal liability of shareholders is introduced, amended or terminated, can only be implemented with the explicit approval of all shareholders and all others entitled to vote.

A third party, for whose benefit a personal liability of shareholders is included in the articles, can directly file his claim against a shareholder, unless the provisions of the articles of association prohibit such.

To the extent that as a result of an amendment of the articles of association a shareholder is released from all or part of a personal liability that previously existed, this will also have immediate effect with respect to existing debts of the company, provided, however, that for debts pre-existing the release or partial release such is only effective in respect of the relevant shareholder six months after the date of the amendment of the articles and registration of the release in the shareholders register. The articles of association may also extend the aforementioned six month term.

If a shareholder that has a personal liability resulting from such a provision in the articles of association ceases to be a shareholder, his liability also terminates for existing debts of the company, provided however that for those debts the termination of liability is also only effective six months after the time at which the shareholding is terminated and registration to that effect is made in the shareholders register. This term can also be extended by the articles of association.

Issue of shares of listed companies (Article 104)

Article 104 has been amended pursuant to the 2012 Amendments in order to provide that shares in listed companies, or shares that will be listed immediately subsequent to their issue, can be issued in accordance with the applicable system of the relevant stock exchange where such shares are or will be listed, provided such shares are not bearer shares.

Preemptive rights (Article 106)

Under the 2004 Amendments the general rule existed that shareholders had preemptive rights for share issues unless the articles provided otherwise. Under the 2012 Amendments this rule has been negatively formulated and preemptive rights must now be explicitly provided for in the articles. The articles of association can provide that all or only certain shareholders have preemptive rights upon an issue of shares, and may further determine that such preemptive rights are pro rata or otherwise distributed amongst shareholders. The authority to determine the distribution of preemptive rights may also be delegated to a corporate body designated in the articles of association.

Please note that due to the rule under the 2004 Amendments, whereby shareholders automatically had preemptive rights pro rata to the shares held by them, the articles of many NVs and BVs do not provide for preemptive rights. As a result of the 2012 Amendments, shareholders of those companies (that under the 2004 Amendments would have preemptive rights) no

longer have such rights. For those companies it is recommended that the articles are amended to reflect this.

Payment on shares (Article 107)

Under the 2004 Amendments it was possible that payment on shares could be delayed for a certain period of time or until a corporate body designated in the articles of association resolved that the payment was due. Under the 2012 Amendments such delay can still be applied to cash payments on shares, however this is no longer possible for in kind payments. Payment in kind on shares must be effectuated immediately after incorporation or issue of the relevant shares.

Article 107 section 7 has also been clarified and now provides that obligations to pay on shares that fall after the date of bankruptcy can be complied with by paying the cash value of such future payment obligations.

Contractual obligations linked to shareholding, quality requirements for shareholding and forced redemption (Article 108a)

This is a new article introduced to specifically allow the articles to provide with respect to all registered shares or certain registered shares of a specific class that (i) certain contractual obligations vis-à-vis the company, third parties or among shareholders are linked to the holding of such shares; (ii) certain quality requirements (*kwaliteitseisen*) apply to the holders of such shares; or (iii) that certain provisions as referred to in article 257 (relating to forced redemption) apply.

If the articles provide for contractual obligations vis-à-vis third parties, such third parties have the right to inspect the shareholders register and can claim a copy of such part of the register from which relevant information for such third party appears.

In order to protect the interests of minority shareholders, the legislator has deemed it appropriate to provide that a revision of the articles as a result of which a provision as referred to in the first section is introduced, changed or revoked can only be resolved upon with the explicit approval of all shareholders and all persons entitled to vote.

Shareholders register (Article 109)

Under the 2012 Amendments, the shareholders register must also mention any possible liability of a shareholder pursuant to articles 102 section 5 and 108 section 1, and in the event that a registered share is exchanged for a bearer share, registration of the issue of the bearer share must be recorded.

Under the 2004 Amendments, shareholders were only entitled to inspect the entries in the shareholders register with respect to their own shares. Under the 2012 Amendments, there is a general entitlement of all shareholders to inspect the entire shareholders register, unless the articles of association limit the possibility to inspect the register to such information that relates to the shares held by the shareholder concerned.

In respect of the shareholders register it is now provided that the articles may provide that the register is held in electronic form and is kept up to date by a third party under responsibility of the managing board.

It should be noted that the amendment by which the shareholders register is now open to inspection by all shareholders unless the articles of association provide otherwise could have the undesirable effect that companies whose articles of association do not contain a specific provision limiting the rights of shareholders in this respect could be more prone to shareholders undertaking action in concert with other shareholders.

(Setting aside of) Limitations on transferability of shares (Article 111)

Under the 2004 Amendments, shareholders could petition the court to set aside provisions restricting the transferability of shares held by them. The 2012 Amendments has now extended that right to holders of a right of pledge in respect of shares in a Curaçao company as well.

It should be noted that under the 2012 Amendments transfer restrictions recorded in a company agreement will be afforded corporate effect provided the articles of association of the company explicitly refer to the transfer restrictions laid down in the company agreement.

Relationships amongst shareholders (Article 127 section 2)

Section 2 of article 127 has been amended under the 2012 Amendments to provide that shareholders can regulate their mutual relationship and the manner in which they will exercise their rights as shareholder in a shareholders agreement.

It should be noted that under the 2012 Amendments, existing shareholders agreements no longer have corporate effect irrespective of whether the company is a party thereto or not.

Company agreement (Article 127 sections 3 through 10)

The company agreement is addressed in more detail above under article 1.

Annual meeting (Article 128)

The 2004 Amendments stipulated that at least once per year a general meeting of shareholders had to be held.

Under the 2012 Amendments, article 128 now stipulates that at least once per year a general meeting must be held or resolutions outside of a meeting (in writing) must be adopted (see article 135 below).

Provisions relating to the right to attend shareholders meetings (*vergaderrecht*) (Article 129)

A new article has been included under the 2012 Amendments concerning rights of persons to attend general meetings of shareholders. The right to attend a meeting is defined as the right to attend a general meeting in person or by proxy and to address such general meeting. The right to attend a meeting is granted to:

- each shareholder;
- each person entitled to vote;
- each managing director;
- each supervisory director; and
- such other persons as the articles grant the right to attend meetings.

As a result of this new article, in conjunction with articles 131 and 135, the procedures for convocation of and adoption of resolutions by the general meeting have substantially changed.

The right to convene meetings (Article 130 section 1)

Under the 2012 Amendments, the rule of article 130, pursuant to which shareholders representing at least 10% of the vote in a general meeting could request the managing board or the supervisory board in writing to convene a general meeting, has been changed to include those persons entitled to vote (who not necessarily be shareholders) representing 10% of the votes.

Resolutions adopted in shareholders meetings held without being duly convened (Article 131 section 6)

Under the 2004 Amendments, resolutions could be adopted at the general meeting of shareholders

even if the meeting was not duly convened, provided such resolutions were adopted unanimously by all shareholders entitled to vote. Under the 2012 Amendments, all persons with the right to attend meetings must be present or represented and to the extent they are not, such persons must have consented to the manner of adoption of resolutions or must have indicated not to invoke the fact that the meeting was not duly convened.

As a result of this expansion under the 2012 Amendments, all non-voting shareholders, all managing directors, all supervisory directors and all others entitled to attend shareholders meetings must be involved in a general meeting of shareholders if it is not duly convened. All such persons entitled to attend shareholders meetings must either be present or actively approve that the meeting is being held without being duly convened.

Advisory vote of managing directors and supervisory directors in the general meeting (Article 132)

The advisory vote of managing directors and supervisory directors to the general meeting can no longer be excluded in the articles of association.

Adoption of resolutions outside of a meeting (Article 135)

Resolutions of the general meeting can also be adopted without holding a meeting (i.e. in writing), provided no bearer shares are in issue and that all persons entitled to attend the meeting have agreed to this manner of adoption of resolutions.

Please note that as a result of the 2012 Amendments, all holders of non-voting shares, all managing directors, all supervisory directors and anyone else holding a right to attend general meetings must be involved when a resolution in writing is adopted. Timely information of the intention to adopt a resolution in writing provided to directors and shareholders is no longer sufficient. All persons entitled to attend must actively consent to a resolution in writing.

If no votes can be cast, the managing board decides (Article 135a)

A new article 135a has been introduced under the 2012 Amendments which provides that if in respect of a resolution of the general meeting no vote can be validly cast on any of the outstanding shares, the managing board will decide, unless the articles of association provide otherwise.

The articles of association may also delegate the authority to decide as mentioned above to another corporate body or a third party.

Suspension and dismissal of managing directors (Article 136)

Under the 2012 Amendments the law now explicitly provides that the authority to dismiss or suspend managing directors can also be granted to another corporate body than the corporate body that has appointed them. The corporate body that has appointed managing directors is, however, at all times authorized to suspend or dismiss.

TITLE 8. RIGHT OF INVESTIGATION (ARTICLES 270 THROUGH 286)

When introducing Book 2 in 2004, the legislator argued in the Explanatory Notes to the 2004 Amendments that the right of investigation (*enquêterecht*) as it is known under Netherlands law would not fit within the Netherlands Antilles system. The main reasons on which the legislator based its view were that it would put an undue burden on the court system, the law provided for the possibility for shareholders to be bought out (which provided sufficient safeguards) and the right of investigation as it had been laid down in

article 132 of the Commercial Code, effective until 2004, had hardly ever been used.

Even though in our view all of these arguments make sense and still hold true today, the legislator has pushed forward and introduced a new Title 8 in the 2012 Amendments granting certain parties the right to request the combined Court of Appeals of Aruba, Curaçao, Sint Maarten and the BES Islands to appoint investigators to perform an investigation into the management and financial affairs of an enterprise.

A request for an investigation procedure may be submitted in respect of: (i) a foundation by any interested person; (ii) an association or cooperative by one/tenth of its members; and (iii) an NV or BV by shareholders that alone or together represent one/tenth of the equity or at least one/tenth of the votes that can be cast on all items that can come before the general meeting. In addition, the public prosecutor, a trustee in bankruptcy or persons authorized thereto in the articles of association or pursuant to an agreement with the legal entity may file such a request (article 272).

The above-mentioned Court may, upon receipt a request by an entitled party or parties, order an investigation into the affairs of a company if it finds well-grounded reasons to doubt the soundness of the company's policies. One or more court-appointed investigators carry out the investigation. The investigators are granted full access to the company's books and premises and they are to receive full co-operation of the company's managing directors, supervisory directors and employees. The investigator's report is sent to the person or persons who requested the investigation and to the legal entity. If the report gives evidence of mismanagement, the Court may take rather far-reaching measures, such as the annulment of a resolution of an organ of the company, the suspension or removal of directors, the appointment of interim directors, temporary transfer of shares, temporary deviation from provision of the company's Formative Documents, and the winding-up of the company.

These and other measures may also be sought in preliminary relief.

Conversion into a foreign entity (Article 304)

Under the 2004 Amendments, in order for an NV or a BV to convert into a foreign entity, all managing directors and all holders of voting shares who had not opposed the resolution to convert, had to issue a statement accepting several liability for all debts of the company at the time of conversion. This made conversion abroad of larger companies and certainly of listed companies, impossible.

Under the 2012 Amendments, this requirement has been deleted. The stipulation under the law is now that there is waiting period of one month in which creditors or counterparties can oppose the conversion on grounds that the conversion would be detrimental to their position as creditor or counterparty.

A publication of the proposed conversion must be made in the Curaçao Gazette and in a newspaper with wide circulation, at least five weeks but not more than three months before the execution of the deed of conversion.

Only in cases where the interest of the company explicitly requires a deviation from the system whereby the proposed conversion is published, a conversion can take place on the basis of the old rule whereby there is a liability statement from all managing directors at the time of conversion and all voting shareholders except where it concerns listed companies. The liability in principle expires three months after the time of conversion but, in any event, one year after the conversion. This means that for listed companies an urgent conversion can still be implemented on the basis of the old rule without liability statements from the shareholders.

Outbound mergers of Curaçao entities with foreign entities (Article 323b)

Under the 2012 Amendments, Curaçao legal entities may also enter into a statutory merger procedure with a foreign entity with a similar legal form whereby the foreign entity will be the acquiring and surviving entity and the Curaçao entity will cease to exist, provided that the law governing to foreign entity does not oppose such statutory merger and the manner in which it is effectuated. Previously, only inbound mergers with foreign entities were possible under Curaçao law.

We hope that you find the above summary of the 2012 Amendments to Curaçao company law informative. Please do not hesitate to contact one of the persons mentioned below if you have any questions regarding the above.

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