

NATIONAL GAZETTE

NATIONAL DECREE, CONTAINING GENERAL PROVISIONS, of the 9th of May 1992 in execution of Article 8 of the Insurance Supervision Act (Nat. Gaz. 1990, No. 77).
(Funeral Service Insurers Decree)

IN THE NAME OF THE QUEEN !

THE GOVERNOR of the Netherlands Antilles,

Having considered:

that it is desirable, under application of Article 8 of the Insurance Supervision Act (Nat. Gaz. 1990, No. 77) to establish regulations concerning enterprises which for their own account enter upon insurance contracts for the benefit in kind in connection with the death of man;

After hearing the Privy Council, has decided:

Article 1

In this national decree, the following terms shall be understood as follows:

- a. national ordinance: the Insurance Supervision Act (Nat. Gaz. 1990, No. 77);
- b. funeral service insurer: everyone who makes a business of, for his own account entering upon insurance contracts to provide benefits in kind in connection with the death of man, including the completion of the contracts involved, even if the making of profit should not be the objective of the business activities;

Article 2

1. Every funeral service insurer shall report to the Bank, within one month after the number of insured persons has reached two hundred.

2. The report as referred to in the first Paragraph shall be made within a month after the number of two hundred insured persons has been reached.

Article 3

1. The Bank shall determine the model of the application form.
2. On application the funeral service insurer shall submit:
 - a. a copy of his deeds of incorporation;
 - b. a copy of his memorandum and Articles of Association;
 - c. a list of the names and addresses of its directors and of those who are in charge of the supervision of the board of directors in case such a supervision has been provided for in the Articles of Association; and
 - d. his policy-conditions, rates and technical foundations for the calculation of his rates; and
 - e. his balance-sheet and profit and loss account for each of the last two financial years or, in case two financial years have not yet expired since the foundation, his balance-sheet and profit and loss account for the past financial year.

Article 4

1. A funeral service insurer as referred to in Article 2, first Paragraph, shall submit to the Bank the financial data to be determined by the Bank in a manner to be prescribed by the Bank and within a period to be stipulated by the Bank.
2. The insurer shall furthermore submit to the Bank within a period to be determined by the Bank the information which the Bank might reasonably require in order to get a clear insight into the management carried out by the insurer.

Article 5

The Bank has the authority to gather information from any person whom it suspects this national decree to be applicable to, any information which reasonably can be deemed necessary to judge this.

Article 6

1. The Bank is authorized to inspect the books and financial records of a funeral service insurer as referred to in Article 2, first Paragraph, or have them inspected by persons appointed by it, by explicit and special power of attorney.

2. The funeral service insurer is obliged to submit his books and financial records, when the Bank or persons appointed by the Bank according to the first Paragraph demand this.

Article 7

1. A funeral service insurer as referred to in Article 2, first Paragraph, shall submit to the Bank a certified copy of each change of his Articles of Association and a copy certified by his board of directors of each change of his by-laws and informs the Bank of each change in the composition of his management or his supervisory body, all this within a fortnight after the change becomes effective.
2. The funeral service insurer shall notify the Bank of each change of his policy conditions, rates and technical bases for the calculation of his rates within a fortnight after it becomes effective.

Article 8

1. In order to cover the cost, connected with the execution of this national decree, according to rules to be stipulated by the Minister of Finance, the Bank shall annually impose an assessment on every funeral service insurer, as referred to in Article 2, first Paragraph.
2. The funeral service insurer pays the amount of the assessment within a period to be stipulated by the Bank.
3. In case the funeral service insurer does not comply with the second Paragraph, the president of the Bank may issue a payment order, which includes the right of summary foreclosure, which shall be declared enforceable by the Court of First Instance, with jurisdiction in the Island Territory in which the insurer has his registered office. The payment order shall be served and executed in the manner laid down in the Code of Civil Procedure of the Netherlands Antilles with regard to judgments and authentic deeds.

Article 9

With regard to a funeral service insurer, chapters XI of the Insurance Supervision Act is applicable.

Article 10

An funeral service insurer who already has two hundred or more insured persons at the moment that this national decree becomes effective, shall report to the Bank within two months after the abovementioned moment.

Article 11

This national decree can be referred to as Funeral Service Insurance Decree.

Article 12

This national decree becomes effective as of the day following the date of issue of the National Gazette in which it has been included and is retroactive up to and including the 1st of December, 1991.

Given at Curaçao, the 9th of May 1992.
J.M. SALEH

The Minister of Finance,
G. DE PAULA

Issued on the 11th of May 1992
The Minister of General Affairs,
M.PH. LIBERIA-PETERS

EXPLANATORY NOTE

A funeral insurance service provides a benefit on the death of the insured person, but contrary to an ordinary life insurance the benefit is not paid out in the form of a certain sum of money, but in the form of a service or a package of services. This means that besides the insurance risks that every life insurer carries, the funeral service insurer in addition carries the risk of increase of the cost of the services to be rendered. It is only in the case that a maximum has been set in the policy for these costs, that the insurer does not run a price-risk. Mostly the performance promised by the insurer consists of providing the funeral services according to a certain description, without setting a maximum to the cost connected therewith for the insurer. As a consequence of the price level risk that the funeral service insurer carries, a balanced actuarial setup, comparable to that in the life insurance business is not possible. The nominal valuation of the size of the promised services in kind, the establishment of the wished for level of provisions and the calculation of the premiums can therefor not occur in a scientific manner. Principally for this reason the funeral service insurance business is exempt from the supervision regulation, as laid down in the Insurance Supervision Act (I.S.A.). This has been done by, in the definition of "life insurance contracts" in Article 1, first Paragraph under a, I.S.A., limiting the aim of the contract to the paying out of monetary benefits. Reference is furthermore made to the explanatory note to this definition in the explanatory memorandum to the I.S.A.. There mention is also made of the fact that the government wants to keep the possibility open to subject the funeral service insurers too, to supervisory regulations, while taking into account the typical place which they traditionally occupy in our society. Therefore Article 8 of the I.S.A. gives the government the authority to oblige the funeral service insurers to report to the Bank van de Nederlandse Antillen and to submit certain financial data to it. Furthermore Article 8 gives the authority to issue further regulations if necessary on the basis of the insight obtained through the reports. In the recent past the funeral service insurance business has a few times received a negative publicity, while furthermore the government is aware of the fact that there is great interest in entering the funeral service insurance market as a tenderer of services. All this has given cause to the government to introduce at this early date an obligation to report and to submit data on the basis of Article 8, I.S.A., with the object of obtaining an insight in the functioning and the financial position of the business sector concerned. For the time being the obligation to report is limited to the larger enterprises, namely the insurers who have two hundred or more insured persons (Articles 2 through 4). A large scale investigation among all the funeral service insurers operating in the Netherlands Antilles is deemed unnecessary by the government in order to reach the intended goal and, with a view to the cost involved with such an investigation, also undesirable.

Pursuant to Article 8 of the national decree the expenses which for the Bank are connected with the execution of the national decree shall be apportioned over the insurers subject to the obligation to report.

Although perhaps superfluous, in Article 9 the appeal regulation according to administrative law, included in chapter XI of the I.S.A., and the term regulation of Article 124, first paragraph I.S.A., have been explicitly declared applicable to the insurers falling under the national decree. The same applies to the applicability declaration of Chapter XII of the I.S.A.. In this chapter, to wit in Article 122, first Paragraph, contraventions of regulations, given under Article 8 of the I.S.A. are made punishable.

The Minister of Finance.