



## 2009 POLICY RULE BANKING LICENCE REQUIREMENTS AND ADMISSION REQUIREMENTS FOR CREDIT INSTITUTIONS OPERATING IN OR FROM ARUBA

### Preamble

This document outlines the Bank's policy with respect to the license and admission requirements of credit institutions. It also combines the main elements outlined in its admission policy documents of May 2000 and August 2006, and further explains the Bank's position on shareholding in credit institutions. It maintains that the soundness of the banking industry in Aruba is best served by admission of credit institutions with strong ties to existing banks, bank holding companies or financial conglomerates subject to comprehensive consolidated supervision by the supervisor(s) in the country where the parent bank, bank holding company or financial conglomerate is established (the "home country supervisor(s)").

### 1. Introduction

The most relevant sections of the State Ordinance on the Supervision of the Credit System (AB1998 No 16) (the ordinance) relating to the application for a banking license are set out below. However, it is still necessary to take fully into account the whole ordinance in order to have a complete picture of the conditions and requirements stipulated in this ordinance. Reference in this policy rule to some parts of the ordinance does not mean that other parts of the ordinance that are not discussed do not apply. The ordinance (including the unofficial English translation hereof) is also available at the website of the Centrale Bank van Aruba (the Bank): [www.cbaruba.org](http://www.cbaruba.org)

### 2. General license requirements for credit institutions

In accordance with section 4 of the ordinance, no enterprise or institution established in Aruba shall pursue the business of a credit institution unless it has obtained a banking license to that end from the Bank. Furthermore, in accordance with section 24 of the ordinance no enterprise or institution established outside Aruba shall pursue the business of a credit institution through a branch in Aruba, unless it has obtained a banking license to that end from the Bank. Sections 5, 6, 7(1) and (2), and 8 to 11 of the ordinance apply to a branch office of a credit institution established outside Aruba.

Pursuant to section 5 sub 1 of the ordinance, the application for a license as referred to in section 4 shall at least contain information about:

a. the number, the names, and the past history of the persons who determine the day-to-day policy of the enterprise or institution;

- b. the number, the names, and the past history of the members of the supervisory board of the enterprise or institution or of the body of the enterprise or institution having a task comparable with that of a supervisory board;
- c. the names of those who have a qualifying holding in the enterprise or institution, as well the size of any such qualifying holding;
- d. annual accounts or an opening balance sheet certified by an auditor;
- e. a program of operations which the enterprise or institution intends to carry on; and
- f. the envisaged administrative organization and organizational structure, including the financial administration and internal controls.

In accordance with section 6 sub 1 of the ordinance the Bank shall grant the license as referred to in section 4, unless:

- a. the enterprise or institution does not fulfill the requirements provided for in or under sections 7 and 8;
- b. the Bank is of the opinion that the expertise of one or more persons who determine or co-determine the policy of the enterprise or institution is insufficient in connection with the pursuit of the business of a credit institution;
- c. on the grounds of the intentions or the past history of one or more persons who determine or co-determine the policy of the enterprise or institution, the Bank is of the opinion that the interests of the creditors or future creditors of the enterprise or institution could be jeopardized;
- d. without prejudice to section 17, the Bank is of the opinion that, as a result of a qualifying holding in the enterprise or institution, the sound banking policy of the enterprise or institution is or could be subject to an undesirable influence;
- e. the auditors opinion referred to in section 5 sub 1d is not an unqualified opinion;
- f. on the grounds of information as referred to in section 5(1), under d, e, or f, the Bank is of the opinion that the enterprise or institution will not be capable of implementing its intentions or meeting the requirements to be imposed on it on account of the supervision; or
- g. the Bank is of the opinion that granting a license would or could lead to an undesirable development of the credit system.

When assessing whether the granting of a license would or could lead to an undesirable development of the credit system as specified in section 6 (1) sub g of the ordinance, the Bank will consider, inter alia, the solvency and liquidity of the institution that requests the license, its parent company and, as the case may be, other shareholders and the effect the granting of license has or could have on:

- The financial solidity and integrity of the credit system.
- The adequate functioning of the financial markets.
- The interest of creditors, account holders, savers, depositors and other interested parties.
- A sound and stable financial sector.
- The financial reputation and integrity of Aruba.

In accordance with section 7 of the ordinance:

1. The day-to day policy of a credit institution shall be determined by at least two persons.
2. A credit institution which is a limited liability company (“naamloze vennootschap”) shall have a supervisory board, consisting of at least three natural persons.

Pursuant to section 8 of the ordinance, a credit institution shall have a minimum amount of own funds being Afl. 5 million. Furthermore, all credit institutions have to comply continuously with all requirements and conditions stipulated in the ordinance, as well as the regulations issued by the Bank. Some of the main requirements are listed below:

1. Appointments of members of senior-management and supervisory board need the Bank’s prior approval.
2. Each credit institution has to comply with the Bank’s solvency and liquidity requirements.
3. Each credit institution has to comply with the Bank’s directives, including but not limited to the administrative organization and internal controls and the Customer Due Diligence Directives, which are based on Section 15 of the SOSCS.
4. Unless it has obtained prior written permission from the Bank, a credit institution is prohibited from:
  - a. reducing its own funds by repayment of capital or distribution of reserves;
  - b. holding, acquiring or increasing a qualifying holding in another enterprise or institution;
  - c. taking over all or a considerable part of the assets and liabilities of another enterprise or institution;
  - d. merging with another enterprise or institution;
  - e. proceeding to financial or corporate reorganization;
  - f. allowing a managing partner to join the credit institution;
  - g. opening a branch.
5. Unless prior written permission of the Bank is obtained, any natural person or legal entity is prohibited from:
  - a. holding, acquiring or increasing a qualifying holding in a credit institution; or

- b. exercising any control attaching to a qualifying holding in a credit institution.
- 6. Each credit institution shall submit to the Bank every year, within six months, its certified annual accounts.
- 7. Each credit institution has to submit to the Bank, on a periodical basis, detailed financial information in the format prescribed by the Bank.

### **3. License and admission policy for credit institutions**

#### **3.1 License and admission requirements applicable to all credit institutions**

In order to ensure a sound development of the banking industry in Aruba (refer also to section 6(1), sub d and g of the ordinance), a credit institution will, in principle, only be considered for admission if all of the following conditions are met:

1. The applicant will be a branch or a majority owned subsidiary of an existing bank, bank holding company or, as the case may be, financial conglomerate, subject to comprehensive consolidated supervision by the home country supervisor(s).
2. The applicant's parent bank, bank holding company or, as the case may be, financial conglomerate has adequate financial strength and a solid reputation.
3. The supervision conducted by the home country supervisor(s) of the applicant's parent bank, bank holding company or, as the case may be, financial conglomerate is of an adequate level and of a comprehensive nature.
4. The home country supervisor(s) of the applicant's parent bank, bank holding company or, as the case may be, financial conglomerate, has or have adopted the international standards issued by the Basel Committee on Banking Supervision, including but not limited to the Minimum Standards for the supervision of international banking groups and their cross-border establishment (1992), the Supervision of Cross Border Banking (1996), and the revised Core Principles for Effective Banking Supervision (2006).<sup>1</sup>

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<sup>1</sup> The Basel Core Principles define 25 principles that are needed for a supervisory system to be effective. Those principles are broadly categorized into seven groups: Objectives, independence, powers, transparency and cooperation (principle 1); Licensing and structure (principles 2 to 5); Prudential regulation and requirements (principles 6 to 18); Methods of ongoing banking supervision (principles 19 to 21); Accounting and disclosure (principle 22); Corrective and remedial powers of supervisors (principle 23); Consolidated and cross-border

5. The Bank must be able to exchange information with the home country supervisor(s) in accordance with the requirements of section 34 of the ordinance.
6. The applicant's parent bank, bank holding company or, as the case may be, financial conglomerate or, where applicable, the applicant must maintain an adequate communicative and cooperative relationship with its home country supervisor(s).
7. The Bank will reject license applications of shell banks. Shell banks are banks that have no physical presence (i.e. meaningful mind and management) in the country where they are incorporated and licensed, and are not affiliated to any financial services group that is subject to effective consolidated supervision.<sup>2</sup>
8. The “mind and management” of the licensed credit institution must be in Aruba.

The Bank may set, depending on the circumstances, additional requirements and may also attach conditions and restrictions to a license pursuant to section 2(2) of the ordinance.

### **3.2 Additional license requirements and admission policy with respect to branch offices of credit institutions not established in Aruba**

In view of the changing market conditions and in order to be able to better protect the interest of depositholders, the Bank deems the following admission policy necessary with respect to foreign credit institutions operating via branch offices.

In order to ensure a sound development of the banking industry in Aruba (refer also to section 6(1), sub d and g of the ordinance), branches of credit institutions not established in Aruba will, in principle, only be considered for a license as referred to in section 24 of the ordinance if it will be a branch office of an existing international bank, bank holding company or, as the case may be, financial conglomerate (the "parent company") that is active in the major financial markets around the world and has a balance sheet total of at least US\$

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banking supervision (principles 24 and 25).

<sup>2</sup> Reference is made to the paper on ‘Shell banks and booking offices’ issued by the Basel Committee on Banking Supervision in January 2003.

10 billion and an “A” rating issued by Standard & Poors or a comparable rating agency.

It is a prerequisite that the applicant provides certified financial statements over the last three years to prove the financial soundness of the parent company. Important elements in the Bank's assessment of said financial strength are among other things: capitalization, profitability, liquidity, audit and internal controls, quality of management, as well as policies and procedures. Furthermore, the parent company must have in principle at least 30 years experience in banking.

Note that the conditions 1 through /6 mentioned under 3.1 are also applicable to branches.

The Bank may set, depending on the circumstances, additional requirements and may also attach conditions and restrictions to a license pursuant to section 2(2) of the ordinance.

### **3.3 Shareholding in credit institutions established in Aruba**

In order to ensure a sound banking policy of the banking industry in Aruba (refer also to section 6(1) d and g of the ordinance) the shareholding in a credit institution established in Aruba must, in any event, comply with the following condition; the credit institution shall have as a major shareholder<sup>3</sup> a financial institution with solid financial strength and reputation subject to comprehensive consolidated supervision by the home country supervisor(s).

The Bank will reject applications for a license that would result in the creating or expanding of a parallel-owned banking structure; e.g. banks operating in different jurisdictions that, while not being part of the same financial group for regulatory consolidation purposes, have the same beneficial owner(s), and consequently, often share common management and interlinked businesses. The owner(s) may be an individual or a family, a group of private shareholders, or a holding company or other entity that is not subject to banking supervision.<sup>4</sup>

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<sup>3</sup> In the view of the Bank a major shareholder is a shareholder that either has a majority of the shares outstanding or a portion of the shares that in view of the Bank is significant enough to allow him to exert a material influence over the institution's decisions and its decision making bodies.

<sup>4</sup> Reference is made to the paper on 'Parallel-owned banking structures' issued by the Basel Committee on Banking Supervision in January 2003.

#### **4. Procedure**

In accordance with section 5 sub 2 of the ordinance, the Bank will make a decision on the application within thirteen weeks upon receipt of all relevant documents for its evaluation.

#### **5. Required documents**

The following documentations are required for evaluation of the application for a license:

1. A business plan for a five-year period, including the projected balance sheets and income statements.
2. A (certified) opening balance sheet.
3. The (draft) articles of incorporation.
4. The annual reports over the last three fiscal years of the parent company.
5. A list of correspondent banks.
6. A list of the prospective managing and supervisory directors including their resumes.
7. A written statement from the home country supervisor(s) indicating that the parent company complies with the regulatory requirements of the home country.
8. A written statement from the home country supervisor(s) that it has adopted the international standards in the area of banking supervision issued by the Basel Committee on Banking Supervision.
9. Detailed external audit reports evidencing a high degree of compliance with the Basel Core Principles.
10. A description of the intended administrative organization and internal controls.
11. A list of the prospective ultimate beneficial owner(s) of the credit institution with a qualifying holding as referred to in section 1 of the ordinance.

The Bank maintains the right to request additional information.

#### **6. Entry into force and transition period**

This revised policy rule will come into force as of January 1, 2009

Already licensed banks whose shareholders' structure is not in compliance with the condition mentioned under paragraph 3.3 above are granted a grace period of three (3) years to comply with the requirements set forth in said paragraph. The Bank may extend this period, to be decided on a case by case basis.

In the event that a major shareholder of an already licensed bank wants to sell (all or part of) its shares the Bank will only give its approval if the requirements with regard to the shareholder structure set forth in paragraph 3.3. are met to the Bank's satisfaction.

The "POLICY RULE BANKING LICENCE REQUIREMENTS AND ADMISSION REQUIREMENTS FOR CREDIT INSTITUTIONS OPERATING IN OR FROM ARUBA" of August 2006 is no longer applicable as of January 1, 2009.

Aruba, December 30, 2008