



**CENTRALE BANK VAN ARUBA**

**Prudential Supervision Manual**  
**Captive Insurance Companies**

**Issued by:**

**The Centrale Bank van Aruba**

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## TABLE OF CONTENTS

### ***I. Legislation***

Landsverordening toezicht verzekeringsbedrijf (AB 2000 no. 82) Unofficial English translation of the State Ordinance on the Supervision of the Insurance Business

Landsbesluit bijzondere bedrijfsrisicoverzekeraars (AB 2002 no. 50) Unofficial English translation of the State Decree Captive Insurance Companies

### ***II. Admission policy and application form***

II.1 Admission policy for Captive Insurance Companies in Aruba

II.2 Application form for licensing of a Captive Insurance Company

### ***III. Directives***

III.1 Captive Insurance Managers

III.2 Appointment of an external auditor at a Captive Insurance Company

III.3 Actuarial certification for Captive Life Insurance Companies

III.4 Solvency Margin

III.5 Anti-money laundering and combating the financing of terrorism for Insurance Companies

III.6 Prospective Managing Directors and members of the Supervisory Board

III.7 Prospective (In-) Direct Shareholders- Natural Persons

III.8 Directive on the management and reporting of incidents

### ***IV. Policy papers***

IV.1 Policy paper Corporate Governance for Captive Insurance Companies

IV.2 Investment Policy for Captive Insurance Companies

IV.3 Outsourcing Arrangements

## TABLE OF CONTENTS

### ***V. Reporting forms***

- V.1 General guidelines
- V.2 Annual Statements Life Captive Insurance Companies
- V.3 Annual Statements Non-Life Captive Insurance Companies
- V.4 Quarterly Coverage Test Captive Insurance Companies

### ***Annexes***

- Annex 1 Personal Questionnaire for:
  - Prospective Director(s) or Members of the Supervisory Board of Captive Insurance Companies; and
  - Prospective (In-) Direct Shareholders Natural Persons of Captive Insurance Companies
  
- Annex 2 Deed of Appointment Representative of Captive Insurance Companies
- Annex 3 Questionnaire for appointment of or change in External Auditor

## **Part I**

### **Legislation**

Landsverordening toezicht verzekeringsbedrijf (AB 2000 no. 82)

Unofficial English translation of the State Ordinance on the Supervision of the Insurance  
Business

Landsbesluit bijzondere bedrijfsrisicoverzekeraars (AB 2002 no. 50)

Unofficial English translation of the State Decree Captive Insurance Companies

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Intitulé : LANDSVERORDENING houdende regels inzake het toezicht op  
het verzekeringsbedrijf

Citeertitel: Landsverordening toezicht verzekeringsbedrijf

Vindplaats : AB 2000 no. 82

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AB 2014 no. 12); AB 2016 no. 53 (inwtr. AB 2016 no. 62)

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## HOOFDSTUK I

### Algemene bepalingen

#### § 1. Definities

##### Artikel 1

In deze landsverordening en de daarop berustende bepalingen wordt verstaan onder:

- levensverzekerings- : een overeenkomst van verzekering tot het doen  
overeenkomst van geldelijke uitkeringen in verband met het  
leven of de dood van de mens;
- schadeverzekerings- : een overeenkomst van verzekering, niet zijnde  
overeenkomst een levens verzekeringsovereenkomst;
- levensverzekerings- : het als bedrijf sluiten en afwikkelen van levens-  
bedrijf overeenkomsten voor eigen rekening, ook al  
wordt daarmee niet beoogd het maken van winst;
- schadeverzekerings- : het als bedrijf sluiten en afwikkelen van scha-  
bedrijf deverzekeringsovereenkomsten voor eigen reke-  
ning, ook al wordt daarmee niet beoogd het ma-  
ken van winst;
- verzekeringsbedrijf : het levensverzekeringsbedrijf of het schadever-  
zekeringsbedrijf;
- verzekeraar : een ieder die het verzekeringsbedrijf uitoe-  
fent;
- gekwaliceerde : een direct of indirect belang van meer dan tien  
deelneming procent van het geplaatste aandelenkapitaal van  
een verzekeraar of het direct of indirect kun-  
nen uitoefenen van meer dan tien procent van de  
stemrechten in een verzekeraar of het direct of  
indirect kunnen uitoefenen van een daarmee ver-  
gelijkbare zeggenschap;
- witwassen : een misdrijf als bedoeld in de artikelen 2:404,  
2:405 en 2:406 van het Wetboek van Strafrecht  
van Aruba;
- terrorismefinan- : het misdrijf, bedoeld in artikel 2:55 van het  
ciering Wetboek van Strafrecht van Aruba;
- accountant : een persoon die geen dienstbetrekking bij de  
onderneming of instelling heeft, zijnde een re-  
gisteraccountant of een accountant-  
administratieconsulent ten aanzien van wie een  
aantekening is geplaatst als bedoeld in artikel

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36, tweede lid, onderdeel i, van de Nederlandse Wet op het accountantsberoep (Stb. 2012, 680);

vestiging : zetel, agentschap of bijkantoor, alsmede elke andere duurzame aanwezigheid van een verzekeraar op het grondgebied van een staat in de vorm van een inrichting, beheerd door eigen personeel van de verzekeraar of door een zelfstandig persoon die gemachtigd is om voor rekening van de verzekeraar het verzekeringsbedrijf uit te oefenen;

bijkantoor : één of meer onderdelen zonder rechtspersoonlijkheid van een verzekeraar;

de Bank : de Centrale Bank van Aruba;

Gerecht : het Gerecht in eerste aanleg van Aruba;

Minister : de minister van Financiën.

## § 2. Reikwijdte

### Artikel 2

1. De Bank oefent toezicht uit op de naar Arubaans recht opgerichte verzekeraars en op de bijkantoren en agentschappen in Aruba van verzekeraars die buiten Aruba zijn gevestigd.

2. Een naar Arubaans recht opgerichte verzekeraar heeft de rechtsvorm van een naamloze vennootschap, vennootschap met beperkte aansprakelijkheid, een Aruba vrijgestelde vennootschap of een onderlinge waarborgmaatschappij.

3. De Bank bepaalt, of een handeling of een samenstel van handelingen al dan niet uitoefening van het levensverzekeringsbedrijf of het schadeverzekeringsbedrijf vormt, en of een handeling of samenstel van handelingen al dan niet uitoefening van het verzekeringsbedrijf vanuit een vestiging in Aruba vormt.

4. Bij landsbesluit, houdende algemene maatregelen kunnen, de Bank gehoord, categorieën van verzekeraars worden aangewezen, waarop deze landsverordening geheel of gedeeltelijk niet van toepassing is.

5. Op een verzekeraar is de Vestigingsverordening bedrijven (AB 1990 no. GT 55) niet van toepassing.

### Artikel 3

1. Het schadeverzekeringsbedrijf wordt onderscheiden in vijf schadegroepen, te weten:

- a. ongevallen- en ziektenverzekering;
- b. motorrijtuigenverzekering;
- c. zee-, transport- en luchtvaartverzekering;
- d. verzekering van brandschade en andere schade aan goederen;
- e. overige schadeverzekeringen.

2. Indien in een geschil de aard van een schadeverzekeringsovereenkomst een rol speelt of kan spelen, bepaalt de Bank op verzoek van de meest gerede partij, tot welke van de in het eerste lid genoemde schadegroepen een schadeverzekeringsovereenkomst behoort.

### Artikel 4

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1. De Bank kan beperkingen stellen en voorschriften en voorwaarden verbinden aan de door haar in het kader van de uitvoering van deze landsverordening afgegeven vergunningen, toestemmingen of ontheffingen.

2. De Bank kan ontheffing verlenen van bij of krachtens deze landsverordening gestelde voorschriften, mits de belangen van de verzekeringnemer, de verzekerde of andere gerechtigden op een uitkering zich naar haar oordeel daartegen niet verzetten.

3. De Bank beslist binnen dertien weken na de datum van ontvangst van een volledige aanvraag op die aanvraag. Indien door de Bank nadere gegevens zijn verzocht, begint deze termijn te lopen vanaf de datum van ontvangst van deze nadere gegevens.

## HOOFDSTUK II

### De toegang tot het verzekeringsbedrijf

#### § 1. Algemeen

##### Artikel 5

1. Het is verboden in of vanuit Aruba zonder vergunning van de Bank zich tot het publiek te wenden ter zake van het direct of indirect uitoefenen van het verzekeringsbedrijf.

2. Een vergunning wordt verleend voor de uitoefening van hetzij het levensverzekeringsbedrijf, hetzij het schadeverzekeringsbedrijf. Een vergunning voor de uitoefening van het schadeverzekeringsbedrijf wordt per schadegroep verleend.

#### § 2. Vergunningsaanvraag

##### Artikel 6

1. De aanvraag om afgifte van een vergunning als bedoeld in artikel 5, eerste lid, wordt aan de Bank gericht en bevat ten minste gegevens omtrent:

- a. de identiteit, antecedenten en een verklaring van goed gedrag, alsmede andere door de Bank te bepalen gegevens op basis waarvan de Bank de betrouwbaarheid en geschiktheid kan vaststellen van:
  - 1°. de bestuurders en andere personen die het beleid van de aanvrager bepalen of medebepalen;
  - 2°. de leden van de raad van commissarissen dan wel van het orgaan van de aanvrager dat een aan die van raad van commissarissen gelijksoortige taak heeft;
- b. de identiteit, antecedenten en een verklaring van goed gedrag, alsmede andere door de Bank te bepalen gegevens op basis waarvan de Bank de betrouwbaarheid kan vaststellen van degenen die een gekwalificeerde deelneming houden in de aanvrager en, indien de houder van een gekwalificeerde deelneming een rechtspersoon is, van de personen die het beleid van deze rechtspersoon bepalen of medebepalen, alsmede de omvang van de desbetreffende gekwalificeerde deelneming;
- c. een jaarrekening of openingsbalans, die moet zijn voorzien van een verklaring omtrent de getrouwheid van de gegevens daarin, onderte-

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kend door een accountant;
- d. een programma van werkzaamheden die de aanvrager voornemens is te verrichten;
  - e. de voorziene bestuurlijke en administratieve organisatie, met inbegrip van de financiële administratie en de interne controle;
  - f. de akte van oprichting, statuten en reglementen van de aanvrager.

2. Indien de aanvrager deel uitmaakt van een groep, worden tevens overgelegd de gegevens omtrent de formele en feitelijke zeggenschapsstructuur binnen de groep en een lijst van namen van degenen die het beleid van de groep bepalen of mede bepalen.

3. Een aanvrager die voornemens is overeenkomsten te sluiten tot dekking van de wettelijke aansprakelijkheid, voortvloeiende uit het gebruik van motorrijtuigen, voegt bij zijn aanvraag tevens een door hem ondertekende verklaring dat zijn voorwaarden van verzekering voldoen aan de in de Landsverordening aansprakelijkheid motorrijtuigen (AB 1999 no. GT 12) gestelde voorschriften terzake.

4. De Bank beslist binnen dertien weken na de datum van ontvangst daarvan op een aanvraag. Indien door de Bank nadere gegevens zijn gevraagd, die verband houden met de vergunningsaanvraag, begint deze termijn te lopen vanaf de datum van ontvangst van deze nadere gegevens.

5. Overschrijding van de termijn, bedoeld in het vierde lid, wordt gelijkgesteld met een weigering tot verlening van de vergunning.

### § 3. Vergunningsvoorwaarden

#### Artikel 7

De Bank verleent een vergunning, als bedoeld in artikel 5, eerste lid, mits haar is gebleken dat wordt voldaan aan de volgende voorwaarden:

- a. het dagelijks beleid van de aanvrager wordt bepaald door ten minste één natuurlijke persoon;
- b. de aanvrager heeft, voor zover het een rechtspersoon betreft, een raad van commissarissen of een soortgelijk orgaan, bestaande uit ten minste drie natuurlijke personen;
- c. de Bank van oordeel is dat de betrouwbaarheid van één of meer personen, bedoeld in artikel 6, eerste lid, onderdeel a, buiten twijfel staat;
- d. de Bank van oordeel is dat de geschiktheid van één of meer van de personen, bedoeld in artikel 6, eerste lid, onderdeel a, individueel of collectief voldoende is in verband met de uitoefening van het verzekeringsbedrijf of de uitoefening van de desbetreffende functie bij de verzekeraar;
- e. de Bank van oordeel is dat de betrouwbaarheid van een houder van een gekwalificeerde deelneming in de aanvrager of, indien de houder van een gekwalificeerde deelneming een rechtspersoon is, van de personen die het beleid van deze rechtspersoon bepalen of medebepalen, buiten twijfel staat, of dat anderszins ingevolge een gekwalificeerde deelneming in de aanvrager van een ongewenste beïnvloeding van het beleid van de aanvrager geen sprake is of zou kunnen zijn;
- f. de verklaring, bedoeld in artikel 6, eerste lid, onderdeel c, houdt in dat de jaarrekening of openingsbalans een getrouw beeld geeft van de grootte en de samenstelling van het vermogen van de aanvra-



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- ger;
- g. de aanvrager is, gelet op de gegevens als bedoeld in artikel 6, eerste lid, onderdeel d en e, in staat om zijn voornemens ten uitvoer te brengen, dan wel om aan de aan hem uit hoofde van het toezicht te stellen eisen te voldoen;
  - h. de verlening van een vergunning aan de aanvrager leidt niet tot een ongewenste ontwikkeling van het verzekeringswezen of tot een omstandigheid die dit zou kunnen bewerkstelligen;
  - i. de aanvrager beschikt over een minimum solvabiliteitsmarge als bedoeld in artikel 14.

### HOOFDSTUK III

#### Intrekking van de vergunning

##### Artikel 8

- 1. De Bank trekt een vergunning als bedoeld in artikel 5, eerste lid, in, indien de verzekeraar:
  - a. om intrekking verzoekt;
  - b. de uitoefening van het levensverzekeringsbedrijf dan wel de bedrijfsuitoefening in de betrokken schadegroep heeft gestaakt.
- 2. De Bank kan een vergunning als bedoeld in artikel 5, eerste lid, intrekken, indien de verzekeraar:
  - a. niet meer voldoet aan de voorschriften die bij of krachtens deze landsverordening voor het verkrijgen van de vergunning zijn gesteld;
  - b. naar het oordeel van de Bank in gebreke blijft te voldoen aan de in Aruba of in het buitenland geldende wettelijke voorschriften inzake de uitoefening van het verzekeringsbedrijf;
  - c. niet voldoet aan een aanwijzing als bedoeld in artikel 15, eerste lid;
  - d. de bedrijfsuitoefening niet binnen zes maanden na de dag van afgifte van de vergunning heeft aangevangen;
  - e. de bij of krachtens de Landsverordening voorkoming en bestrijding van witwassen en terrorismefinanciering (AB 2011 no. 28) of een andere wettelijke regeling ter zake van de voorkoming en bestrijding van witwassen en terrorismefinanciering gestelde regels naar het oordeel van de Bank niet of onvoldoende naleeft.

##### Artikel 9

- 1. De intrekking, bedoeld in artikel 8, wordt eerst van kracht, nadat het daartoe strekkende besluit onherroepelijk is geworden. Zodra de intrekking van kracht is geworden, maakt de Bank het besluit bekend in de Landscourant van Aruba.
- 2. De verzekeraar wikkelt het gedeelte van zijn bedrijf, waarvoor de vergunning werd afgegeven, binnen een door de Bank te bepalen termijn af. Gedurende deze termijn wordt de verzekeraar voor de toepassing van deze landsverordening gelijkgesteld met een verzekeraar die beschikt over een vergunning als bedoeld in artikel 5, eerste lid.

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## HOOFDSTUK IV

## Toezicht op de uitoefening van het verzekeringsbedrijf

## § 1. Bestuurlijke en administratieve organisatie

## Artikel 10

1. De Bank kan richtlijnen geven aan verzekeraars met betrekking tot hun administratieve organisatie en interne bedrijfsvoering, met inbegrip van de financiële administratie en interne controle.

2. De richtlijnen, bedoeld in het eerste lid, kunnen betrekking hebben op de uitvoering van voorschriften in andere landsverordeningen.

3. De Bank kan aan een verzekeringsbedrijf aanwijzingen geven met betrekking tot de wijze waarop aan richtlijnen als bedoeld in het eerste lid, uitvoering wordt gegeven.

## Artikel 10a

1. Een verzekeraar voert een adequaat beleid voor een deugdelijk ondernemingsbestuur, en richt haar corporate governance structuur zodanig in dat een deugdelijk ondernemingsbestuur is gewaarborgd.

2. Het beleid en de structuur als bedoeld in het eerste lid, gaan in ieder geval in op:

- a. de vastlegging en invulling van de taken, verantwoordelijkheden en werkwijze van het bestuur en de raad van commissarissen;
- b. de geschiktheid, zowel individueel als collectief, van de bestuurders en commissarissen;
- c. de vaststelling en uitvoering van een heldere strategie en doelstellingen;
- d. de vaststelling, uitvoering, monitoring en waar nodig bijstelling van het algehele risicobeleid;
- e. de systematische controle op de beheersing van de risico's die met de bedrijfsactiviteiten samenhangen;
- f. de adequate informatievoorziening aan het bestuur en de raad van commissarissen;
- g. een zorgvuldige en integere besluitvorming;
- h. de bezoldiging van de bestuurders en commissarissen;
- i. de onafhankelijkheid van de commissarissen;
- j. de rol en verantwoordelijkheden van de aandeelhouders van de vennootschap.

3. De Bank kan aan verzekeraars richtlijnen geven met betrekking tot het beleid en de structuur als bedoeld in het eerste lid.

## Artikel 10b

1. Een verzekeraar beschikt over schriftelijke procedures voor de zorgvuldige en consistente behandeling van klachten binnen een redelijke termijn.

2. De Bank kan aan verzekeraars richtlijnen geven met betrekking tot het eerste lid.

## § 2. Staten

## Artikel 11

1. De verzekeraar zendt binnen zes maanden na afloop van elk boekjaar de Bank staten toe, die een duidelijk beeld geven van het door de verzekeraar gevoerde beheer en van zijn financiële toestand.

2. De verzekeraar doet de staten vergezeld gaan van een verklaring van getrouwheid van een accountant. Ten bewijze dat de staten door hem zijn onderzocht of, indien het betreft staten als bedoeld in het derde lid die in zijn onderzoek zijn betrokken, waarmerkt de accountant de staten. De verzekeraar machtigt bij de opdracht tot het onderzoek de accountant schriftelijk aan de Bank schriftelijk alle inlichtingen te verstrekken, die redelijkerwijs geacht kunnen worden nodig te zijn voor de vervulling van de aan de Bank bij of krachtens deze landsverordening opgelegde taak.

3. Voor zover van toepassing behelst één van de staten het actuariële verslag, dat wordt voorzien van een verklaring van de actuaris. Met zijn verklaring bevestigt de actuaris het feit dat hij zich ervan heeft overtuigd dat de in het actuariële verslag genoemde voorzieningen juist zijn vastgesteld. Hij is bevoegd zijn verklaring nader toe te lichten of op enig punt een voorbehoud te maken.

4. De Bank stelt de modellen van de staten, bedoeld in het eerste lid, vast.

## § 3. Jaarverslag

## Artikel 12

1. Een verzekeraar dient jaarlijks binnen zes maanden na afloop van het boekjaar zijn jaarrekening en jaarverslag in bij de Bank. Het jaarverslag geeft een getrouw beeld van de toestand op de balansdatum en de gang van zaken gedurende het boekjaar.

2. De jaarrekening en het jaarverslag van een verzekeraar met zetel buiten Aruba betreffen het gehele bedrijf.

## § 4. Technische voorzieningen

## Artikel 13

1. Een verzekeraar houdt toereikende technische voorzieningen aan die volledig door waarden zijn gedekt. De Bank kan tegen de aard en de waardering van deze waarden bezwaar maken, aan welk bezwaar de verzekeraar onverwijld tegemoet komt.

2. De Bank kan algemene richtlijnen geven ten aanzien van de inhoud en de omvang van de technische voorzieningen, bedoeld in het eerste lid.

## § 5. Solvabiliteitsmarge

## Artikel 14

1. Een verzekeraar die het levensverzekeringsbedrijf uitoefent, beschikt over een solvabiliteitsmarge die acht procent van de voorzie-

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ning voor verzekeringsverplichtingen aan het einde van het voorgaande boekjaar bedraagt, zonder dat rekening wordt gehouden met de herverzekering van deze verplichtingen.

2. Een verzekeraar die het schadeverzekeringsbedrijf uitoefent, beschikt over een solvabiliteitsmarge die gelijk is aan de hoogste uitkomst van een van de navolgende berekeningen:

- a. vijftien procent van de in het voorgaande boekjaar geboekte bruto premie, of
- b. vijftien procent van de gemiddeld geboekte bruto-schaden in de afgelopen drie boekjaren.

3. De Bank kan algemene richtlijnen geven ten aanzien van de solvabiliteitsmarge, waarin onder meer kan worden aangegeven, welk bedrag aan solvabiliteitsmarge ten minste aangehouden wordt.

4. Bij landsbesluit, houdende algemene maatregelen, kunnen voor bepaalde categorieën van verzekeraars bijzondere solvabiliteitsmarges worden vastgesteld.

## § 6. Structuurtoezicht

### Artikel 14a

1. Het is een natuurlijke persoon of rechtspersoon verboden zonder toestemming van de Bank:

- a. een gekwalificeerde deelneming in een verzekeraar te houden, te verwerven of te vergroten;
- b. enige zeggenschap, verbonden aan een gekwalificeerde deelneming in een verzekeraar, uit te oefenen.

2. De Bank verleent een gevraagde toestemming als bedoeld in het eerste lid, tenzij de Bank van oordeel is dat de betrouwbaarheid van de aanvrager of, indien de aanvrager een rechtspersoon is, van de personen die het beleid van deze rechtspersoon bepalen of medebepalen, niet buiten twijfel staat, of dat anderszins ingevolge de gekwalificeerde deelneming in de onderneming of instelling van een ongewenste beïnvloeding van het beleid van de onderneming of instelling sprake is of zou kunnen zijn.

3. Indien het houden, verwerven of vergroten van een gekwalificeerde deelneming in een verzekeraar is verricht, zonder dat voor die handeling een toestemming als bedoeld in het eerste lid is verkregen of de bij de toestemming gestelde beperkingen in acht zijn genomen, maakt de in overtreding zijnde natuurlijke persoon of rechtspersoon binnen een door de Bank te bepalen termijn de verrichte handeling ongedaan, dan wel neemt zij de beperkingen alsnog in acht. Deze verplichting vervalt, indien voor de desbetreffende handeling alsnog een toestemming wordt afgegeven, dan wel de niet in acht genomen beperkingen worden ingetrokken.

4. Indien het uitoefenen van enige zeggenschap, verbonden aan een gekwalificeerde deelneming in een verzekeraar, geschiedt zonder dat voor die handeling toestemming is verkregen, of de bij een verleende toestemming van de Bank gestelde beperkingen of voorwaarden niet in acht zijn genomen, is een mede door de uitgeoefende zeggenschap tot stand gekomen besluit vernietigbaar door het Gerecht op vordering van de Bank, indien het besluit, zonder dat de desbetreffende zeggenschap zou zijn uitgeoefend, anders zou hebben geluid, dan wel niet zou zijn genomen, tenzij voor het tijdstip van de uitspraak

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alsnog een toestemming wordt verleend, dan wel de niet in acht genomen beperkingen of voorwaarden alsnog zijn nageleefd. Het Gerecht regelt, voor zover nodig, de gevolgen van de vernietiging.

5. Indien een natuurlijk persoon of een rechtspersoon niet alle aan een toestemming als bedoeld in het eerste lid, verbonden voorschriften of voorwaarden naleeft, kan de Bank een termijn vaststellen, waarbinnen die natuurlijke persoon of rechtspersoon de niet nagekomen voorschriften of voorwaarden alsnog dient te vervullen.

#### Artikel 14b

1. Op een aanvraag om de verlening van een toestemming als bedoeld in artikel 14a, eerste lid, is artikel 6, eerste lid, onderdelen a, b, f, en tweede, vierde en vijfde lid, van overeenkomstige toepassing.

2. Van de verlening van een toestemming als bedoeld in artikel 14a, eerste lid, wordt mededeling gedaan in de Landscourant van Aruba, alsmede in één of meer door de Bank te bepalen nieuwsbladen, tenzij de Bank van oordeel is dat de bekendmaking daarvan zou leiden of zou kunnen leiden tot onevenredige bevoordeling of benadeling van bij de beslissing betrokkenen of derden.

3. Een toestemming als bedoeld in artikel 14a, eerste lid, kan door de Bank geheel of gedeeltelijk worden gewijzigd of ingetrokken:

- a. op schriftelijk verzoek van de houder;
  - b. indien de gegevens of bescheiden, die zijn verstrekt ter verkrijging van de verklaring, zodanig onjuist of onvolledig zijn gebleken, dat op het verzoek een andere beslissing zou zijn genomen, indien bij de beoordeling van het verzoek de juiste omstandigheden volledig bekend waren geweest;
  - c. indien niet binnen de termijn, bedoeld in artikel 14a, vijfde lid, aan alle bij de verklaring gestelde voorschriften of voorwaarden wordt voldaan;
  - d. indien de houder een aanwijzing als bedoeld 15b niet opvolgt.
- Alsdan is het tweede lid van overeenkomstige toepassing.

#### Artikel 14c

1. Een natuurlijke persoon of rechtspersoon, wiens gekwalificeerde deelneming in een verzekeraar zodanig wijzigt, dat de omvang van deze deelneming onder de 10, 20, 33 of 50 procent daalt, stelt de Bank daarvan schriftelijk in kennis.

2. Een verzekeraar stelt de Bank in de maand juli van ieder jaar schriftelijk in kennis van de identiteit van iedere natuurlijke persoon of rechtspersoon, die een gekwalificeerde deelneming in die instelling houdt, voor zover die gegevens haar bekend zijn. Tevens stelt een verzekeraar, zodra dat haar bekend wordt, de Bank schriftelijk in kennis van iedere verwerving of afstoting van, dan wel mutatie in een gekwalificeerde deelneming in die instelling, waardoor de omvang van deze deelneming boven onderscheidenlijk onder de 10, 20, 33 of 50 procent stijgt, onderscheidenlijk daalt.

#### §7. Integriteitstoezicht

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## Artikel 14d

1. Een verzekeraar voert een adequaat beleid voor een integere uitoefening van haar bedrijf en richt haar bedrijfsvoering zodanig in, dat de integere uitoefening van haar bedrijf is gewaarborgd.

2. Het beleid en de bedrijfsvoering, bedoeld in het eerste lid, zijn in ieder geval gericht op:

- a. het tegengaan van belangenverstrengeling;
- b. het tegengaan van witwassen van geld en terrorismefinanciering;
- c. de naleving van de bij of krachtens de Landsverordening voorkoming en bestrijding van witwassen en terrorismefinanciering en andere wettelijke regelingen ter zake van de voorkoming en bestrijding van witwassen en terrorismefinanciering gestelde regels;
- d. het tegengaan van strafbare feiten of andere wetsovertredingen door de verzekeraar of haar werknemers, die het vertrouwen in de onderneming of in de financiële markten kunnen schaden;
- e. het tegengaan van relaties met cliënten of andere zakelijke relaties die het vertrouwen in de onderneming of in de financiële markten kunnen schaden;
- f. het tegengaan van andere handelingen door de verzekeraar of haar werknemers, die zodanig ingaan tegen hetgeen volgens ongeschreven recht in het maatschappelijk verkeer betaamt dat daardoor het vertrouwen in de onderneming of in de financiële markten kan worden geschaad.

3. De Bank kan aan verzekeraars richtlijnen geven met betrekking tot:

- a. de integere uitoefening van het verzekeringsbedrijf.
- b. de wijze waarop wordt vastgesteld of de betrouwbaarheid van een persoon, bedoeld in artikel 6, eerste lid, onderdeel a, buiten twijfel staat en of deze persoon geschikt is en welke feiten en omstandigheden daarbij in aanmerking worden genomen.

4. De richtlijnen, bedoeld in het derde lid, kunnen betrekking hebben op de uitvoering van de voorschriften in andere landsverordeningen. Zij worden slechts gegeven of gewijzigd na overleg met de daarbij betrokken representatieve organisatie.

## Artikel 14e

1. Een verzekeraar is niet met personen of rechtspersonen verbonden in een formele of feitelijke zeggenschapsstructuur:

- a. die in zodanige mate ondoorzichtig is dat deze een belemmering vormt of kan vormen voor het adequaat uitoefenen van toezicht op die onderneming;
- b. indien op die personen of rechtspersonen buitenlands recht van toepassing is en dat buitenlandse recht een belemmering vormt of kan vormen voor het adequaat uitoefenen van toezicht op die onderneming.

## HOOFDSTUK V

## Bijzondere maatregelen

## § 1. Aanwijzingsrecht

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## Artikel 15

1. Indien een verzekeraar niet voldoet aan de voorschriften die bij of krachtens deze landsverordening voor het verkrijgen van de vergunning zijn gesteld, of indien de Bank constateert dat een verzekeraar het bij of krachtens artikelen 10 tot en met 14, 14c, tweede lid, 14d en 14e, bepaalde niet naleeft, of indien de Bank andere tekenen ontwaart, die naar haar oordeel de solvabiliteit van een verzekeraar in gevaar brengt of zou kunnen brengen, kan zij deze verzekeraar een aanwijzing geven om binnen een door haar te bepalen termijn weer aan deze voorschriften of het bij of krachtens artikelen 10 tot en met 14, 14c, tweede lid 14d en 14e, bepaalde te voldoen, dan wel om er voor zorg te dragen dat de solvabiliteit weer op een door de Bank te bepalen niveau wordt gebracht.

2. Indien de Bank niet binnen twee weken na dagtekening van de aanwijzing een voor haar bevredigend antwoord van de verzekeraar heeft ontvangen, of indien naar haar oordeel niet of onvoldoende aan de aanwijzing gevolg is gegeven, kan zij, onverminderd haar bevoegdheid tot intrekking van een vergunning ingevolge artikel 8, het opleggen van een last onder dwangsom ingevolge artikel 16, eerste lid, en het opleggen van een bestuurlijke boete ingevolge artikel 16, tweede lid:

- de verzekeraar schriftelijk aanzeggen dat vanaf een bepaald tijdstip alle of bepaalde van zijn organen hun bevoegdheden slechts mogen uitoefenen na goedkeuring van een of meer door de Bank aangewezen personen, welke aanzegging terstond van kracht wordt;
- de verzekeraar schriftelijk aanzeggen dat de Bank zal overgaan tot bekendmaking van de aanwijzing in de Landscourant van Aruba.

3. Indien de in het eerste lid genoemde gevallen onverwijld ingrijpen noodzakelijk maken, kan de Bank zonder toepassing van het eerste lid, onmiddellijk uitvoering geven aan het tweede lid, onderdeel a, nadat zij de verzekeraar in de gelegenheid heeft gesteld zijn mening over de onmiddellijk uitvoering te geven.

4. De organen, bedoeld in het tweede lid, onderdeel a, verlenen de door de Bank aangewezen personen alle medewerking. Voor schade ten gevolge van handelingen die zijn verricht in strijd met een aanzegging als bedoeld in het tweede lid, onderdeel a, zijn degenen die deze handelingen als orgaan van de verzekeraar verrichten, persoonlijk aansprakelijk tegenover de verzekeraar.

5. Het besluit tot bekendmaking van een aanwijzing wordt eerst van kracht, nadat dit onherroepelijk is geworden. Indien de verzekeraar na de bekendmaking alsnog voldoet aan de aanwijzing, dan wel indien de Bank de aanwijzing intrekt, wordt dit door de Bank bekendgemaakt in de Landscourant van Aruba.

6. De kosten en beloning van een of meer op grond van dit artikel door de Bank aangewezen personen komen ten laste van de betrokken verzekeraar.

## Artikel 15a

1. Indien naar het oordeel van de Bank een accountant of actuaaris niet of niet meer de nodige waarborgen biedt dat hij zijn taak met betrekking tot een verzekeraar naar behoren zal kunnen vervullen, kan de Bank ten aanzien van deze accountant of actuaaris bepalen dat hij

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niet langer bevoegd is de in deze landsverordening bedoelde verklaringen met betrekking tot die verzekeraar af te leggen.

2. De Bank maakt een besluit als bedoeld in het eerste lid, terstond bekend aan de desbetreffende verzekeraar.

#### Artikel 15b

De Bank kan de houder van een gekwalificeerde deelneming in een verzekeraar ten aanzien van wie naar haar oordeel niet langer is voldaan aan de voorwaarde van artikel 7, onderdeel e, een aanwijzing geven om ten aanzien van met name genoemde punten een bepaalde gedragslijn te volgen.

### § 2. Bestuurlijke sancties

#### Artikel 16

1. Ter zake van de overtreding van de bij of krachtens de artikelen 4, 5, eerste lid, 9, tweede lid, 10 tot en met 15b, 17, 22, eerste en derde lid, 24b, derde, vierde en vijfde lid, 25, zesde lid, en 27a, eerste lid, 27b gestelde voorschriften, kan de Bank een last onder dwangsom opleggen.

2. Ter zake van de in het eerste lid bedoelde feiten kan de Bank ook een bestuurlijke boete opleggen van ten hoogste Afl. 1.000.000,- per afzonderlijke overtreding.

3. Overtredingen kunnen worden begaan door natuurlijke personen en rechtspersonen. Artikel 1:127, tweede en derde lid, van het Wetboek van Strafrecht van Aruba is van overeenkomstige toepassing.

4. De Bank stelt richtsnoeren vast voor de toepassing van de bevoegdheden, bedoeld in het eerste en tweede lid, en legt deze vast in een beleidsdocument. Het beleidsdocument bevat in ieder geval een beschrijving van de te volgen procedures bij de toepassing van de bevoegdheden, bedoeld in het eerste en tweede lid. Het beleidsdocument, bedoeld in de eerste volzin, wordt, evenals alle nadien daarin aan te brengen wijzigingen, vooraf bekend gemaakt op een door de Bank te bepalen wijze.

5. Bij landsbesluit, houdende algemene maatregelen, worden regels gesteld met betrekking tot de grondslagen voor de vaststelling van de hoogte van de last onder dwangsom en de bestuurlijke boete per overtreding. De overtredingen worden gerangschikt in categorieën naar zwaarte van de overtreding met de bijbehorende basisbedragen, minimumbedragen en maximumbedragen.

6. Verbeurde dwangsommen en bestuurlijke boeten komen toe aan de Bank.

#### Artikel 16a

1. Indien tijdens het plegen van een overtreding nog geen vijf jaren zijn verlopen sedert het opleggen van een bestuurlijke boete aan de overtreder ter zake van eenzelfde overtreding, wordt het maximale bedrag van de bestuurlijke boete, vermeld in artikel 16, tweede lid, voor elke afzonderlijke overtreding verdubbeld.

2. In afwijking van artikel 16, tweede lid, kan de Bank de hoogte van de bestuurlijke boete vaststellen op ten hoogste twee keer het



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bedrag van het voordeel dat de overtreder door de overtreding heeft verkregen, indien diens voordeel groter is dan Afl. 1.000.000,-.

#### Artikel 16b

1. Indien de Bank voornemens is een bestuurlijke boete op te leggen, geeft zij de betrokkene daarvan kennis onder vermelding van de gronden waarop het voornemen berust.

2. De Bank stelt de betrokkene in de gelegenheid om binnen een redelijke termijn naar keuze schriftelijk of mondeling zijn zienswijze naar voren te brengen voordat de bestuurlijke boete bij beschikking wordt opgelegd.

3. Indien de Bank, nadat de betrokkene zijn zienswijze naar voren heeft gebracht, beslist dat voor de overtreding geen bestuurlijke boete zal worden opgelegd, wordt dit schriftelijk aan de betrokkene medegedeeld

#### Artikel 16c

1. De Bank kan op verzoek van de overtreder een last onder dwangsom opheffen, de looptijd ervan voor een bepaalde termijn opschorten of de dwangsom verminderen ingeval van blijvende of tijdelijke gehele of gedeeltelijke onmogelijkheid voor de overtreder om aan zijn verplichtingen te voldoen.

2. De Bank kan voorts op verzoek van een overtreder een last onder dwangsom opheffen, indien de beschikking een jaar van kracht is geweest zonder dat de dwangsom is verbeurd.

#### Artikel 16d

Degene jegens wie door de Bank een handeling is verricht, waaraan hij in redelijkheid de gevolgtrekking kon verbinden dat hem wegens een overtreding van het gestelde bij of krachtens deze landsverordening een bestuurlijke boete zal worden opgelegd, is niet verplicht ter zake daarvan enige verklaring af te leggen. Hij wordt hiervan in kennis gesteld alvorens hem om informatie wordt gevraagd.

#### Artikel 16e

1. De bestuurlijke boete is verschuldigd binnen zes weken na de dagtekening van de beschikking waarbij zij is opgelegd.

2. De bestuurlijke boete wordt vermeerderd met de wettelijke rente, te rekenen vanaf de dag waarop sedert de bekendmaking van de beschikking zes weken zijn verstreken.

#### Artikel 16f

1. De bevoegdheid een bestuurlijke boete op te leggen, vervalt:  
a. indien ter zake van de overtreding een strafvervolgning is ingesteld en het onderzoek ter terechtzitting een aanvang heeft genomen, dan wel het recht tot strafvordering is vervallen ingevolge artikel 1:149 van het Wetboek van Strafrecht van Aruba;

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b. drie jaren na de dag waarop de niet-naleving van het voorschrift is geconstateerd.

2. De termijn, bedoeld in het eerste lid, onderdeel b, wordt gestuit door een bekendmaking van de beschikking waarbij de bestuurlijke boete werd opgelegd.

3. Het recht tot strafvervolgning vervalt indien aan de betrokkene terzake van hetzelfde feit reeds een bestuurlijke boete is opgelegd.

4. Tussen de Bank en het Openbaar Ministerie vindt periodiek overleg plaats over de keuze tussen de oplegging van een bestuurlijke boete of strafrechtelijke sancties ter voorkoming van ongeoorloofde samenloop van die sancties.

#### Artikel 16g

1. De Bank is bevoegd, met het oog op de bescherming van het financiële stelsel en het tegengaan van het witwassen en het financieren van terrorisme, het feit ter zake waarvan de last onder dwangsom of de bestuurlijke boete is opgelegd, het overtreden voorschrift, alsmede de naam, het adres en de woonplaats van degene aan wie de bestuurlijke boete is opgelegd, ter openbare kennis brengen.

2. De Minister kan regels stellen ter zake van de uitoefening van de bevoegdheid, bedoeld in het eerste lid.

3. De beschikking tot het ter openbare kennis brengen treedt in werking op de dag waarop het feit ter openbare kennis is gebracht, zonder dat de werking voor de duur van de beroepstermijn of, indien beroep is ingesteld, van het beroep wordt opgeschort, indien van de betrokkene geen adres bekend is en het adres ook niet met een redelijke inspanning kan worden verkregen.

#### Artikel 16h

De Bank houdt aantekening van de handelingen die in het kader van een onderzoek, voorafgaand aan het opleggen van een bestuurlijke boete, hebben plaatsgevonden onder vermelding van de personen die die handelingen hebben verricht.

#### Artikel 16i

1. Indien een verbeurde dwangsom of boete niet is betaald binnen de door Bank bepaalde termijn, wordt de overtreder schriftelijk aangeklaagd om binnen twee weken alsnog het bedrag van de dwangsom of de boete, verhoogd met de kosten van de aanmaning, te betalen.

2. Bij gebreke van betaling wordt het bedrag en de kosten, bedoeld in het eerste lid, verhoogd met de invorderingskosten, door de Bank bij dwangbevel ingevorderd.

3. De bekendmaking van het dwangbevel geschiedt door middel van betekening van een exploit als bedoeld in het Wetboek van Burgerlijke Rechtsvordering van Aruba en levert een executoriale titel op, die met toepassing van de voorschriften van dit Wetboek kan worden tenuitvoergelegd.

4. Het dwangbevel vermeldt ten minste:

a. aan het hoofd het woord dwangbevel;

b. het bedrag van de invorderbare hoofdsom, vermeerderd met de ver-

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- schuldigde wettelijke rente;
- c. de beschikking of het wettelijk voorschrift waaruit de verschuldigde geldsom voortvloeit;
- d. de kosten van de aanmaning en van het dwangbevel;
- e. dat het op kosten van de overtreder ten uitvoer kan worden uitgebracht.

5. Gedurende zes weken na de dag van betekening staat tegen het dwangbevel verzet open. Verzet wordt aanhangig gemaakt tegen de Bank bij het Gerecht en op de voor het indienen van vorderingen bepaalde wijze. Het verzet, mits tijdig en op de voorgeschreven wijze gedaan, schorst de tenuitvoerlegging van het dwangbevel.

#### Artikel 16j

1. De Bank kan met het oog op de belangen die deze landsverordening beoogt te beschermen, bij overtreding van een verbodsbepaling uit deze landsverordening een openbare waarschuwing uitvaardigen, indien nodig onder vermelding van de overwegingen die tot de waarschuwing hebben geleid.

2. De Minister kan regels stellen ter zake van de uitoefening van de bevoegdheid als bedoeld in het eerste lid.

3. De beschikking tot het uitvaardigen van een openbare waarschuwing treedt in werking op de dag waarop de openbare waarschuwing ter openbare kennis is gebracht, zonder dat de werking voor de duur van de beroepstermijn of, indien beroep is ingesteld, van het beroep wordt opgeschort, indien van de betrokkene geen adres bekend is en het adres ook niet met een redelijke inspanning kan worden verkregen.

#### Artikel 16k

1. De Bank stelt, indien zij voornemens is een openbare waarschuwing uit te vaardigen, de betrokkene schriftelijk in kennis van de voorgenomen beslissing en stelt hem in de gelegenheid daarover zijn zienswijze naar voren te brengen.

2. De Bank kan toepassing van het eerste lid achterwege laten, indien de vereiste spoed zich daartegen verzet, of indien van de betrokkene geen adres bekend is en zijn adres ook niet met een redelijke inspanning kan worden verkregen.

### § 3. Benoeming in bepaalde functies

#### Artikel 17

1. Een verzekeraar benoemt geen personen in functies als bedoeld in artikel 7, onderdelen a en b, alvorens hij daarvoor de toestemming van de Bank heeft erlangd.

2. De Bank beslist binnen dertien weken na de datum van ontvangst van een volledige aanvraag op die aanvraag. Indien door de Bank nadere gegevens zijn verzocht, begint deze termijn te lopen vanaf de datum van ontvangst van deze nadere gegevens.

## HOOFDSTUK VI

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Het register

## Artikel 18

1. De Bank houdt een register waarin alle verzekeraars worden ingeschreven, die een vergunning als bedoeld in artikel 5, eerste lid, hebben verkregen. Het register wordt ingericht op een door de Bank te bepalen wijze en ligt voor een ieder kosteloos ter inzage ten kantore van de Bank.

2. De Bank draagt zorg voor de doorhaling in het register van iedere verzekeraar waarvan de vergunning als bedoeld in artikel 5, eerste lid, is ingetrokken.

## Artikel 19

1. Van de inschrijving of doorhaling in het register wordt door de zorg van de Bank binnen twee binnen weken na de dag waarop zij heeft plaatsgehad, mededeling gedaan in de Landscourant van Aruba en in twee lokale nieuwsbladen.

2. Jaarlijks wordt in de maand januari door de zorg van de Bank een afschrift van het register naar de stand per 31 december van het voorafgaande jaar in de Landscourant van Aruba en in twee lokale nieuwsbladen geplaatst.

## HOOFDSTUK VII

## Noodregeling en faillissement

## § 1. Noodregeling

## Artikel 20

1. Ingeval de solvabiliteit van een in het register ingeschreven verzekeraar tekenen van een gevaarlijke ontwikkeling vertoont of er anderszins tekenen zijn, die het voortbestaan van een verzekeraar bedreigen, en er redelijkerwijs geen verbetering is te voorzien in deze ontwikkeling, kan het Gerecht op verzoek van de Bank verklaren dat de verzekeraar verkeert in een toestand die in het belang van de gezamenlijke schuldeisers een bijzondere voorziening behoeft.

2. Bij een verklaring als bedoeld in het eerste lid, benoemt het Gerecht op voordracht van de Bank een of meerdere bewindvoerders, die gemachtigd zijn zowel tot vereffening van het geheel of van een gedeelte van de door de verzekeraar aangegane verzekeringsovereenkomsten als tot overdracht over te gaan van alle of van een deel van zijn rechten en verplichtingen uit of krachtens verzekeringsovereenkomsten.

3. Bij landsbesluit, houdende algemene maatregelen, kunnen regels worden gesteld ter zake van de inhoud van de bijzondere voorziening, bedoeld in het eerste lid, en de wijze van uitoefening van de taken, genoemd in het tweede lid. Daarbij kunnen een of meerdere bepalingen van de Faillissementsverordening van overeenkomstige toepassing worden verklaard en kan worden afgeweken van voorschriften van die landsverordening.

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## § 2. Faillissement en liquidatie

## Artikel 21

1. De Bank kan een verzoek tot faillietverklaring van een verzekeraar indienen bij het Gerecht, indien haar gebleken is dat deze een negatief eigen vermogen heeft en hetzij het met de voorziening, omschreven in artikel 20, te bereiken doel niet of niet meer kan worden verwezenlijkt, hetzij, indien niet tevoren om deze voorziening is gevraagd, geen redelijk vooruitzicht meer bestaat dat het met deze voorziening te bereiken doel alsnog kan worden verwezenlijkt.

2. In afwijking van artikel 1 van de Faillissementsverordening wordt de faillietverklaring uitgesproken, ongeacht of de verzekeraar verkeert in een toestand van te hebben opgehouden te betalen.

3. Indien een verzoek tot faillietverklaring door een ander dan de Bank wordt ingediend, een eigen aangifte daaronder begrepen, wordt daarover niet eerder beslist, dan nadat het Gerecht de Bank in de gelegenheid heeft gesteld haar gevoelen daaromtrent kenbaar te maken.

4. Een in het register ingeschreven verzekeraar die tot gehele of gedeeltelijke liquidatie van zijn bedrijf, dan wel tot ontbinding heeft besloten, doet ten minste dertien weken, voordat aan het besluit uitvoering wordt gegeven, aan de Bank mededeling van de wijze waarop de liquidatie, onderscheidenlijk de ontbinding zal plaatsvinden.

## HOOFDSTUK VIII

## Bijzondere bepalingen

## § 1. Overdracht van rechten en verplichtingen

## Artikel 22

1. Een verzekeraar draagt zijn rechten en verplichtingen uit alle of een deel van de verzekeringsovereenkomsten slechts zonder toestemming van degenen die aan die overeenkomsten rechten kunnen ontleenen, over aan een andere verzekeraar bij schriftelijke overeenkomst en met schriftelijke toestemming van de Bank.

2. In afwijking van het eerste lid is een verzekeraar bevoegd zijn rechten en verplichtingen uit een individuele verzekeringsovereenkomst op schriftelijk verzoek van de verzekeringsnemer over te dragen.

3. De Bank kan algemene richtlijnen geven ten aanzien van de overdracht van rechten en plichten uit hoofde van verzekeringsovereenkomsten.

## § 2. Geheimhouding

## Artikel 23

1. Het is een ieder die uit hoofde van de toepassing van deze landsverordening of van een ingevolge deze landsverordening genomen besluit enige taak vervult of heeft vervuld, verboden van gegevens of

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inlichtingen die ingevolge deze landsverordening zijn verstrekt of verkregen of van een buitenlandse instantie als bedoeld in artikel 24, eerste lid, zijn ontvangen, verder of anders gebruik te maken of daaraan verder of anders bekendheid te geven dan voor de uitvoering van zijn taak of door deze landsverordening wordt geëist.

2. In afwijking van het eerste lid, is de Bank bevoegd met gebruikmaking van gegevens of inlichtingen, verkregen bij de uitvoering van haar taak op grond van deze landsverordening, mededelingen te doen, mits deze niet kunnen worden herleid tot afzonderlijke personen of instellingen.

3. Het eerste lid laat onverlet de verplichting om overeenkomstig het Wetboek van Strafvordering van Aruba (AB 1996 no. 75) als getuige in strafzaken een verklaring af te leggen omtrent gegevens of inlichtingen, verkregen bij de vervulling van zijn ingevolge deze landsverordening opgedragen taak. Het laat evenzo onverlet de verplichting om overeenkomstig het Wetboek van Burgerlijke Rechtsvordering van Aruba (AB 2005 no. 34) als getuige, dan wel partij in een comparitie van partijen in burgerlijke zaken een verklaring af te leggen omtrent gegevens of inlichtingen, verkregen bij de vervulling van zijn in gevolge deze landsverordening opgedragen taak, zulks met dien verstande dat zodanige verplichting slechts geldt, voor zover het betreft een verzekeraar die in staat van faillissement is verklaard of op grond van een rechterlijke uitspraak is ontbonden, en dat zij niet geldt voor gegevens of inlichtingen, die betrekking hebben op ondernemingen of instellingen, die betrokken zijn of zijn geweest bij een poging de desbetreffende verzekeraar in staat te stellen haar bedrijf voort te zetten.

### § 3. Gegevensuitwisseling

#### Artikel 24

1. In afwijking van artikel 23, eerste lid, is de Bank bevoegd om gegevens en of inlichtingen, verkregen bij de vervulling van de haar ingevolge deze landsverordening opgedragen taken, uit te wisselen met aan in het buitenland van overheidswege aangewezen instanties die belast zijn met:

- a. het toezicht op personen en instellingen die actief zijn op de financiële markten of;
- b. het toezicht op de naleving van wet- en regelgeving ter zake van de voorkoming en bestrijding van witwassen en terrorismefinanciering.

2. Van de bevoegdheid, bedoeld in het eerste lid, wordt geen gebruik gemaakt, indien:

- a. het doel waarvoor de gegevens of inlichtingen zullen worden gebruikt, onvoldoende bepaald is;
- b. het beoogde gebruik van de gegevens of inlichtingen niet past in het kader van het toezicht op financiële markten of op die markten werkzame personen;
- c. verstrekking van de gegevens of inlichtingen zich niet verdraagt met de openbare orde of het recht van Aruba;
- d. de geheimhouding van de gegevens of inlichtingen niet voldoende is gewaarborgd;
- e. verstrekking van de gegevens of inlichtingen redelijkerwijs in strijd is of zou kunnen komen met de belangen die deze landsveror-

dening beoogt te beschermen;  
f. onvoldoende is gewaarborgd dat de gegevens of inlichtingen niet zullen worden gebruikt voor een ander doel dan waarvoor deze worden verstrekt.

3. Voor zover de gegevens of inlichtingen, bedoeld in het eerste lid, zijn verkregen van een buitenlandse toezichthoudende instantie, verstrekt de Bank deze niet aan een andere buitenlandse toezichthoudende instantie, tenzij de instantie waarvan de gegevens of inlichtingen zijn verkregen, heeft ingestemd met de verstrekking van de gegevens of inlichtingen en in voorkomend geval heeft ingestemd met het gebruik voor een ander doel dan waarvoor de gegevens of inlichtingen zijn verstrekt.

4. Indien een buitenlandse toezichthoudende instantie aan de Bank verzoekt om gegevens of inlichtingen, die de Bank op grond van het eerste of tweede lid heeft verstrekt, te gebruiken voor een ander doel dan waarvoor zij zijn verstrekt, willicht de Bank dat verzoek slechts in, indien:

- a. het beoogde gebruik niet in strijd is met het eerste of tweede lid; of
- b. de toezichthoudende instantie in kwestie op een andere wijze dan in deze landsverordening voorzien vanuit Aruba met inachtneming van de daarvoor geldende wettelijke procedures voor dat andere doel de beschikking over die gegevens of inlichtingen zou kunnen verkrijgen.

#### Artikel 24a

In afwijking van artikel 23, eerste lid, is de Bank bevoegd gegevens of inlichtingen, verkregen bij de vervulling van de haar ingevolge deze landsverordening opgedragen taken, te verstrekken aan personen en instanties die op grond van het Wetboek van Strafvordering van Aruba zijn belast met de uitoefening van strafvorderlijke bevoegdheden.

#### Artikel 24b

1. De Bank kan ten behoeve van de uitvoering van haar taak op grond van deze paragraaf van een ieder inlichtingen vorderen, indien dat voor de vervulling van de taak van een in artikel 24, eerste lid, bedoelde instantie nodig is. Artikel 25, derde tot en met zesde lid, is van overeenkomstige toepassing.

2. Op verzoek van een instantie als bedoeld in het eerste lid, kan de Bank gegevens en inlichtingen vragen aan of een onderzoek instellen of doen instellen bij een verzekeraar dan wel bij een ieder waarvan redelijkerwijs kan worden vermoed dat hij over gegevens of inlichtingen beschikt, die redelijkerwijs van belang kunnen zijn voor de verzoekende instantie.

3. Degene aan wie gegevens of inlichtingen als bedoeld in het tweede lid, zijn gevraagd, verstrekt deze binnen een door de Bank te stellen redelijke termijn.

4. Degene bij wie een onderzoek als bedoeld in het tweede lid, wordt ingesteld, verleent alle medewerking die nodig is voor een richtige uitvoering van dat onderzoek. Artikel 25, derde en vierde lid, is van overeenkomstige toepassing.

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5. De Bank kan toestaan dat een functionaris van een instantie als bedoeld in artikel 24, eerste lid, deelneemt aan de uitvoering van een verzoek als bedoeld in het tweede lid. De functionaris, bedoeld in de eerste volzin, volgt de aanwijzingen op van de werknemer van de Bank die met de uitvoering van het verzoek is belast. Het gebod, bedoeld in het vierde lid, geldt eveneens jegens de in de eerste volzin bedoelde functionaris.

#### Artikel 24c

1. De Bank is bevoegd om de registers te raadplegen en alle inlichtingen te vragen van de Kamer van Koophandel en Nijverheid, de Dienst Landmeetkunde en Vastgoedregistratie, het Bureau Burgerlijke Stand en Bevolkingsregister, alsmede van andere bij landsbesluit, houdende algemene maatregelen, aan te wijzen instanties.

2. De in het eerste lid genoemde instanties verlenen aan de Bank binnen de door haar gestelde redelijke termijn kosteloos alle medewerking die op grond van het eerste lid wordt gevraagd.

#### § 4. Toezicht

#### Artikel 25

1. Met het toezicht op de naleving van het bij of krachtens deze landsverordening bepaalde zijn belast de daartoe door de President van de Bank aangewezen personen, werkzaam bij de Bank. Van een zodanige aanwijzing wordt mededeling gedaan in de Landscourant van Aruba.

2. De krachtens het eerste lid aangewezen personen kunnen het toezicht op een risicogeoriënteerde wijze uitoefenen. Zij rapporteren ter zake van de uitoefening van de bevoegdheden, genoemd in het derde lid, aan de President van de Bank of aan de door deze schriftelijk aan te wijzen leidinggevenden binnen de Bank.

3. De krachtens het eerste lid aangewezen werknemers van de Bank zijn, uitsluitend voor zover dat voor de vervulling van hun taak redelijkerwijs noodzakelijk is, bevoegd:

- a. alle inlichtingen te vragen;
- b. inzage te verlangen van alle zakelijke boeken, bescheiden en andere informatiedragers en daarvan afschrift te nemen of kopie te maken of deze daartoe tijdelijk mee te nemen;
- c. alle plaatsen, met uitzondering van woningen zonder uitdrukkelijke toestemming van de bewoner, te betreden, vergezeld van door hen aan te wijzen personen.

4. Zo nodig, wordt de toegang tot een plaats als bedoeld in het derde lid, onderdeel c, verschaft met behulp van de sterke arm.

5. Bij landsbesluit, houdende algemene maatregelen, worden regels gesteld met betrekking tot de wijze van taakuitoefening van de krachtens het eerste lid aangewezen werknemers van de Bank.

6. Een ieder verleent aan de krachtens het eerste lid aangewezen personen de medewerking die door hen op grond van het derde lid wordt gevorderd.

#### HOOFDSTUK IX



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Strafbepaling

## Artikel 26

1. Degene die in strijd handelt met een voorschrift, voorwaarde of beperking, gesteld bij of krachtens de artikelen 4, 5, eerste lid, 9, tweede lid, 10 tot en met 15b, 17, 22, eerste en derde lid, 24b, derde, vierde en vijfde lid, 25, zesde lid, en 27a, eerste lid, 27b wordt gestraft met hechtenis van ten hoogste een jaar of geldboete van de vierde categorie.

2. Opzettelijk handelen in strijd met enig voorschrift, gegeven in of ingevolge de artikelen, genoemd in het eerste lid, wordt gestraft met gevangenisstraf van ten hoogste zes jaren of geldboete van de zesde categorie.

3. De strafbare feiten, bedoeld in het eerste lid zijn overtredingen; de strafbare feiten, bedoeld in het tweede lid, zijn misdrijven.

## HOOFDSTUK X

## Slotbepalingen

## Artikel 27

Deze landsverordening is niet van toepassing op instellingen die bij landsverordening in het leven zijn geroepen, en die handelingen verrichten, die overeenkomen of nagenoeg overeenkomen met de uitoefening van het verzekeringsbedrijf.

## Artikel 27a

1. Bij landsbesluit, houdende algemene maatregelen, kunnen natura-uitvaartverzekeraars, herverzekeraars en assurantiebemiddelaars volgens de in dit landsbesluit te stellen regels onder het toezicht van de Bank worden geplaatst. Daarbij kunnen één of meer artikelen van deze landsverordening van overeenkomstige toepassing worden verklaard.

2. Onder natura-uitvaartverzekeraar wordt verstaan een ieder die, geen levensverzekeraar zijnde, zijn bedrijf maakt van het sluiten van natura-uitvaartverzekeringen voor eigen rekening en het afwickelen van die natura-uitvaartverzekeringen. Onder natura-uitvaartverzekering wordt verstaan een verzekering in verband met de verzorging van de uitvaart van een natuurlijke persoon waarbij de verzekeraar zich verbindt tot het leveren van een prestatie die niet tevens inhoudt het doen van een geldelijke uitkering.

3. Onder herverzekeraar wordt verstaan een ieder die zijn bedrijf maakt van het sluiten van herverzekeringen voor eigen rekening en het afwickelen van die herverzekeringen. Onder herverzekering wordt verstaan een verzekering waarbij risico's worden geaccepteerd die door een verzekeraar worden overgedragen.

4. Onder assurantiebemiddelaar wordt verstaan een ieder die, anders dan uit hoofde van een arbeidsovereenkomst, bemiddeling verleent bij het sluiten, afkopen of uitkeren van een levensverzekeringsovereenkomst of van een schadeverzekeringsovereenkomst.

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Artikel 27b

1. Het is een ieder verboden bemiddeling te verlenen bij het sluiten, afkopen of uitkeren van een levensverzekeringsovereenkomst of van een schadeverzekeringsovereenkomst met een in of buiten Aruba gevestigde onderneming of instelling die niet beschikt over een vergunning als bedoeld in artikel 5 tot de uitoefening van het verzekeringsbedrijf.

2. Onverminderd artikel 4, tweede lid, kan de Bank op een daartoe strekkend verzoek ontheffing verlenen van het verbod, bedoeld in het eerste lid, indien dit naar het oordeel van de Bank niet strijdig is met de belangen die deze landsverordening beoogt te beschermen.

Artikel 28

De Bank brengt jaarlijks voor 1 juli en met inachtneming van artikel 23 verslag uit aan de Minister over de uitvoering van deze landsverordening.

Artikel 29

Bij regeling van de Minister kan een organisatie worden aangewezen, die een daarbij aangeduide groep van verzekeraars vertegenwoordigt met betrekking tot de uitvoering van deze landsverordening.

Artikel 30

Kosten, verbonden aan de uitvoering van deze landsverordening, kunnen geheel of gedeeltelijk bij landsbesluit, houdende algemene maatregelen, de Bank en de organisatie, bedoeld in artikel 29, gehoord, op bepaalde groepen van betrokken verzekeraars worden verhaald.

Artikel 31

Bij landsbesluit, houdende algemene maatregelen, kunnen, de Bank gehoord, nadere regels worden gesteld ter uitvoering van deze landsverordening.

Artikel 32

1. Deze landsverordening treedt in werking op een bij of krachtens landsverordening te bepalen tijdstip.

2. Zij kan worden aangehaald als Landsverordening toezicht verzekeringsbedrijf.

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Unofficial and not binding translation of  
the State Ordinance containing regulations  
on the supervision of the insurance business  
(State Ordinance Supervision Insurance Business)  
(AB 2000 No. 82)  
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CHAPTER I

General Provisions

§ 1. Definitions

Article 1

For the purposes of this State Ordinance and the provisions based there upon, the following terms shall be defined as stated below:

- life insurance contract : an insurance contract concerning the payment of cash benefits related to the life or death of a person;
- general insurance : an insurance contract, other than a life contract insurance contract;
- life insurance business : the business of concluding and settlement of life insurance contracts for own account irrespective of whether the project is to make a profit;
- general insurance business : the business of concluding and settlement of general insurance contracts for own account, irrespective of whether the object is to make a profit;
- insurance business : the life insurance business or the general insurance business;
- insurer : anyone engaged in the insurance business;
- qualifying holding : a direct or indirect holding of more than ten percent of the issued share capital of an insurer or the ability to exercise directly or indirectly more than ten percent of the

voting rights in an insurer or the ability to exercise directly or indirectly a comparable degree of control;

money laundering : an offence as meant in Articles 2:404, 2:405 and 2:406 of the Criminal Code of Aruba;

terrorist financing : the criminal offense, meant in Article 2:55 of the Criminal Code of Aruba;

auditor : a natural person who is not employed by the enterprise or institution, and who is an accountant with a "Registeraccountant" or an "Accountant-Administratieocnsulent" qualification listed as referred to in Article 36 second paragraph, subparagraph I, of the Dutch Accountancy Profession Act ("Stb". [Bulletin of Acts and Decrees] 2012, 680);

establishment : registered office, agency or branch, as well as any other permanent presence of an insurer on the territory of a state in the form of an organization, managed by the insurer's own personnel or by an independent person who is authorized to engage in the insurance business on behalf of the insurer;

branch : part of an insurer, not being a separate legal entity;

the Bank : the Central Bank of Aruba;

Court : the Court of First Instance of Aruba;

Minister : the Minister of Finance.

## § 2 Scope

### Article 2

1. The Bank supervises insurers incorporated under the Aruban law and the branches and agencies in Aruba of insurers incorporated outside Aruba.
2. An insurer incorporated under the Aruban law shall have the legal status of a public limited company ("naamloze vennootschap"), a limited liability company ("vennootschap met beperkte aansprakelijkheid"), an Aruba exempt corporation, or a mutual insurance company.

3. The Bank shall decide whether an action or a combination of actions does or does not constitute as being engaged in the life insurance business or the general insurance business, and whether an action or a combination of actions does or does not constitute as being engaged in the insurance business from an establishment in Aruba.

4. By State Decree containing General Administrative Measures, having heard the Bank, categories of insurers may be designated, for which this State Ordinance shall not be applicable in part or in whole.

5. The Establishment of Business Ordinance (AB 1990, no. GT 55) shall not be applicable for insurers.

### Article 3

1. The general insurance business shall be divided into five indemnity lines, viz.:

- a. accident and health insurance;
- b. motor vehicle insurance;
- c. maritime, transport, and aviation insurance;
- d. fire insurance and other property insurance;
- e. other indemnity insurances.

2. In the event that the nature of a general insurance contract plays a part or may play a part in a dispute, the Bank shall decide on request of the interested party, to which of the indemnity lines listed in the first paragraph a general insurance contract belongs.

### Article 4

1. The Bank may impose restrictions and attach stipulations and conditions to licenses, permissions or exemptions issued by it within the framework of the execution of this State Ordinance.

2. The Bank may grant exemption from regulations laid down by, or by virtue of, this State Ordinance, provided that in the Bank's opinion this is not in conflict with the interests of the insurant, the insured or other persons entitled to payment.

3. Within thirteen weeks after receipt of a complete application, the Bank shall decide on that application. If the Bank requests additional information, this period shall commence after the date of receipt of this additional information.

## CHAPTER II

### Admission to the insurance business

§ 1. In general

### Article 5

1. Without a license from the Bank it is prohibited to approach the public in or from Aruba regarding the direct or indirect engagement in the insurance business.

2. A license is granted either to engage in the life insurance business or the general insurance business. A license to engage in the general insurance business shall be granted per line of insurance.

## § 2. Application for a license

### Article 6

1. The application for a license as referred to in Article 5, first paragraph, shall be addressed to the Bank and shall at least contain information on:

a. the identity, background, and a certificate of good conduct, as well as other data to be determined by the Bank, based on which the Bank can ascertain the integrity and suitability of:

1. the directors and other persons who determine or co-determine the policy of the applicant;

2. the members of the board of supervisory directors or of the body of the applicant that has a task similar to that of the board of supervisory directors;

b. the identity, background, and a certificate of good conduct, as well as other data to be determined by the Bank, based on which the Bank can ascertain the integrity of those who hold a qualifying holding in the applicant and, if the holder of a qualifying holding is a legal entity, of the persons who determine or co-determine the policy of this legal entity, as well as the extent of the qualifying holding in question;

c. annual financial statements or an opening balance sheet, which shall be accompanied by a declaration that the information presents a true and fair view, signed by an auditor;

d. a program of activities which the applicant intends to conduct;

e. the envisaged management controls and administrative organization, including the financial accounting system and the internal controls;

f. the applicant's Deed of Incorporation, Articles of Incorporation, and By-laws.

2. In the event that the applicant constitutes part of a group, the data on the formal and factual control structures within the group and a list of names of the persons who determine or co-determine the group's policy shall also be provided.

3. An applicant who intends to conclude contracts covering liabilities resulting from the use of motor vehicles, shall include with its application a statement signed by it stating that its insurance terms comply with the stipulations laid down in the State Ordinance Motor Vehicles Liability Insurance (AB 1999, no. GT 12).

4. The Bank shall decide on the application within thirteen weeks after the date of receipt thereof. If further information related to the application have been requested by the Bank, this period shall start on the date of receipt of the additional information.

5. Exceeding the period referred to in the fourth paragraph shall be similar to a refusal for granting the license.

### § 3 Licensing conditions

#### Article 7

The Bank shall grant a license, as meant in Article 5, first paragraph, provided it is evident to it that the following conditions are met:

- a. the applicant's day-to-day management is determined by at least one natural person;
- b. in so far it concerns a legal entity, the applicant has a Supervisory Board or a similar body, consisting of at least three natural persons;
- c. the Bank is of the opinion that the integrity of one or more persons, referred to in Article 6, first paragraph, subparagraph a, is beyond doubt;
- d. the Bank is of the opinion that the suitability of one or more persons, referred to in Article 6, first paragraph, subparagraph a, is sufficient, individually or jointly, in connection with the conduct of the insurance business, or the performance of the duties in question at the insurer;

the Bank is of the opinion that the integrity of a holder of a qualifying holding in the applicant, or, if the holder of a qualifying holding is a legal entity, of the persons who determines or also determines the policy of this legal entity is beyond doubt, or that there is no or could be question, otherwise, of undesirable influence



on the policy of the applicant as a result of a qualifying holding in the applicant;

- f. the declaration, mentioned in Article 6, first paragraph, sub c. implies that the annual financial statements or opening balance sheet present a true and fair view of the size and composition of the capital of the applicant;
- g. in view of the data as mentioned in Article 6, first paragraph, sub d and e, the applicant is able to realize its intentions, or meet the requirements to be imposed on it in connection with the supervision;
- h. the granting of a license to the applicant does not lead to an undesirable development of the insurance sector, or to a circumstance that could bring this about;
- i. the applicant has a minimum solvency margin as mentioned in Article 14.

### Chapter III

#### Revocation of the license

#### Article 8

1. The Bank shall revoke a license as mentioned in Article 5, first paragraph, if the insurer:

- a. so requests;
- b. has ceased to operate in the life insurance business or the concerned indemnity line.

2. The Bank may revoke a license as mentioned in Article 5, first paragraph, if the insurer:

- a. no longer meets the regulations for obtaining the license laid down by, or by virtue of, this State Ordinance;
- b. in the opinion of the Bank fails to comply with statutory regulations in force in Aruba or abroad concerning the engagement in the insurance business;
- c. fails to comply with a directive as mentioned in Article 15, first paragraph;
- d. has not commenced the business operations within six months after the day the license was granted;

e. does not or not sufficiently comply with the regulations laid down by or pursuant to the State Ordinance on the Prevention and Combating of Money Laundering and Terrorist Financing (AB 2011 No. 28) or any other statutory rules on the prevention and suppression of money laundering and terrorist financing in the opinion of the Bank.

#### Article 9

1. The revocation, mentioned in Article 8, shall only become effective, after the pertinent decision has become irrevocable. As soon as the revocation has become effective, the Bank shall publish the decision in the Government Gazette of Aruba.

2. The insurer shall wind up the part of its business, for which the license was granted, within a term to be determined by the Bank. During this term, for the purposes of this State Ordinance, the insurer shall be put on a par with an insurer who has a license as mentioned in Article 5, first paragraph.

#### CHAPTER IV

#### Supervision of the engagement in the insurance business

##### § 1. Management controls and administrative organization

#### Article 10

1. The Bank may give insurers directives with regard to the administrative organization and internal operational management, including the financial accounts and internal control.

2. The directives meant in the first paragraph may relate to the implementation of rules in other State Ordinances.

3. The Bank may give an insurance company instructions on the way in which directives as meant in the first paragraph are to be implemented.

#### Article 10a

1. An insurer shall pursue an adequate policy for sound corporate governance and shall set up its corporate governance

structure in such a way that sound corporate governance is guaranteed.

2. The policy and structure as referred to in the first paragraph shall in any case deal with:

- a. the recording and performance of the duties, responsibilities and the working method of the management board and the board of supervisory directors;
- b. the suitability, both individually and collectively, of the directors and supervisory directors;
- c. the adoption and implementation of a clear strategy and objectives;
- d. the adoption, implementation, monitoring and, where necessary, adjustment of the overall risk policy;
- e. the systematic control of the management of the risks associated with the business activities;
- f. the adequate provision of information to the management board and the board of supervisory directors;
- g. a careful and sound decision-making;
- h. the remuneration of the directors and supervisory directors;
- i. the independence of the supervisory directors;
- j. the role and responsibilities of the shareholders of the company.

3. The Bank may give insurers directives with regard to the policy and the structure as referred to in the first paragraph.

#### Article 10b

1. An insurer shall dispose of written procedures for the careful and consistent handling of complaints within a reasonable period.

2. The Bank may give insurers directives with regard to the first paragraph.

#### § 2. Statements

#### Article 11

1. Within six months after the end of each financial year the insurer shall send the Bank statements, which provide a clear picture of the management carried out by the insurer and of its financial position.

2. The insurer shall submit the statements accompanied by an auditor's declaration stating that they present a true and fair view. As evidence that the statements have been audited by him or, if the statements as mentioned in the third paragraph were included in his audit, the auditor shall certify the statements. When giving the audit assignment, the insurer shall authorize the auditor in writing to provide the Bank all information that may be reasonably considered necessary to carry out the duty imposed on the Bank by, or by virtue of, this State Ordinance.

3. In so far applicable one of the statements shall consist of the actuarial report, which shall be provided with an actuarial certification. With his certification the actuary shall confirm that he has ascertained that the provisions stated in the actuarial report have been assessed correctly. He shall be authorized to amplify his certification or to make reservations on any point.

4. The Bank shall determine the models of the statements mentioned in the first paragraph.

### § 3. Annual report

#### Article 12

1. Each year, within six months after the end of the financial year, an insurer shall submit its annual financial statements and annual report to the Bank. The annual report shall present a true and fair view of the position on the balance sheet date and of the business transactions during the financial year.

2. The annual financial statements and annual report of an insurer domiciled outside Aruba shall concern the entire business.

### § 4. Technical provisions

#### Article 13

1. An insurer shall maintain adequate technical provisions which are fully covered by assets. The Bank may raise objections against the nature and valuation of these assets, which objections shall be promptly met by the insurer.

2. The Bank may provide general guidelines with regards to the contents and the magnitude of the technical provisions, mentioned in the first paragraph.

§ 5. Solvency margin

Article 14

1. An insurer engaged in the life insurance business must have a solvency margin amounting to eight percent of the provision for insurance obligations at the end of the preceding financial year, without taking the reinsurance of these obligations into account.

2. An insurer engaged in the general insurance business must have a solvency margin equal to the highest outcome of one of the following calculations:

- a. fifteen percent of the gross premiums booked in the preceding financial year, or
- b. fifteen percent of the average gross claims booked in the past three financial years.

3. The Bank may give general guidelines with regards to the solvency margin, in which among other things may be indicated, what amount of solvency margin must at least be maintained.

4. By State Decree, containing General Administrative Orders, special solvency margins may be prescribed for certain categories of insurers.

§ 6. Structural supervision

Article 14a

1. Without the permission from the Bank, a natural person or a legal entity is not allowed:

- a. to hold, acquire, or increase a qualifying holding in an insurer;
- b. to exercise any control associated with a qualifying holding in an insurer.

2. The Bank shall grant permission requested as referred to in the first paragraph, unless the Bank is of the opinion that the integrity of the applicant or, if the applicant is a legal entity, of the

persons who determine or also determine the policy of this legal entity is not beyond doubt, or that there is or could be question, otherwise, of undesirable influence on the policy of the enterprise or institution as a result of a qualifying holding in the enterprise or institution.

3. If a qualifying holding in an insurer is held, acquired, or increased without having obtained permission for this act, or without having observed the restrictions imposed when granting the permission, the infringing natural person or legal entity shall reverse the act performed within a period to be determined by the Bank or shall observe the restrictions as yet. This obligation shall cease to apply, if permission is given for the act in question as yet, or the restrictions not observed are withdrawn.

4. If the exercise of any control, associated with a qualifying holding in an insurer, takes place without having obtained permission for this act, or without having observed the restrictions or conditions imposed when granting the permission, a decision made also based on the control exercised can be annulled by the Court, on the demand of the Bank, if the decision would have been different or would not have been made, if the control in question had not been exercised, unless permission is granted as yet, or the restrictions or conditions not observed are observed as yet. Insofar as necessary, the Court shall provide for the consequences of the annulment.

5. If a natural person or a legal entity does not comply with all regulations or conditions attaching to the permission as referred to in the first paragraph, the Bank may set a period within which that natural person or legal entity shall comply with the regulations or conditions not complied with as yet.

#### Article 14b

1. Article 6, first paragraph, subparagraphs a, b, f, and second, fourth, and fifth paragraph shall be equally applicable to an application for permission as referred to in Article 14 a, first paragraph.

2. The issue of the permission as referred to in Article 14a, first paragraph, shall be announced in the Official Gazette of Aruba, as well as in one or more newspapers to be determined by the Bank, unless the Bank is of the opinion that the announcement thereof would or could lead to disproportionate favoring of, or prejudice to parties involved in the decision or third parties.

3. The Bank may modify or revoke the permission as referred to in Article 14a, first paragraph, in whole or in part:

- a. at the written request of the holder;
- b. if the data or documents provided for obtaining the declaration have turned out to be incorrect or incomplete to such an extent that a different decision would have been made on the application, if, at the time of assessing the application, the correct circumstances had been fully known;
- c. if not all regulations or conditions laid down in the declaration are complied with within the period referred to in Article 14a, fifth paragraph;
- d. if the holder does not comply with an instruction as referred to in 15b.

In that case, the second paragraph shall be equally applicable.

#### Article 14c

1. A natural person or legal entity whose qualify holding in an insurer changes in such a way that the extent of this holding falls below 10, 20, 33, or 50 percent, shall notify the Bank thereof in writing.

2. Each year in the month of July, an insurer shall notify the Bank in writing of the identity of each natural person or legal entity holding a qualifying holding in that institution, insofar as these data are known to it. As soon as this becomes known to it, an insurer shall also notify the Bank in writing of each acquisition or disposal of, or change to a qualifying holding in that institution, by which the extent of the holding exceeds or falls below 10, 20, 33, or 50 percent.

## § 7. Integrity supervision

### Article 14d

1. An insurer shall pursue adequate policy for an ethical conduct of its business and shall set up its operational management in such a way that the ethical conduct of its business is safeguarded.

2. At any rate, the policy and the operational management, referred to in the first paragraph, shall be aimed at:

- a. the countering of conflicts of interests;
- b. the suppression of money laundering and terrorist financing;
- c. the compliance with rules laid down by or pursuant to the State Ordinance on the Prevention and Suppression of Money Laundering and Terrorist Financing and other statutory regulations on the prevention and combating of money laundering and terrorist financing;
- d. the prevention of punishable offenses or other violations of the law by the insurer or its employees, which could prejudice the confidence in the enterprise or in the financial markets;
- e. the countering of relationships with clients or other business relationships, which could prejudice the confidence in the enterprise or in the financial markets;
- f. the countering of other acts by the insurer or its employees, which are in conflict with generally accepted standards according to unwritten law to such an extent, that this could prejudice the confidence in the enterprise or in the financial markets.

3. The Bank may give insurers directives with regard to:

- a. the ethical conduct of the insurance business;
- b. the way in which it is determined whether the integrity of a person, referred to in Article 6, first paragraph, subparagraph a, is beyond doubt, and whether such person is suitable, and which facts and circumstances are to be taken into consideration for that purpose.

4. The directives, referred to in the third paragraph, may be related to the implementation of the regulations of other State



Ordinances. They shall only be given or modified after consulting the representative organization involved.

#### Article 14e

1. An insurer shall not be associated through persons or legal entities in a formal or factual control structure:

- a. that is intransparent to such an extent that it constitutes or can constitute an obstacle to the adequate exercise of supervision of that enterprise;
- b. if foreign law applies to these persons or legal entities, and this foreign law constitutes or can constitute an obstacle to the adequate exercise of supervision of that enterprise.

#### CHAPTER V

#### Special measures

#### § 1. Right to give directives

#### Article 15

1. If an insurer does not meet the regulations for obtaining the license laid down by, or by virtue of, this State Ordinance, or if the Bank establishes that an insurer does not comply with the provisions laid down by, or by virtue of, Articles 10 through 14, 14c, second paragraph, 14d and 14e, or if the Bank perceives other signs, that in its opinion endanger or might endanger an insurer's solvency, it can give this insurer a directive to comply again, within a term to be determined by the Bank, with these regulations or with the provisions laid down by, or by virtue of, Articles 10 through 14, 14c, second paragraph, 14d and 14e, or to ensure that the solvency is brought again to a level to be determined by the Bank.

2. If within two weeks after the date of the directive the Bank has not received an answer from the insurer which it regards as satisfactory, or if in its opinion the directive has not or not adequately been complied with, it may, without prejudice to its authorization for revocation of a license pursuant to Article 8, to

impose a penalty charge order pursuant to Article 16, first paragraph, and to impose an administrative fine pursuant to Article 16, second paragraph:

a. notify the insurer in writing that as from a certain date all or certain of its bodies may only exercise their powers after approval by one or more persons appointed by the Bank, which notification shall take immediate effect;

b. notify the insurer in writing that the Bank will proceed to publication of the directive in the Government Gazette of Aruba.

3. If the cases mentioned in the first paragraph require immediate intervention, the Bank may without applying the first paragraph, immediately implement the second paragraph, sub a, after it has given the insurer the opportunity to present its views about the immediate enforcement.

4. The bodies, mentioned in the second paragraph, sub a, shall give the persons appointed by the Bank full cooperation. For losses resulting from acts performed in contravention of a notification as mentioned in the second paragraph, sub a, the persons who perform these acts as a body of the insurer shall be personally liable towards the insurer.

5. The decision to publish a directive shall only become effective after it has become irrevocable. If after the publication the insurer complies with the directive as yet, or if the Bank withdraws the directive, this shall be published by the Bank in the Government Gazette of Aruba.

6. The costs and remuneration of the persons designated by the Bank pursuant to this Article shall be paid by the insurer in question.

#### Article 15a

1. If the Bank is of the opinion that an auditor or actuary does not provide or no longer provides the necessary guarantees that he can fulfill his task properly in relation to an insurance company, the Bank may decide that this auditor or actuary is no longer authorized to sign the reports meant in this State Ordinance in relation to that insurance company.

2. The Bank will notify the insurance company in question immediately of a decision as meant in the first paragraph.

#### Article 15b

The Bank may give the holder of a qualifying holding in an insurer, as regards to whom the condition of Article 7, subparagraph

e, is no longer fulfilled in its opinion, an instruction to take a certain course of action with regard to specified issues.

## §2. Administrative sanctions

### Article 16

1. For the violation of the provisions laid down by or pursuant to Articles 4, 5, first paragraph, 9, second paragraph, 10 through 15b, 17, 22, first and third paragraph, 24b, third, fourth, and fifth paragraph, 25, sixth paragraph, and 27a, first paragraph, 27b, the Bank may impose a penalty charge order.

2. For the offenses referred to in the first paragraph, the Bank may also impose an administrative fine not exceeding Afl. 1,000,000.- per separate violation.

3. Violations can be committed by natural persons and legal entities. Article 1:127, second and third paragraph, of the Criminal Code of Aruba shall be equally applicable.

4. The Bank shall adopt guidelines for the exercise of the powers, referred to in the first and second paragraph, and shall record them in a policy document. The policy document shall at any rate contain a description of the procedures to be followed when exercising the powers, referred to in the first and second paragraph. The policy document, referred to in the first sentence, as well as all modifications to be introduced to same afterwards shall be announced in advance in a manner to be determined by the Bank.

5. By State Decree containing General Administrative Orders, rules shall be laid down with regard to the principles for the determination of the amount of the penalty charge order and the administrative fine per violation. The violations shall be classified into categories based on the severity of the violation, with the corresponding basic amounts, minimum amounts, and maximum amounts.

6. Forfeited penalties and administrative fines shall accrue to the Bank.

#### Article 16a

1. If, at the time of committing a violation, a period of five years has not yet expired since an administrative fine was imposed on the violator for a similar violation, the amount of the administrative fine, referred to in Article 16, second paragraph, shall be doubled for each separate violation.

2. Notwithstanding Article 16, second paragraph, the Bank may set the amount of the administrative fine at a maximum of twice the amount of the benefit obtained by the violator as a result of the violation, if his benefit exceeds Afl. 1,000,000.-.

#### Article 16b

1. If the Bank intends to impose an administrative fine, it shall notify the person concerned thereof, stating the grounds on which the intention is based.

2. The Bank shall give the person concerned the opportunity to express his view, either in writing or orally, within a reasonable period, before imposing the administrative fine by decision.

3. If, after the person concerned has expressed his view, the Bank decides that no administrative fine will be imposed for the violation, the person concerned shall be informed hereof in writing.

#### Article 16c

1. At the request of the violator, the Bank may cancel a penalty charge order, suspend the duration thereof for a specific period, or reduce the penalty, in case the violator is permanently or temporarily unable in whole or in part to comply with his obligations.

2. Furthermore, at the request of a violator, the Bank may cancel a penalty charge order, if the decision has been effective one year without having forfeited the penalty.

#### Article 16d

Anyone in respect of whom the Bank has performed an act from which he could reasonably infer that an administrative fine will be imposed on him for violation of the provisions laid down by or pursuant to this State Ordinance will not be required to make any statement in that regard. He shall be notified to this effect before being asked to provide information.

#### Article 16e

1. The administrative fine is due within six weeks after the date of the decision by which it was imposed.

2. Statutory interest will be added to the fine, to be counted from the day after the six weeks have elapsed since the notification of the decision.

#### Article 16f

1. The power to impose an administrative fine will lapse:

- a. if criminal prosecution has been instituted for the infringement, and the court hearings has started, or if the right to prosecute has ceased to exist pursuant to Article 1:149 of the Criminal Code of Aruba;
- b. three years after the day the non-compliance with the rule was discovered.

2. The period meant in the first paragraph, sub b will be interrupted by a notification of the order by which the administrative fine was imposed.

3. The right to institute criminal proceedings shall lapse, if an administrative fine was already imposed on the subject matter for the same infringement.

4. The Bank and the Public Prosecution Service shall consult periodically on the choice between imposing an administrative fine or criminal-law sanction to avoid unlawful concurrence of those sanctions.

#### Article 16g

1. The Bank is authorized, for the purpose of protection of the financial system and preventing money laundering and terrorist financing, to publish the offence for which the order subject to a penalty or the administrative fine was imposed, the infringed rule, as well as the name, address and domicile of the person on whom the administrative fine was imposed.

2. The Minister may lay down rules on the exercise of the authority meant in the first paragraph.

3. The order to publish shall take effect on the day on which the offence is made public, without suspension of the effect for the duration of the period for appeal or, if appeal has been brought, of the appeal, if the address of the person concerned is not known and it cannot be obtained either with reasonable efforts.

#### Article 16h

The Bank shall keep record of the acts carried out in the context of an investigation prior to the imposition of an administrative fine, stating the persons who carried out those acts.

#### Article 16i

1. If a forfeited penalty or fine is not paid within the period set by the Bank, a demand will be made to the infringer to pay the amount of the penalty or fine, plus the costs of the demand, within two weeks.

2. In the absence of payment, the amount and the costs, referred to in the first paragraph, shall be augmented by the collection costs, collected by the Bank by writ of execution.

3. The writ of execution shall be published by serving a process as referred to in the Code of Civil Procedure of Aruba and shall constitute entitlement to enforcement, which may be enforced while applying the provisions of this Code.

4. The writ of execution shall at any rate state:

- a. the words 'writ of execution' in the heading;
- b. the amount of the collectable principal sum, augmented by the statutory interest due;
- c. the order or the statutory provision from which the amount due arises;
- d. the costs of the demand and of the writ of execution;
- e. that it may be enforced for the account of the violator.

5. For a period of six weeks after the date of service, an objection may be lodged against the writ of execution. Objection shall be lodged against the Bank with the Court and in the manner stipulated for filing claims. Provided it has been lodged in a timely fashion and in the prescribed manner, the objection shall suspend the enforcement.

#### Article 16j

1. The Bank may, in view of the interests this State Ordinance seeks to protect, issue a public warning in case of infringement of any prohibitory provision of this State Ordinance, if necessary, stating the considerations that led to the warning.

2. The minister may lay down rules concerning the exercise of the power as referred to in the first paragraph.

3. The decision to issue a public warning shall enter into effect on the date on which the public warning has been published, without suspending the effect for the duration of the appeal period or, if an appeal has been lodged, of the appeal, if no address of the subject matter is known, and the address also cannot be obtained by reasonable efforts.

#### Article 16k

1. If the Bank intends to issue a public warning, it shall notify the person (legal/natural) concerned in writing of the intended decision and shall give him the opportunity to express his views.

2. The Bank may decide not to apply the first paragraph, if the urgency of the matter dictates otherwise, or if no address of the person (legal/natural) concerned is known, and the address also cannot be obtained by reasonable efforts.

### § 3. Appointment of certain positions

#### Article 17

1. An insurer shall not appoint persons to positions as referred to in Article 7, sub a and b, prior to having obtained the approval thereof from the Bank.

2. Within thirteen weeks after receipt of a complete application, the Bank shall decide on that application. If the Bank requests additional information, this period shall commence after the date of receipt of this additional information.

## CHAPTER VI

### The register

#### Article 18

1. The Bank shall keep a register in which all insurers are entered, which have obtained a license as mentioned in Article 5, first paragraph. The register shall be organized in a way to be determined by the Bank and shall be available for everyone for inspection at the Bank's office, free of charge.

2. The Bank shall ensure the removal from the register of every insurer whose license as mentioned in Article 5, first paragraph, is revoked.

#### Article 19



1. The entry in or removal from the register shall be published by the Bank in the Government Gazette of Aruba and in two local newspapers within two weeks after the day on which it took place.

2. Each year in the month of January, a transcript of the register showing the position as per December 31 of the preceding year shall be published by the Bank in the Government Gazette of Aruba and in two local newspapers.

## CHAPTER VII

### Emergency regulation and bankruptcy

#### § 1. Emergency regulation

##### Article 20

1. In the event that the solvency of an insurer entered in the register shows signs of a dangerous development or there are otherwise signs, that threaten the continued existence of an insurer, and no improvement in this development may be expected in reason, the Court may, on petition of the Bank declare that the insurer is in a position that in the interests of the combined creditors requires a special measure.

2. In case of a declaration as mentioned in the first paragraph, the Court shall appoint on the Bank's recommendation one or more administrators, who shall be authorized to liquidate all or part of the insurance agreements concluded by the insurer as well as to proceed to transfer all or part of its rights and obligations under or by virtue of insurance agreements.

3. By State Decree, containing General Administrative Orders, regulations may be laid down concerning the way of performing the duties, mentioned in the second paragraph. By this decree, one or more provisions of the Bankruptcy Ordinance may be declared applicable and may be deviated from regulations of that state ordinance.

#### § 2. Bankruptcy and liquidation

## Article 21

1. The Bank may file a petition at the Court to adjudicate an insurer bankrupt, if it appears to it that the insurer has a negative proprietors' equity capital and either the purpose to be achieved by the measure, described in Article 20, can not or no longer be realized, or, if this measure was not previously requested, there is no longer a reasonable prospect that the purpose to be achieved by this measure may be realized as yet.

2. In deviation from Article 1 of the Bankruptcy Ordinance the bankruptcy shall be adjudicated, irrespective of whether the insurer is in a position of having ceased to make payments.

3. If a petition to adjudicate bankrupt is filed by another than the Bank, including an insurer's own petition, this shall not be decided on until after the Court has given the Bank the opportunity to express its opinion on this matter.

4. An insurer entered in the register that has decided to liquidate its business in whole or in part, or to dissolve it, shall notify the Bank at least thirteen weeks before the decision will be executed of the way in which the liquidation, respectively the dissolution, will take place.

## CHAPTER VIII

### Special provisions

#### § 1. Transfer of rights and obligations

## Article 22

1. An insurer shall only transfer its rights and obligations from all or part of the insurance agreements without the permission of the persons who can derive rights from these agreements to another insurer by written agreement and with written permission of the Bank.

2. In deviation from the first paragraph, an insurer shall be authorized to transfer its rights and obligations from an individual insurance agreement at the insurant's written request.

3. The Bank may give general guidelines with regards to the transfer of rights and obligations from insurance agreements.

## 2. Secrecy

## Article 23

1. Anyone who performs or performed any duty for the purposes of this State Ordinance or a decision made pursuant to this State Ordinance is not allowed to use data or information provided or obtained pursuant to this State Ordinance or received from a foreign body as referred to in Article 24, first paragraph, further or differently or to make it known further or differently than required for the performance of his duty or by this State Ordinance.

2. Notwithstanding the first paragraph, the Bank shall be authorized to make statements by using data or information obtained in the performance of its duty pursuant to this State Ordinance, provided these data or that information cannot be traced back to separate persons or institutions.

3. The first paragraph shall not affect the obligation to make a statement, in accordance with the Code of Criminal Procedure of Aruba (AB 1996 No. 75), as a witness in criminal cases with regard to data or information obtained in the performance of the duty assigned to him pursuant to this State Ordinance. Likewise, it shall not affect the obligation to make a statement, in accordance with the Code of Civil Procedure of Aruba (AB 2005 No. 34), as a witness or a party in a personal appearance of parties in civil cases with regard to data or information obtained in the performance of the duty assigned to him pursuant to this State Ordinance, and this on the understanding that such an obligation shall only apply, insofar as it concerns an insurer that has been declared bankrupt or that has been dissolved by court decision, and that it does not apply to data or information related to enterprises or institutions that are or were involved in an attempt to enable the insurer in question to continue its business.

### § 3. Exchange of data

#### Article 24

1. Notwithstanding Article 23, first paragraph, the Bank shall be authorized to exchange data and/or information obtained in the performance of the duties assigned to it pursuant to this State Ordinance with bodies designated by foreign public authorities, which are charged with:

- a. the supervision of persons and institutions that are active in the financial markets, or

- b. the supervision of the compliance with legislation and regulations concerning the prevention and suppression of money laundering and terrorist financing.

2. The power, referred to in the first paragraph, shall not be exercised, if:

- a. the purpose for which the data or information will be used has not been sufficiently specified;
- b. the contemplated use of the data or information is not in line with the supervision of financial markets or persons working in these markets;
- c. provision of the data or information is contrary to public order or the laws of Aruba;
- d. the secrecy of the data or information has not been sufficiently guaranteed;
- e. provision of the data or information is or could be contrary in reason to the interests this State Ordinance intends to protect;
- f. it has not been sufficiently guaranteed that the data or information will not be used for a purpose other than for which they are provided.

3. Insofar as the data or information, referred to in the first paragraph, have been obtained from a foreign supervisory body, the Bank shall not provide them to another foreign supervisory body, unless the body from which the data or information have been obtained approved the provision of the data and information and, if applicable, approved the use for a purpose other than for which the data or information have been provided.

4. If a foreign supervisory body requests the Bank to use data or information, which the Bank provided pursuant to the first or second paragraph, for a purpose other than for which they have been provided, the Bank shall only comply with that request, if:

- a. the contemplated use is not contrary to the first or second paragraph; or
- b. the supervisory body concerned could obtain these data or information from Aruba, for that other purpose, in a way other than provided for in this State Ordinance, with due observance of the applicable legal procedures.

#### Article 24a

Notwithstanding Article 23, first paragraph, the Bank shall be authorized to provide data or information obtained in the performance of the duties assigned to it pursuant to this State Ordinance to persons and bodies charged with the exercise of criminal-law powers pursuant to the Code of Criminal Procedure of Aruba.

#### Article 24b

1. For the performance of its duty pursuant to this paragraph, the Bank may demand information from anyone, if this is necessary for the performance of the duty of a body referred to in Article 24, first paragraph. Article 25, third through sixth paragraph, shall be equally applicable.

2. At the request of a body as referred to in the first paragraph, the Bank may ask data and information from or conduct an investigation or cause same to be conducted at an insurer or at anyone who can be suspected in reason of disposing of data or information that may be important to the requesting body.

3. The person who has been asked for data or information as referred to in the second paragraph shall provide same within a reasonable period to be set by the Bank.

4. The person at whom an investigation as referred to in the second paragraph is conducted shall give all cooperation necessary for the proper conduct of that investigation. Article 25, third and fourth paragraph, shall be equally applicable.

5. The Bank may allow that an officer of a body as referred to in Article 24, first paragraph, participates in the implementation of a request as referred to in the second paragraph. The officer referred to in the first sentence shall comply with the instructions of the employee of the Bank, charged with the implementation of the request. The order referred to in the fourth paragraph shall also apply to the officer referred to in the first sentence.

#### Article 24c

1. The Bank shall be authorized to consult the registers of and to ask all information from the Chamber of Commerce and Industry, the Department of Land Surveying and Real Estate Registration, the Civil Registry, as well as other bodies to be designated by State Decree containing General Administrative Orders.

2. The bodies mentioned in the first paragraph shall give the Bank all cooperation free of charge and within the reasonable period set by it, as requested pursuant to the first paragraph.

#### § 4. Supervision

#### Article 25

1. The persons employed by the Bank and designated for this purpose by the President of the Bank shall be charged with supervising the compliance with the provisions laid down by or pursuant to this State Ordinance. Such State Decree shall be announced in the Official Gazette of Aruba.

2. The persons designated pursuant to the first paragraph may exercise the supervision in a risk-oriented manner. They shall report on the exercise of the powers mentioned in the third paragraph to the President of the Bank or to the executives within the Bank to be designated in writing by the President.

3. The employees of the Bank, designated by virtue of the first paragraph, shall be authorized, exclusively in as far as this is necessary in reason for the performance of their duties:

- a. to request all information;
- b. to demand inspection of all books, documents, and other information carriers concerning the business and to make transcripts thereof or copies thereof or to take these along temporarily for this purpose;
- c. to enter all places, except for dwelling houses without specific permission of the occupant, accompanied by persons to be designated by them.

4. If necessary, access to a place as mentioned in the third\ paragraph, sub c, shall be gained with the assistance of the police.

5. By State Decree, containing General Administrative Orders, rules shall be laid down regarding the way in which the employees of the Bank, designated by virtue of the first paragraph, perform their duties.

6. Everyone shall give the persons, designated by virtue of the first paragraph, the cooperation required pursuant to the third paragraph.

## CHAPTER IX

### Penal provision

#### Article 26

1. The person who violates a regulation, condition, or limitation laid down by or pursuant to Articles 4, 5, first paragraph, 9, second paragraph, 10, through 15b, 17, 22, first and third paragraph, 24b, third, fourth, and fifth paragraph, 25, sixth paragraph, and 27a, first paragraph, 27b, shall be punished with imprisonment not exceeding one year, or with a fine of the fourth category.

2. Acting intentionally in violation of any provision, laid down in or in pursuance of the Articles, mentioned in the first paragraph, shall be punished with imprisonment not exceeding six years or a fine of the sixth category.

3. The punishable acts, mentioned in the first paragraph are punishable offenses; the punishable acts, mentioned in the second paragraph are criminal offenses.

## CHAPTER X

### Final provisions

#### Article 27

This State Ordinance is not applicable for institutions that are established by state ordinance and that conduct activities similar or almost similar to the engagement in the insurance business.

## Article 27a

1. By State Decree containing General Administrative Orders, funeral insurance companies with in-kind benefits, reinsurers, and insurance agents may be placed under the supervision of the Bank in accordance with rules to be laid down by this State Decree. One or more Articles of this State Ordinance may then be declared equally applicable.

2. A funeral insurance company with in-kind benefits shall be understood to be anyone, not being a life insurer, whose business is to conclude funeral insurances with in-kind benefits for own account and to complete these funeral insurances with in-kind benefits. Funeral insurance with in-kind benefits shall be understood to be insurance in connection with the funeral arrangements of a natural person, while the insurer undertakes to deliver a performance that does not also imply paying a financial benefit.

3. A reinsurer shall be understood to be anyone whose business is to conclude reinsurances for own account and to complete these reinsurances. Reinsurance shall be understood to be insurance under which risks are accepted that are transferred by an insurer.

4. An insurance agent shall be understood to be anyone who, other than on account of an employment contract, acts as an intermediary in the conclusion, surrender, or payment of a life insurance contract or a nonlife insurance contract.

## Article 27b

1. It is not allowed for anyone to act as an intermediary in the conclusion, surrender, or payment of a life insurance contract or a nonlife insurance contract with an enterprise or institution domiciled in or outside Aruba, which does not dispose of a license as referred to in Article 5 for the conduct of the insurance business.

2. Without prejudice to Article 4, second paragraph, the Bank may grant an exemption from the prohibition referred to in the first paragraph, on a request to that effect, if the Bank is of the opinion



that this is not contrary to the interests this State Ordinance intends to protect.

#### Article 28

Each year, before July 1, the Bank shall report to the Minister on the enforcement of this State Ordinance, with due observance of Article 23.

#### Article 29

By Ministerial Regulation an organization may be designated, that represents a thereby indicated group of insurers with regard to the enforcement of this State Ordinance.

#### Article 30

Costs related to the enforcement of this State Ordinance, by Ministerial Decree, having heard the Bank and the organization as mentioned in Article 29, may be fully or partially charged to certain groups of insurers.

#### Article 31

By State Decree, containing General Administrative Orders, having heard the Bank, further rules may be laid down for the enforcement of this State Ordinance.

#### Article 32

1. This State Ordinance shall become effective on a date to be determined by or by virtue of a state ordinance.
2. It may be cited as State Ordinance Supervision Insurance Business.

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Intitulé : LANDSBESLUIT, houdende algemene maatregelen, ter uitvoering van de artikelen 2, vierde lid, 14, vierde lid, en artikel 31 van de Landsverordening toezicht verzekeringsbedrijf (AB 2002 no. 82)

Citeertitel: Landsbesluit bijzondere bedrijfsrisicoverzekeraars

Vindplaats : AB 2002 no. 50

Wijzigingen: AB 2015 no. 47  
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§ 1. Inleidende bepalingen

Artikel 1

In dit landsbesluit wordt verstaan onder:  
bijzondere bedrijfs- : een verzekeringsbedrijf dat risico's verzekert  
risicoverzekeraar of herverzekert die uitsluitend of in overwegende mate voortvloeien uit de bedrijfs- of beroepsuitoefening van aandeelhouders of leden van een in een groep verbonden ondernemingen of van deelnemers in een samenwerkingsverband;  
vergunning : een vergunning als bedoeld in artikel 5, eerste lid, van de Landsverordening toezicht verzekeringsbedrijf (AB 2000 no. 82);  
Landsverordening : de Landsverordening toezicht verzekeringsbedrijf.

Artikel 2

1. Bijzondere bedrijfsrisicoverzekeraars worden onderscheiden in:  
a. zuivere bijzondere bedrijfsrisicoverzekeraars;  
b. associatieve bijzondere bedrijfsrisicoverzekeraars;  
c. uitleenbare bijzondere bedrijfsrisicoverzekeraars;  
d. overige bijzondere bedrijfsrisicoverzekeraars.  
2. Bijzondere bedrijfsrisicoverzekeraars als bedoeld in het eerste lid, onderdelen a en b, verzekeren of herverzekeren geen andere risico's dan die van hun aandeelhouders respectievelijk leden.  
3. Een bijzondere bedrijfsrisicoverzekeraar als bedoeld in het eerste lid, onderdeel c, verzekert of herverzekert geen andere risico's dan die van de deelnemende instellingen.

Artikel 3

Een bijzondere bedrijfsrisicoverzekeraar sluit geen overeenkomsten tot dekking van de wettelijke aansprakelijkheid als bedoeld in de Landsverordening aansprakelijkheid motorrijtuigen (AB 1999 no. GT 12).

§ 2. Vergunningsaanvraag

Artikel 4

1. Het krachtens artikel 6, eerste lid, onderdeel d, van de

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Landsverordening door een bijzondere bedrijfsrisicoverzekeraar te overleggen programma van werkzaamheden bevat ten minste:

- a. een opgave van de aard van de risico's die de bijzondere bedrijfsrisicoverzekeraar voornemens is te dekken,
- b. de technische grondslagen die de bijzondere bedrijfsrisicoverzekeraar voornemens is toe te passen, met name de grondslagen voor de berekening van de tarieven en de technische voorzieningen,
- c. een uiteenzetting omtrent de leidende beginselen op het gebied van de herverzekering,
- d. inzicht in de aanwezigheid van de krachtens artikel 8, eerste lid, vereiste solvabiliteitsmarge en een raming van de financiële middelen tot dekking van de solvabiliteitsmarge, en
- e. een vijfjarige financiële prognose, waaronder een raming van de solvabiliteitsmarge en de liquiditeitspositie.

2. Een aanvrager met zetel buiten Aruba dient in het land waar zijn zetel zich bevindt, bevoegd te zijn tot uitoefening van het verzekeringsbedrijf.

3. De Bank stelt het model van het aanvraagformulier vast.

#### Artikel 5

1. Onverminderd artikel 7 van de Landsverordening verleent de Bank een vergunning aan een bijzondere bedrijfsrisicoverzekeraar, mits haar is gebleken dat voldaan is aan de volgende voorwaarden:

- a. het dagelijks beleid van de bijzondere bedrijfsrisicoverzekeraar wordt bepaald door ten minste één natuurlijke persoon die zijn woonplaats in Aruba heeft;
- b. de bijzondere bedrijfsrisicoverzekeraar beschikt over een solvabiliteitsmarge als bedoeld in artikel 8;

2. Een vergunning wordt slechts verleend voor de uitoefening van het bedrijf van bijzondere bedrijfsrisicoverzekeraar in één van de in artikel 2, eerste lid, genoemde groepen.

3. Indien het dagelijks beleid van de bijzondere bedrijfsrisicoverzekeraar door een vertegenwoordiger wordt bepaald, zijn de artikelen 7, eerste lid, onderdelen c en d, en 17 van de Landsverordening van overeenkomstige toepassing op de vertegenwoordiger.

4. Een bijzondere bedrijfsrisicoverzekeraar voert te hare kantore in Aruba de financiële administratie van het door haar uitgeoefende verzekeringsbedrijf en bewaart aldaar alle zakelijke bescheiden betreffende dit verzekeringsbedrijf gedurende een periode van tenminste tien jaar.

### § 3. Bijzondere toezichtsvoorschriften

#### Artikel 6

1. Een bijzondere bedrijfsrisicoverzekeraar dient jaarlijks binnen zes maanden na afloop van het boekjaar haar jaarrekening bij de Bank in.

2. De jaarrekening van een bijzondere bedrijfsrisicoverzekeraar met zetel buiten Aruba betreft het gehele bedrijf, waar dit ook wordt uitgeoefend.

3. De jaarrekening van een bijzondere bedrijfsrisicoverzekeraar is voorzien van een verklaring omtrent de getrouwheid van de gegevens

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daarin, ondertekend door een accountant.

4. Een bijzondere bedrijfsrisicoverzekeraar dient jaarlijks binnen zes maanden na afloop van het boekjaar bij de Bank een actuariel verslag in dat voorzien is van een verklaring van een actuaaris.

5. De Bank kan het model, de inhoud en de grondslagen van de jaarrekening en het actuariële verslag vaststellen.

#### Artikel 7

Een bijzondere bedrijfsrisicoverzekeraar houdt overeenkomstig artikel 13 van de Landsverordening toereikende technische voorzieningen aan, die volledig door waarden zijn gedekt.

#### Artikel 8

1. Een bijzondere bedrijfsrisicoverzekeraar beschikt over een solvabiliteitsmarge van:

- in het geval van een zuivere bijzondere bedrijfsrisicoverzekeraar, minimaal Afl. 300.000,-;
- in het geval van een associatieve bijzondere bedrijfsrisicoverzekeraar, minimaal Afl. 500.000,-;
- in het geval van een uitleenbare bijzondere bedrijfsrisicoverzekeraar, minimaal Afl. 1.000.000,-;
- in het geval van een overige bijzondere bedrijfsrisicoverzekeraar, een door de Bank te bepalen minimum solvabiliteitsmarge die zal variëren tussen Afl. 300.000,- en Afl. 1.000.000,-.

2. De Bank kan een additionele solvabiliteitsmarge voorschrijven op basis van het type, de omvang en de aard van de risico's die een bijzondere bedrijfsrisicoverzekeraar verzekert of herverzekert.

3. De solvabiliteitsmarge kan aangehouden worden in de vorm van contanten of een onherroepelijke garantie, uitgegeven door een in Aruba gevestigde bank, die in het bezit is van een vergunning als bedoeld in artikel 4 of 24 van de Landsverordening toezicht kredietwezen (AB 1998 no. 16).

#### Artikel 9

1. Indien een bijzondere bedrijfsrisicoverzekeraar niet meer beschikt over de ingevolge artikel 8 vereiste minimum solvabiliteitsmarge of indien de Bank andere tekenen ontwaart, die naar haar oordeel de solvabiliteit van een bijzondere bedrijfsrisicoverzekeraar in gevaar brengt of zou kunnen brengen, dient zij binnen een door de Bank te bepalen termijn, bij de Bank een financieringsplan ter goedkeuring in, dat aangeeft op welke wijze en binnen welke termijn de solvabiliteitsmarge weer op het vereiste niveau zal worden gebracht.

2. Artikel 15 van de Landsverordening is niet van toepassing op bijzondere bedrijfsrisicoverzekeraars.

#### Artikel 10

Onverminderd artikel 8 van de Landsverordening kan de Bank de vergunning van een bijzondere bedrijfsrisicoverzekeraar intrekken, indien niet binnen de ingevolge artikel 9 door de Bank goedgekeurde ter-

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mijn de solvabiliteitsmarge op het vereiste niveau is gebracht.

§ 4. Kostenvergoeding

Artikel 11

Een onderneming die een vergunning als bijzondere bedrijfsrisico-verzekeraar aanvraagt, is voor de behandeling van zijn aanvraag een vergoeding aan de Bank verschuldigd ten bedrage van Afl. 1.000,-.

Artikel 12

1. De kosten, bedoeld in artikel 30 van de Landsverordening, die door een bijzondere bedrijfsrisicoverzekeraar verschuldigd zijn, hebben betrekking op de diverse, door de Bank krachtens dit landsbesluit uitgevoerde werkzaamheden en worden door deze telkens jaarlijks aan de desbetreffende bijzondere bedrijfsrisicoverzekeraar in rekening gebracht. De kosten bedragen ten hoogste Afl. 7.500,- en worden binnen een door de Bank te bepalen termijn voldaan.

2. Voor de eerste maal is de betaling van de rekening, bedoeld in het eerste lid, verschuldigd na afloop van het eerste volle boekjaar, volgende op de afgifte van de vergunning.

§ 5. Slotbepaling

Artikel 13

1. Dit landsbesluit treedt in werking met ingang van de dag na plaatsing in het Afkondigingsblad van Aruba.

2. Het kan worden aangehaald als Landsbesluit bijzondere bedrijfsrisicoverzekeraars.

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Unofficial translation of the State Ordinance  
Supervision Insurance Business (State Decree  
Captive Insurance Companies)  
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IN THE NAME OF THE QUEEN!

THE GOVERNOR of Aruba,

Having considered:

that with a view to supervision as effective as possible of the insurance business, it is desirable to lay down special rules concerning the supervision of captive insurance companies;

Having regard to:

the Sections 2, fourth paragraph, 14, fourth paragraph, and 31 of the State Ordinance Supervision Insurance Business (AB 2000, no. 82);

having heard the Advisory Council, has decided:

§ 1. Prefatory provisions

Section 1

For the purposes of this State Decree the following shall be understood by:

Captive insurance company : an insurance company that insures or reinsures risks that exclusively or predominantly arise from the conduct of business or practice of a profession of shareholders or members of enterprises associated in a group, or of participants in a joint venture;

license : a license as meant in Section 5, first paragraph, of the State Ordinance Supervision Insurance Business (AB 2000, no. 82);

State Ordinance : the State Ordinance Supervision Insurance Business.

## Section 2

1. Captive insurance companies are distinguished into:
  - a. pure captive insurance companies;
  - b. association captive insurance companies;
  - c. rent-a-captive insurance companies;
  - d. other captive insurance companies.
2. Captive insurance companies as meant in the first paragraph, subs a and b, do not insure or reinsure any risks other than those of their shareholders or members, respectively.
3. A captive insurance company as meant in the first paragraph, sub c does not insure or reinsure any risks other than those of the participating institutions.

## Section 3

A captive insurance company shall not effect agreements for the cover of the legal liability as meant in the State Ordinance Liability Motor Vehicles (AB 1999, No. GT 12).

## § 2. Application for a license

### Section 4

1. The program of activities to be submitted by the captive insurance company pursuant to Section 6, first paragraph, sub d, of the State Ordinance, shall contain at least:

- a. a statement of the nature of the risks the captive insurance company intends to cover,
- b. the actuarial assumptions the captive insurance company intends to apply, notably the standards for the calculation of the rates and the technical provisions,
- c. an explanation concerning the leading principles in the field of reinsurance,
- d. insight in the presence of the solvency margin required pursuant to Section 8, first paragraph, and an estimation of the financial assets to cover the solvency margin, and
- e. a five-year financial projection, including an estimate of the solvency margin and liquidity position.

2. An applicant incorporated outside Aruba, shall be authorized to conduct the insurance business in the country it is incorporated.

3. The Bank shall decide on the model of the application form.

### Section 5

1. Without prejudice to Section 7 of the State Ordinance, the Bank shall grant a captive insurance company a license, provided it is evident to it that the following conditions are met:

- a. the day-to-day management of the captive insurance company is determined by at least one natural person who resides in Aruba;
- b. the captive insurance company disposes of a solvency margin as meant in Section 8;



2. A license shall only be granted for the conduct of the business of a captive insurance company in one of the groups mentioned in Section 2, first paragraph.

3. In the event that the day-to-day management of the captive insurance company is determined by a representative, the Sections 7, first paragraph, subs c and d, and 17 of the State Ordinance shall apply mutates mutandis to the representative.

4. A captive insurance company shall keep the financial administration of the insurance business conducted by it at its office in Aruba, and shall preserve there any and all business documents concerning this insurance business during a period of at least ten years.

### § 3. Special supervision regulations

#### Section 6

1. Each year, a captive insurance company shall submit its financial statements to the Bank within six months after the end of the financial year.

2. The financial statements of a captive insurance company domiciled outside Aruba concern the entire enterprise, wherever it is conducted.

3. The financial statements of a captive insurance company shall be provided with a declaration stating that the information therein presents a true and fair view, signed by an auditor.

4. Each year, a captive insurance company shall submit an actuarial report to the Bank, provided with an actuary's certificate within six months after the end of the financial year.

5. The Bank may decide on the model, the contents and the bases of the financial statements and the actuarial report.

## Section 7

Pursuant to Section 13 of the State Ordinance, a captive insurance company shall maintain adequate technical provisions, fully covered by assets.

## Section 8

1. A captive insurance company shall dispose of a solvency margin of:

- in case of a pure captive insurance company, at least Afls. 300,000.=;
- in case of an association captive insurance company, at least Afls. 500,000.=;
- in case of a rent-a-captive insurance company, at least Afls. 1,000,000.=;
- in the case of other captive insurance companies, a minimum solvency margin to be fixed by the Bank, which will vary between Afls. 300,000.= and Afls. 1,000,000.=.

2. The Bank may prescribe an additional solvency margin based on the type, the magnitude and the nature of the risks a captive insurance company insures or reinsures.

3. The solvency margin may be maintained in the form of cash or an irrevocable guarantee issued by a bank established in Aruba, which is in the possession of a license as meant in Section 4 or 24 of the State Ordinance Supervision Credit System (AB 1998, No. 16).

## Section 9

1. In the event that a captive insurance company no longer disposes of the minimum solvency margin required pursuant to Section 8, or in the event the Bank perceives other signs that endanger or might endanger the solvency of a captive insurance company in its judgment, it shall submit a financing plan to the Bank for approval within a term to

be fixed by the Bank, which plan shall indicate in what way and within what term the solvency margin will be brought back to the level required.

2. Section 15 of the State Ordinance shall not apply to captive insurance companies.

## Section 10

Without prejudice to Section 8 of the State Ordinance, the Bank may withdraw the license of a captive insurance company, if the solvency margin has not been brought back to the level required within the term approved by the Bank pursuant to Section 9.

## § 4. Compensation of expenses

## Section 11

An entity applying for a license as a captive insurance company, shall pay the Bank a compensation in the amount of Afls. 1,000.= for processing its application.

## Section 12

1. The charges meant in Section 30 of the State Ordinance which have to be paid by a captive insurance company, relate to the various activities carried out by the Bank in pursuance of this State Decree, and shall be charged by the Bank to the captive insurance company in question each year. The charges shall not exceed Afls. 3,000.= and shall be paid within a term to be fixed by the Bank.

2. Payment of the charges meant in the first paragraph shall be due for the first time after the end of the first full financial year following the issue of the license.

§ 5. Final provision

Section 13

1. The State Decree shall become effective as of the day after placement in the Statute Publication Gazette of Aruba.
2. It may be cited as State Decree Captive insurance companies.

Given in Oranjestad, May 7, 2002

O. Koolman

The Minister of Finance and Economic Affairs,  
N.J.J. Swaen

The Minister of Justice,  
H.R. Croes

## **Part II**

### **Admission policy and application form**

- II.1 Admission policy for Captive Insurance Companies in Aruba
- II.2 Application form for licensing of a Captive Insurance Company

## **II.1 Admission Policy for Captive Insurance Companies in Aruba**

### **I. Introduction**

The main objectives of the State Ordinance on the Supervision of the Insurance Business (SOSIB) are:

1. To protect the interests of policyholders and other beneficiaries, and
2. To promote and maintain the integrity of the financial system in Aruba.

According to section 2, paragraph 4 of the SOSIB categories of insurers can be wholly or partially exempted from the provisions of the SOSIB by State Decree. In this respect the State Decree Special Provisions Captive Insurers (Decree) has been drafted containing provisions, which will be only applicable to captive insurance companies operating in or from Aruba. It should be noted that the other provisions of the SOSIB, unless otherwise indicated, will remain applicable to the captive insurance companies. The captive insurance companies will be supervised by the Centrale Bank van Aruba (the Bank).

The captive insurance company is now recognized by the international financial and business world as a significant and integral part of the international insurance market. It has developed as an alternative provider of protection against the risks of damage or loss and third party liabilities.

### **II. Captive Insurance Companies**

#### **A. Captive insurance companies defined**

There are two characteristics that distinguish a captive insurance company.

First, it is generally owned through a common interest which is not engaged primarily in the business of insurance. This interest may be a single-parent shareholder, a group of shareholders or an association.

Secondly, as the name implies, all or a significant portion of the risks written are related in some way to the risks of shareholders or third-party risks which the shareholders or association control. In other words, the feature that distinguishes the captive insurance company from the traditional insurance company is that there is a relationship between the shareholders' or associations' activities and the risks that the company/association underwrites or reinsures.

## ADMISSION POLICY AND APPLICATION FORM

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### B. Captive Insurance Companies - groups

The following groups of captives insurance companies are distinguished:

- **Parent only or pure captive:** A wholly owned or controlled company which only insures or reinsures the risks of its non-insurance parent or affiliated companies.
- **Association or industry captive:** An insurance company owned by a group of industrial or commercial companies or members of a professional association established solely for the purpose to insure or reinsure the risks of its shareholders.
- **Rent-a-captive:** An insurance company which provides captive facilities to others for a fee whilst protecting itself from losses under their programs.
- **Other types, for example:**
  - **Special Purpose Vehicle:** An insurance company formed with the sole intention of reinsuring a specific risk where the risk capital is obtained via the capital markets, usually in the form of bonds or notes.
  - **Agency captive:** An insurance company that is owned by insurance brokers or agents who reinsure a portion of the insurance they sell with their own captive insurance company.
  - **Quasi profit center or open market captive:** A subsidiary which primarily insures or reinsures the risk of its parent or affiliated companies but, at the same time, insures the risks of unrelated parties or assumes open-market reinsurance business (up to 25% of the risk portfolio).

### III. Licensing process

#### A. Prerequisites

Herein the sections of the Decree related to the application for a license are discussed.

A captive insurer or reinsurer is prohibited to operate as an insurer in or from Aruba without a license from the Bank. A license shall only be granted for the engagement in one of the groups as mentioned under II B above.

In order to ensure a sound development of the insurance industry in Aruba a captive insurer will only be considered for admission if the following conditions are met:

1. The parent, holding company or association must be financially sound and of a solid reputation, evidenced by audited financial statements for the last three years.
2. A captive insurer:
  - a. is only allowed to conduct the insurance or reinsurance business;
  - b. is only allowed to conduct either the life or general insurance or reinsurance business.

## ADMISSION POLICY AND APPLICATION FORM

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The Bank can grant an exemption of the provisions under b provided that it has been proven to its satisfaction that the management of the life insurance business is separated from the management of the general insurance business.

3. Pure captive insurance company may not insure risks other than those of its parent and affiliated companies.

Association captive insurance company may not insure risks other than those of the member organization of its association and their affiliated companies.

Rent-a-captive insurance company may not insure risks other than those of the participating companies.

4. A captive insurance company may not conclude contracts to cover the legal liabilities as indicated in the State Ordinance Motor Vehicles Liability Insurance (AB 1999, no. GT 12).

### **B. Documents to be submitted to the Bank**

Pursuant to Section 6 of the SOSIB and Section 4 of the State Decree the application for a license shall at least contain information about:

1. The names and the curriculum vitae of the persons who determine the day-to-day management of the captive.
2. The names and the curriculum vitae of the members of the Supervisory Board or the body of the captive having a task similar to that of a Supervisory Board.
3. A business plan containing at least information on:
  - a. the nature of the risks that the captive insurance company intends to cover [the risks to be insured -direct, assumed and ceded - by line of business, the maximum retained risks (per loss and annual aggregate)];
  - b. the rating program and actuarial assumptions;
  - c. insight in the presence of the solvency margin required and an estimation of the financial assets to cover the solvency margin;
  - d. the reinsurance program;
  - e. five-year financial projection, including a projection of the solvency margin and liquidity position.



## ADMISSION POLICY AND APPLICATION FORM

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4. Documents proofing that the applicant has at its disposal the required solvency margin as stipulated in C 1 below.
5. Certified financial statements or an opening balance sheet.
6. A list of the prospective ultimate beneficial owner(s) of the captive with a qualifying holding (more than 5% of the shares or voting rights) mentioning the size of the qualifying holding. An explanation of the relationship between the beneficial owners should also be provided.
7. If the applicant is part of a group, holding or association indicate which other companies or institutions form part of the group, holding or association and what the relationship is with the applicant. If the applicant is an Association Captive, give history, purpose, size and other details of the parent association.
8. The envisaged administrative organization and organizational structure, including the financial administration and internal controls.
9. A certified copy of the articles of incorporation and a recent certificate (not older than 6 months) of its registration in the trade register at the Chamber of Commerce of Aruba.
10. If the applicant is incorporated outside of Aruba a written statement from the home country supervisor stating that the applicant is licensed to operate as an insurance or a reinsurance company in the home country.
11. Names and professional qualifications of the appointed external auditor and actuary.
12. The organization responsible for loss prevention and safety.

**The Bank maintains the right to request, if deemed necessary, additional information.**

### **C. Licensing requirements**

1. Solvency requirements:
  - 1) in the case of a pure captive insurer, not less than Afl. 300.000 (Aruban Florins)<sup>1</sup> ;
  - 2) in the case of an association or industrial captive insurer, not less than Afl. 500.000 (Aruban Florins);
  - 3) in the case of rent-a-captive, not less than Afl 1.000.000 (Aruban Florins);

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<sup>1</sup> The exchange rate for the Aruban Florin is fixed at US\$ 1.00 = Afl. 1.79

## ADMISSION POLICY AND APPLICATION FORM

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- 4) in the case of other captive insurance company a minimum solvency margin to be determined by the Bank that will range between Afl. 300.000 and Afl. 1.000.000,- (Aruban Florins).

The Bank may prescribe additional solvency based upon the type, magnitude, and nature of the risks that a captive insurer insures or reinsures.

The solvency may be maintained in the form of cash or an irrevocable letter of credit issued by a commercial bank licensed in Aruba.

2. The captive shall have a Supervisory Board or a comparable body consisting of at least three natural persons.
3. The company must have at least one managing director of proven ability and experience in the insurance business, who is of good standing, charged with the responsibility for the day-to-day management of the company, and who has his residence in Aruba.<sup>2</sup>
4. All Board and senior management appointments require the prior approval of the Bank.
5. The captive conducts its financial administration from its office in Aruba.
6. The captive has to comply with the Bank's directives on the administrative organization and internal controls.
7. Audited annual financial statements must be submitted to the Bank within six months after the end of each financial year, accompanied by a certified actuarial report. The Bank may fine a captive insurer that fails to file any of these documents. The fine is set at Afl. 1000 for each day in default.

### D. Charges

Pursuant to Section 11 and 12 of the decree:

1. The applicant is charged with an application fee of Afl. 1,000 (Aruban Florins).

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<sup>2</sup> The following criteria are taken into account: the manager must be professionally qualified; the manager must be reliable and of good repute; if senior management functions (e.g. authorized representative) are performed by a management company (specialized insurance management company), this company must meet the requirements mentioned above. The captive manager must be approved by the Bank.

## **ADMISSION POLICY AND APPLICATION FORM**

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2. The licensed captive insurer is required to make an annual contribution in the cost of execution of the decree of max. Afl. 3,000 (Aruban Florins).

## II. 2 Application Form for a License for a Captive Insurance Company

By virtue of section 3 paragraph 3 of the State Decree Special Provisions Captive Insurers

### I. GENERAL

1. Name of proposed captive insurance company:

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2. Name of parent company or sponsor:

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3. Name, address, and telephone number of individual to be contacted regarding this application:

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4. Principal place of business of proposed captive:

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5. Please indicate type of proposed captive.

- |                                    |                          |
|------------------------------------|--------------------------|
| a. Pure captive                    | <input type="checkbox"/> |
| b. Association or industry captive | <input type="checkbox"/> |
| c. Rent-a-captive (sponsored)      | <input type="checkbox"/> |
| d. Other (specify)                 | <input type="checkbox"/> |

## ADMISSION POLICY AND APPLICATION FORM

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6. The organization form in Aruba:

- Limited Liability Company (“Naamloze Vennootschap”)
- Mutual Company
- Aruba Exempt Corporation (“Aruba Vrijgestelde Vennootschap”)
- Branch

7. Name, address and telephone number of resident representative:

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### II. ENCLOSURES

8. Please enclose the following documents together with the application form:

- a. Certified copy of the articles of incorporation of the company and a recent certificate (not older than 6 months) of its registration in the trade register at the Chamber of Commerce of Aruba.
- b. The names and completed questionnaire for each of the persons who determine the day-to-day policy of the company.<sup>3</sup>
- c. The names and completed questionnaire for each of the members of the Supervisory Board (or a similar body) of the company.
- d. The names of those who have a qualifying holding (more than 5% of the shares or voting rights) in the company, as well as the size of the qualifying holding. Explain the relationship among the beneficial owners.
- e. Certified financial statements or an opening balance sheet.
- f. A business plan including information on:
  - Risks to be insured – direct, assumed and ceded – by line of business, and maximum retained risk (per loss and annual aggregate);
  - The technical principles that the captive insurer intends to apply, in particular the rating program and actuarial assumptions;
  - Reinsurance program;
  - Insight in the presence of the solvency margin required and an estimation of the financial assets to cover the solvency margin;
  - A five-year financial projection, including projections of the solvency margin and liquidity position.

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<sup>3</sup> If the day-to-day management of the company is performed by a management company, the representative of the company must be professionally qualified, reliable and of good repute.

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## ADMISSION POLICY AND APPLICATION FORM

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- g. The envisaged administrative organization and organizational structure, including the financial administration and internal controls.
- h. The organization responsible for loss prevention and safety.
- i. The name and professional qualifications of the external auditor and the actuary of the company.
- j. Documents proofing that the applicant disposes of a solvency margin in accordance with the requirements stipulated in Section 8 of the State Decree.
- k. If the applicant is part of a group, holding or association indicate which other companies or institutions form part of the group, holding or association and what the relationship is with the applicant. The answer must be clearly formulated in an appendix and an organization chart of the group, holding or association should be included.
- l. If applicant is an Association Captive, give history, purpose, size and other details of parent association.
- m. If the applicant is incorporated outside of Aruba a written confirmation by the home country supervisor that the applicant is solvent and meets all regulatory requirements in the home jurisdiction.

If the day-to-day operation of the company is conducted by a management company please provide:

- n. Articles of incorporation of the management company.
- o. A copy of the contract between the applicant and the management company.
- p. Documents showing the financial standing of the management company.

Number of enclosures included: \_\_\_\_\_

I certify that to the best of my knowledge and belief all of the information given in this application is true and correct and that all estimates given are true estimates based upon facts which have been carefully considered and assessed.

**Place and date** :  
**Name** :  
**Position held** :  
**Signature** :

## **Part III**

### **Directives**

- III.1 Captive Insurance Managers
- III.2 Appointment of an external auditor at a Captive Insurance Company
- III.3 Actuarial certification for Captive Life Insurance Companies
- III.4 Solvency Margin
- III.5 Anti-money laundering and combating the financing of terrorism for Insurance Companies
- III.6 Prospective Managing Directors and members of the Supervisory Board
- III.7 Prospective (In-) Direct Shareholders- Natural Persons
- III.8 Directive on the management and reporting of incidents

## III.1 Captive Insurance Managers

### 1. Introduction

An insurance manager is defined as a person or company that provides, or holds itself out as providing, insurance management services to one or more captive insurers.

Captive Insurance Managers act as intermediaries between the Supervisor and the Shareholders/ Supervisory Board of Captives, providing staff and related resources and expertise to the captive industry. Pursuant to Section 7, sub a, section 17 of the SOSIB and section 5, paragraph 1a and paragraph 3 of the SDCIC a Captive Insurance Manager acting as representative needs the Bank's prior written approval. In order to assess the intended appointment in the light of the criteria above, the candidate is required to complete the Bank's questionnaire (Annex 1), sign and return it to the Bank.

Also, the prospective captive insurance manager should provide the Bank with the following information and documents:

### 1. Ownership and Management

- Full details of ownership of the entity – beneficial ownership should be known. Any changes in control of the entity should receive prior approval of the Bank.
- A copy of the shareholders' register.

### 2. Staffing

- A detailed organizational chart showing any related entities should be provided.
- The prospective insurance manager should demonstrate that the entity will be controlled and managed by persons who are fit and proper, taking into consideration honesty, integrity, reputation, competence, and financial soundness.
- Staffing structure should include qualifications and experience relevant to respective positions of all members of staff.

### 3. Business Plan

- A detailed business plan covering the first three years of operation. The business plan should at least include the following information:
  - a. the reasons for wishing to establish a presence in the domicile as well as short and long term goals and objectives and how these will be met.
  - b. A description of the services to be offered, target markets, areas of specialization, staffing structure and financial projection. If any functions are to be outsourced, full details including copies of agreements should be provided.
  - c. If available/relevant, latest financial statements of the company/parent should be supplied to substantiate financial resources.
  - d. Articles of incorporation.
  - e. Confirmation that an auditor has been appointed.
  - f. Proof of Professional Indemnity cover.



**4. Compliance**

- The Insurance Manager should have in place compliance and procedural manuals and internal controls that will ensure effective management and compliance with relevant legislation.
- The Insurance Manager should be required to have an annual independent audit performed.
- The Insurance Manager should be required to have at least one independent Director.
- The Insurance Manager should be required to comply with respective industry standards/codes of conduct if such standards/codes exist.

Upon approval by the Bank the captive insurer must submit a filled out and signed Deed of Appointment for a Representative of a Captive Insurance Company (Annex 2).

### III.2 Appointment of an external auditor at a captive insurance company

Directive on the appointment of an external auditor by virtue of article 10 in conjunction with article 15a of the State Ordinance on the Supervision of the Insurance Business (AB 2000 no. 82) (SOSIB) for (captive) insurance companies licensed by the Centrale Bank van Aruba (the CBA).

#### 1. Introduction

It is important that supervisors obtain the information they need to properly form an opinion on the financial strength of the operations of each captive insurance company. This information is obtained, amongst others, from the financial reports that are filed, supported by information obtained through communication with the external auditor. As such, supervisors have a clear interest in ensuring that external audits performed are acceptable and that an adequate relationship between them and the captive insurance companies' external auditors exists, essentially based on the principles and guidance formulated by the International Association of Insurance Supervisors. In this respect, high standards of auditing are indispensable. As such, the audit performed should be carried out by external auditors who:

- are properly licensed and in good standing;
- have relevant professional experience and competence;
- are subject to a quality assurance program. In this regard, the external audit firm must have policies and procedures in place on the appointment and eligibility of the engagement quality reviewer, the performance of the engagement quality review(er), and the documentation of the quality review. Said policies and procedures must comply with paragraphs 14 up to and including 30 of the International Standard on Quality Management 2, issued by the International Auditing and Assurance Board;
- are independent in fact and in appearance;
- are objective and impartial; and
- comply with relevant ethical requirements. Relevant ethical requirements are defined as the principles of professional ethics and ethical requirements that are applicable to a professional accountant when undertaking the engagement quality review (e.g., International Ethics Standards Board for Accountants' International Code of Ethics for Professional Accountants (IESBA Code) related to audits or reviews of financial statements.

As defined under article 1 of the SOSIB an external auditor is: 'a person who is not employed by the company or institution, being a "registeraccountant" or an "accountant-administratieconsulent" registered pursuant to article 36, paragraph 2, item i, of the Dutch Law on the accounting profession (Stb. 2012, 680)'.

#### 2. Directive

Any appointment of or change in external auditor needs the CBA's prior written approval. In order to assess the intended appointment or change, the institution concerned and the external auditor are required to complete the "Questionnaire External Auditor" (Annex 3). Reference is also made to the Guidance notes associated with the Questionnaire External Auditor.

In case of a change of external auditor, the CBA should also be informed on the reason(s) for the intended change.

## DIRECTIVES

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The CBA will grant its approval if the external auditor complies with the requirements as stipulated in article 1 of the SOSIB and if there are no circumstances that, in the opinion of the CBA, would make the external auditor unfit for the assignment.

With regard to the independence in fact and appearance, there may not be any material financial interest, loans and guarantees, business relationships, and family and personal relationships between i) the captive insurance company, its Managing Board or a member thereof, its Supervisory Board or a member thereof, its direct or indirect shareholder(s), and (ii) the external auditor, the audit firm of the external auditor or a member/partner thereof.

The CBA maintains at all times the right to revoke its approval if there are circumstances that in the opinion of the CBA justify such an action.

The provision of information to the CBA by the external auditors of (captive) insurance companies is covered in article 11, paragraph 2, of the SOSIB. Pursuant to this section, when granting the auditor the assignment to audit the annual accounts, the (captive) insurance company shall instruct its auditor in writing to:

- a. after consultation with the captive insurance company that granted the assignment, provide the CBA forthwith with a copy of the auditor's report to the Supervisory Board, of the management letter and of the correspondence that relates directly to the auditor's report, in so far as these documents are considered to be necessary in reason for the proper fulfillment of the CBA's supervisory tasks;
- b. after consultation with the captive insurance company, inform the CBA in writing forthwith of circumstances that could hinder the issue of an auditor's report stating that the annual accounts give a true and fair view of the financial position of the insurance company;
- c. after consultation with the captive insurance company that granted the assignment, inform the CBA in writing forthwith of circumstances which could endanger the continuity of the insurance company, or from which it appears that there is a serious suspicion of an extensive fraud; and
- d. furnish the CBA, if required, with additional information on the documents referred to under a. and on the circumstances referred to under b. and c.

Subject provisions should be included in the engagement letter. A copy of the draft engagement letter must be attached to the request for the appointment of an external auditor.

Upon the CBA's approval of the external auditor, the final and signed engagement letter must be submitted to the CBA.

This directive enters into force as of **July 1, 2023**.

### **III.3 Actuarial certification for Captive Life Insurance Companies**

#### **1. Introduction**

These guidelines must be taken into account for the preparation of the actuarial report and the actuarial certification of the adequacy of the technical provisions disclosed in the Annual Statements of Captive Life Insurance Companies.

#### **2. Guidelines**

1. The certifying actuary shall draw up an actuarial report on his analysis of the financial position of the Captive life insurance company (hereafter: the company) in accordance with the instructions contained in item 2.
2. The Actuarial Report shall contain the following items:
  - (a) The objective of the report;
  - (b) Substantiated conclusions with regard to the financial position;
  - (c) The methods and principles applied;
  - (d) The methods and techniques used to evaluate the financial position;
  - (e) Comments on the activities of the company and the commercial and institutional environment in which it operates, in so far as this has a bearing on the risk profile of the company;
  - (f) Comments, an opinion and recommendations with regard to the operations, based on an actuarial analysis of all possible factors that may threaten the solvency of the institution in the near future. In addition, the measures or management instruments should be stated which the management of the company may take or use to avert these threats;
  - (g) The declaration, as referred to in section 11 paragraph 3 of the State Ordinance on the Supervision of the Insurance Business (AB 2000 No. 82);
  - (h) Information on financially significant reinsurance agreements (including financial reinsurance) and implicit and explicit options contained therein, with an opinion on the purpose and feasibility of these agreements and the extent of the counterparty risk.
3. If deemed necessary, the draft of the report to be issued shall be discussed first with the external auditor. The outcome of these discussions with the external auditor shall be disclosed in a separate addendum to the report. Any remarks made by the auditor shall be taken into account. In the event that the actuary does not wish to incorporate the remarks made by the auditor into the report, he shall include these as a separate addendum and shall provide a commentary.

**3. Explanatory notes to items 2(b), (c), (d), (f), (g) and (h)**

Item 2(b) substantiated conclusions with regard to the financial position

The following aspects should be dealt with in the report:

- (1) Determine the degree of adequacy of the technical provisions at the balance sheet date for the insurance portfolio. Furthermore, in determining the adequacy of the provisions, an assessment will have to be made of the sensitivity of changes in the assumptions used.
- (2) The analyses of the development of the adequacy of the provisions referred to under item (1) compared to the previous year.
- (3) If the assets to cover the technical provisions are not sufficient (refer to form G: “coverage test” of the annual statements for life insurance companies) the actuarial report must contain notes explaining how this situation arose, the measures that must be taken to remedy the situation and recommendations aimed at preventing such situation in the future.

Item 2(c) the methods and principles applied

For the evaluation of the financial position it is important to know how the technical provision has been determined. In this regard the following explanation should be provided in the report:

- (1) The method used to establish the technical provisions:
  - prospective or retrospective;
  - entry age basis used to determine age at balance sheet date and period until retirement;
  - individual or aggregate approach.
- (2) The actuarial principles used to establish the technical provisions :
  - mortality table used;
  - family structure;
  - age difference;
  - actuarial interest rate;
- (3) A description of the quality (nature and reliability) of the assumptions used.

The relevant assumptions used should be compared to recent, internal and external experience data. In case the assumptions used deviate significantly, this should be explained. For example, verify the yearly mortality within the portfolio and compare this figure with the expected mortality (used to establish the technical provision).

## DIRECTIVES

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### Item 2(d) the methods and techniques used in evaluating the financial position of the company

The following information should be provided in the report:

- (1) The methods, techniques and assumptions used for the evaluation;
  - Static or dynamic: In case of the static method, the coverage test (as stipulated in the annual filings) can be derived from the balance sheet, whereby the value of the assets are compared to the technical provision. This test should be performed yearly and should be compared with previous year. Significant changes in the outcome of the coverage test should be analyzed;
  - Changes in the methods applied;
- (2) Changes in these compared to the previous report;
- (3) Information on any limitations on the evaluation as a result of a lack of data, shortcomings in the administrative organization and systems, and the qualification that the certifying actuary makes as a consequence of this.

### Item 2(f) comments, an opinion and recommendations with regard to the operations, based on an actuarial audit of all possible factors that may threaten the solvency of the institution in the future.

This relates to risks insofar as these have a bearing on the risk profile of the company, from the perspective of the actuary. The risks that can have a direct influence on the performance of life insurance business are for example changes in the mortality assumptions as well as changes in the investments results as a consequence, of for example, epidemics or war.

### Item 2(g) declaration as referred to in section 11 paragraph 3 of the SOSIB

The declaration of the certifying actuary should consist of the following parts:

- (1) A description of the relationship of the certifying actuary to the company (internal or external actuary).
- (2) The professional qualifications of the certifying actuary.
- (3) The items to which the declaration relates, such as the correct determination of the technical provisions.
- (4) The extent to which use is made of the work of other experts in the area of administrative data, models and assumptions.

## DIRECTIVES

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- (5) The opinion of the certifying actuary with regard to the adequacy of the company's finances in relation to the settlement of all liabilities arising from the current insurance agreements.
- (6) Any qualifications in relation to the opinion referred to under point (5).
- (7) Any deviations from legislation and regulations or from the guidelines issued by the Centrale Bank van Aruba (CBA) in respect to the assessment of the financial position of the company, with a statement of the acceptability of and a statement of any risks arising from these deviations.
- (8) Dating and signing of the report with the personal signature and the name of the actuary; the name of the firm is not sufficient.

### Item 2(h) information on financially significant reinsurance agreements

Financially significant reinsurance agreements shall be understood to be agreements, which, in the event that they were not entered into, would result in clear deviations in the provision and/or the capital adequacy and/or the result and/or the balance-sheet position of the company in question.

## III.4 Solvency Margin

### 1. Legal framework

According to section 8 paragraph 1 of the State Decree Captive Insurance Companies (SDCIC) a captive insurance company must have a solvency margin:

- 1) in the case of a pure captive insurer, not less than Afl. 300.000 (Aruban Florins)<sup>1</sup>
- 2) in the case of an association or industrial captive insurer, not less than Afl. 500.000 (Aruban Florins);
- 3) in the case of rent-a-captive, not less than Afl 1.000.000 (Aruban Florins);
- 4) in the case of other captive insurance company a minimum solvency margin to be determined by the Bank that will range between Afl. 300.000 and Afl. 1.000.000 (Aruban Florins).

Pursuant to section 8 paragraph 2 of the SDCIC the Bank may prescribe additional solvency based upon the type, magnitude, and nature of the risks that a captive insurer insures or reinsures.

The solvency may be maintained in the form of cash or an irrevocable letter of credit issued by a commercial bank licensed in Aruba.

### 2. Purpose

The solvency margin serves as a buffer to ensure that the obligations under the insurance contracts can be met at any time and that the insurer has free financial means (own funds) at its disposal in order to absorb discrepancies between the anticipated and actual expenses and profits.

### 3. Definition

The following capital elements form the available solvency margin:

1. "Paid-in capital";
2. "Statutory and general reserves";
3. "Retained earnings";
4. "Asset revaluation reserves";
5. "Net income current year".

In case of a mutual captive insurance company the paid-in capital is considered the policyholders' surplus. A branch office or an agency does not have "paid-in capital", in such case the capital assigned to the Aruban operations may be considered as paid-in capital.

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<sup>1</sup> The exchange rate for the Aruban Florin is fixed at US\$ 1.00 = Afl. 1.79



**4. Policy**

The minimum solvency margin should at all times be held or invested in Aruba. The minimum solvency margin that an insurer must have at its disposal amounts to:

- 1) in the case of a pure captive insurer, not less than Afl. 300.000 (Aruban Florins)<sup>2</sup>
- 2) in the case of an association or industrial captive insurer, not less than Afl. 500.000 (Aruban Florins);
- 3) in the case of rent-a-captive, not less than Afl 1.000.000 (Aruban Florins);
- 4) in the case of other captive insurance company a minimum solvency margin to be determined by the Bank that will range between Afl. 300.000 and Afl. 1.000.000 (Aruban Florins).

The admissible assets to cover the minimum solvency margin are:

1. Treasury bonds issued by the Government of Aruba;
2. Shares certificates, debentures, profit-sharing certificate and other similar securities;
3. Proof of partnership rights;
4. Certificates of the assets as referred to in points 2 and 3;
5. Scrip certificates of the assets as referred to in points 1, 2 and 3;
6. Acknowledgement of debt towards the insurer, not being treasury bills or debentures, issued by or guaranteed by the Government of Aruba or other public entities in Aruba;
7. Acknowledgement of debt towards the insurer, not being debentures, issued by companies incorporated in Aruba or issued by companies incorporated in Aruba for which a license pursuant to section 4 or 24 of the State Ordinance on the Supervision of the Credit System has been granted.

The valuation and distribution of these assets require the Bank's prior approval.

Furthermore, these assets should be pledged to the Bank and kept in custody of a credit institution supervised by the Bank.

The solvency calculation is also part of the annual filings that all insurers should submit to the Bank (refer to exhibit 1).

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<sup>2</sup> The exchange rate for the Aruban Florin is fixed at US\$ 1.00 = Afl. 1.79

**DIRECTIVES**

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Exhibit 1

<b>Solvency Margin Calculation Captive Insurance Companies</b>		
		<i>Amount in AFL 1000</i>
<b>Shareholders' Equity</b> (= available solvency margin)	<b>A</b>	
Required solvency margin	<b>B</b>	
<b>Surplus/(shortfall) (A-B)</b>		

<b>Assets to cover the applicable minimum Solvency Margin</b>		
		<i>Amount in AFL 1000</i>
1	Treasury bonds issued by the Government of Aruba;	
2	Shares certificates, debentures, profit-sharing certificate and other similar securities;	
3	Proof of partnership rights	
4	Certificates of the assets as referred to in points 2 and 3;	
5	Scrip certificates of the assets as referred to in points 1 up to and including 3;	
6	Acknowledgement of debt towards the insurer, not being treasury bills or debentures, issued by or guaranteed by the Government of Aruba or other public entities in Aruba;	
7	Acknowledgement of debt towards the insurer, not being debentures, issued by companies incorporated in Aruba or issued by companies incorporated in Aruba for which a license pursuant to section 4 or 24 of the State Ordinance on the Supervision of the Credit System has been granted;	
	Total	

## **III.5 Anti-money laundering and combating the financing of terrorism for insurance companies**

### **1. Introduction**

The insurance sector<sup>3</sup> and other sectors of the financial services industry are potentially at risk of being misused for money laundering and the financing of terrorism. Criminals look for ways of concealing the illegitimate origin of funds. Persons involved in organizing terrorist acts look for ways to finance these acts. The products and transactions of insurers can provide the opportunity to launder money or to finance terrorism. The insurance sector should therefore take adequate measures to prevent its misuse by money launderers and terrorists.

This directive sets minimum standards in the area of anti-money laundering and combating the financing of terrorism to which all insurers must adhere to.

### **2. Money laundering and financing of terrorism in insurance**

#### **2.1 The process of money laundering and terrorist financing**

Money laundering is the processing of the proceeds of crime to disguise their illegal origin. Once these proceeds are successfully ‘laundered’ the criminal is able to enjoy these monies without revealing their original source. Money laundering can take place in various ways. Information on possible trends and techniques used by money launderers is collected by the FATF in the course of its annual typology exercise<sup>4</sup>.

Financing of terrorism can be defined as the willful provision or collection, by any means, directly or indirectly, of funds with the intention that the funds should be used, or in the knowledge that they are to be used, to facilitate or carry out terrorist acts.

#### **2.2 Vulnerabilities in insurance**

Life insurance and non-life insurance can be used in different ways by money launderers and terrorist financiers. The vulnerability depends on factors such as (but not limited to) the complexity and terms of the contract, distribution, method of payment (cash or bank transfer) and contract law. Insurers should take these factors into account when assessing

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<sup>3</sup> The insurance sector includes insurers and intermediaries. The word “intermediaries” shall, in the context of this paper, mean agents, brokers and any other form of mediation or delegation of authority on behalf of an insurer.

<sup>4</sup> More information on typologies can be found on the website of the FATF ([www.fatf-gafi.org](http://www.fatf-gafi.org))

## DIRECTIVES

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this vulnerability. This means they should prepare a risk profile of the type of business in general and of each business relationship.

Examples of the type of life insurance contracts that are vulnerable as a vehicle for laundering money or terrorist financing are products, such as:

- unit-linked or with profit single premium contracts;
- single premium life insurance policies that store cash value;
- fixed and variable annuities;
- (second hand) endowment policies.

When a life insurance policy matures or is surrendered, funds become available to the policyholder or other beneficiaries. The beneficiary to the contract may be changed – possibly against payment – before maturity or surrender, in order that payments are made by the insurer to a new beneficiary. A policy might be used as collateral to purchase other financial instruments. These investments in themselves may be merely one part of a sophisticated web of complex transactions with their origins elsewhere in the financial system.

Non-life insurance money laundering or terrorist financing can be seen through inflated or totally bogus claims, e.g. by arson or other means causing a bogus claim to be made to recover part of the invested illegitimate funds. Other examples include cancellation of policies for the return of premium by an insurer's cheque, and the overpayment of premiums with a request for a refund of the amount overpaid. Money laundering can also occur through under-insurance, where a criminal can say that he received compensation for the full amount of the damage, when in fact he did not.

Insurance intermediaries – independent or otherwise – are important for distribution, underwriting and claims settlement. They are often the direct link to the policyholder and therefore intermediaries should play an important role in anti-money laundering and combating the financing of terrorism. The FATF Recommendations allow insurers, under strict conditions, to rely on customer due diligence carried out by intermediaries. The same person who wants to launder money or finance terrorism may seek an insurance intermediary who is not aware of, or does not conform to, necessary procedures, or who fails to recognize or report information regarding possible cases of money laundering or the financing of terrorism. The intermediaries themselves could have been set up to channel illegitimate funds to insurers. In addition to the responsibility of intermediaries, customer due diligence ultimately remains the responsibility of the insurer involved.

### **3. Control measures and procedures against money laundering and financing of terrorism**

#### **3.1 General**

Insurers should be constantly vigilant in deterring criminals from making use of them for the purposes of money laundering or the financing of terrorism. By understanding the risks of money laundering and the financing of terrorism, insurers are in a position to determine what can be done to control these risks, and which procedures and measures can be implemented effectively and efficiently.

For reasons of sound business practice and proper risk management insurers should already have controls in place to assess the risk of each business relationship. As customer due diligence is a business practice suitable not just for commercial risk assessment and prevention but also to prevent money laundering and the financing of terrorism, control measures should be linked to these existing controls. The concept of customer due diligence goes beyond the identification and verification of the policyholder - it extends to identification of the potential risks of the whole business relationship.

The duty of vigilance consists mainly of the following elements:

- Customer due diligence
- Recognition and reporting of suspicious customers transactions, and
- Provisions of affecting the organization and the staff of the insurer, such as a compliance and audit environment, keeping of records, the recruitment of staff and training.

#### **3.2 Performing due diligence on customers, beneficial owner and beneficiaries**

##### **3.2.1 CDD in general**

Insurers should know the customers<sup>5</sup> with whom they are dealing. A first step in setting up a system of CDD is to develop clear, written and risk based client acceptance policies and procedures.

Customers due diligence measures that should be taken by insurers include<sup>6</sup>:

- identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information

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<sup>5</sup> Know-your-customer

<sup>6</sup> FATF Recommendation 5.

## DIRECTIVES

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- determining whether the customer is acting on behalf of another person, and then taking reasonable steps to obtain sufficient identification data to verify the identity of that other person
- identifying the (ultimate) beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner such that the insurer is satisfied that it knows who the beneficial owner is. For legal persons and arrangements insurers should take reasonable measures to understand the ownership and control structure of the customer
- obtaining information on the purpose and intended nature of the business relationship and other relevant factors
- conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the insurer's knowledge of the customer and/or beneficial owner, their business and risk profile, including, where necessary, the source of funds.

The extent and specific form of these measures may be determined following a risk analysis based upon relevant factors including the customer, the business relationship and the transaction(s). Enhanced due diligence is called for with respect to higher risk categories. Decisions taken on establishing relationships with higher risk customers and/or beneficial owners should be taken by senior management.

Prior to the establishment of a business relationship, the insurer should assess the characteristics of the required product, the purpose and nature of the business relationship and any other relevant factors in order to create and maintain a risk profile of the customer relationship. Based on this assessment, the insurer should decide whether or not to accept the business relationship. As a matter of principle, insurers should not offer insurance to customers or for beneficiaries that obviously use fictitious names or whose identity is kept anonymous.

Factors to consider when creating a risk profile, which are not set out in any particular order of importance and which should not be considered exhaustive, include (where appropriate):

- type and background of customers and/or beneficial owner
- the customers and/or beneficial owner's geographical base
- the geographical sphere of the activities of the customer and/or beneficial owner;
- the nature of the activities
- the means of payment as well as the type of payment (cash, wire transfer, other means of payment)
- the source of funds
- the source of wealth
- the frequency and scale of activity
- the type and complexity of the business relationship
- whether or not payments will be made to third parties
- whether a business relationship is dormant

- any bearer arrangements
- suspicion or knowledge of money laundering, financing of terrorism or other crime.

The requirements for customer due diligence should apply to all new customers as well as – on the basis of materiality and risk – to existing customers and/or beneficial owners. As to the latter the insurer should conduct due diligence at appropriate times<sup>7</sup>. In insurance, various transactions or ‘trigger events’ occur after the contract date and indicate where due diligence may be applicable. These trigger events include claims notification, surrender requests and policy alterations, including changes in beneficiaries.

The requirement for an insurer to pay special attention to all complex, unusually large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose is essential to both the establishment of a business relationship and to ongoing due diligence. The background and purpose of such transactions should, as far as possible, be examined, the findings established in writing, and be available to the competent authorities. In this respect “transactions” should be interpreted in a broad sense, meaning inquiries and applications for an insurance policy, premium payments, requests for changes in benefits, beneficiaries, duration, etc.

In the event of failure to complete verification of any relevant verification subject or to obtain information on the purpose and intended nature of the business relationship, the insurer should not conclude the insurance contract, perform the transaction, or should terminate the business relationship. The insurer should also consider filing a suspicious transaction report to the Financial Intelligence Unit (“Meldpunt Ongebruikelijke Transacties” (MOT)).

### **3.2.2 Establishing a business relationship**

Before an insurance contract is concluded between customer and insurer there is already a pre-contractual business relationship between these two and possibly other parties. After a policy is taken out:

- the insurer covers a certain risk described in the contract and policy conditions
- certain transactions may take place such as premium payments, payments of advance or final benefits, and
- certain events may occur such as a change in cover or a change of beneficiaries.

The insurer will need to carefully assess the specific background, and other conditions and needs of the customer. This assessment is already being carried out for commercial purposes (determining the risk exposure of the insurer and setting an adequate premium) as well as for reasons of active client management. To achieve this, the insurer will collect relevant information, for example details of source of funds, income, employment, family

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<sup>7</sup> FATF Recommendation 5.

## DIRECTIVES

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situation, medical history, etc. This will lead to a customer profile which could serve as a reference to establish the purpose of the contract and to monitor subsequent transactions and events.

The insurer should realize that creating a customer profile is also of importance for AML/CFT purposes and therefore for the protection of the integrity of the insurer and its business.

In addition, the beneficial owner should also be identified and verified. For the purposes of this directive the expression beneficial owner applies to the owner/controller of the policyholder as well as to the beneficiary to the contract.

When the identity of customers and beneficial owners with respect to the insurance contract has been established the insurer is able to assess the risk to its business by checking customers and beneficial owners against internal and external information on known fraudsters or money launderers (possibly available from industry databases) and on known or suspected terrorists (publicly available on sanctions lists such as those published by the United Nations).

### **3.2.3 Transactions and events in the course of the business relationship**

The insurer should perform ongoing due diligence on the business relationship. In general the insurer should pay attention to all requested changes to the policy and/or exercise of rights under the terms of the contract. It should assess if the change/transaction does not fit the profile of the customer and/or beneficial owner or is for some other reason unusual or suspicious. Enhanced due diligence is required with respect to higher risk categories. The CDD program should be established in such a way that the insurer is able to adequately gather and analyze information.

Examples of transactions or trigger events after establishment of the contract that require CDD are:

- a change in beneficiaries (for instance, to include non-family members, or a request for payments to be made to persons other than beneficiaries)
- a change/increase of insured capital and/or of the premium payment (for instance, which appear unusual in the light of the policyholder's income or where there are several overpayments of policy premiums after which the policyholder requests that reimbursement is paid to a third party)
- use of cash and/or payment of large single premiums
- payment/surrender by a wire transfer from/to foreign parties
- payment by banking instruments which allow anonymity of the transaction
- change of address and/or place of residence of the policyholder, in particular, tax residence
- lump sum top-ups to an existing life insurance contract
- lump sum contributions to personal pension contracts
- requests for prepayment of benefits



## DIRECTIVES

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- use of the policy as collateral/security (for instance, unusual use of the policy as collateral unless it is clear that it is required for financing of a mortgage by a reputable financial institution)
- change of the type of benefit (for instance, change of type of payment from an annuity to a lump sum payment)
- early surrender of the policy or change of the duration (where this causes penalties or loss of tax relief)
- request for payment of benefits at the maturity date.

The above list is not exhaustive. Insurers should consider other types of transactions or trigger events, which are appropriate to their type of business.

### **3.2.4 Methods of identification and verification**

This paragraph does not seek to specify what, in any particular case, may or may not be sufficient evidence to complete verification. It does set out what, as a matter of good practice, may reasonably be expected of insurers. Reference is also made to the State Ordinance on the identification for rendering financial services (Lif).

#### **Individuals**

In general, the following information should be available:

- full name(s) used
- date and place of birth
- nationality
- current permanent address
- occupation and name of employer (if self-employed the nature of the self-employment)
- specimen signature of the individual
- copy of valid passport, drivers license, or identity card.

#### **Legal persons, companies, partnerships and other institutions/arrangements**

The types of measures normally needed to perform CDD on legal persons, companies, partnerships and other institutions/arrangements satisfactorily require identification of the natural persons with a controlling interest and the natural persons who comprise the mind and management of the legal person or arrangement.

FATF recommendation 5 requires, where customers and/or beneficial owners are legal persons or legal arrangements, the insurers to:

- verify that any person purporting to act on behalf of the customer and/or be beneficial owner is so authorized and identify and verify the identity of that person
- verify the legal status of the legal person or legal arrangement, e.g. by obtaining proof of incorporation or similar evidence of establishment or existence, and
- form an understanding of the ownership and control structure of the customer and/or beneficial owner.

## DIRECTIVES

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Where trusts or similar arrangements are used, particular care should be taken in understanding the substance and form of the entity. Where the customer is a trust, the insurer should verify the identity of the trustees, any other person exercising effective control over the trust property, the settlors and the beneficiaries. Should it not be possible to verify the identity of the beneficiaries when the policy is taken out, verification must be carried out prior to any payments being made.

Sufficient verification should be undertaken to ensure that the individuals purporting to act on behalf of an entity are authorized to do so.

In principle the following documents or their equivalent should be available:

- certificate of incorporation
- the name(s) and address(es) of the beneficial owner(s) and/or the person(s) on whose instructions the signatories of the customer are empowered to act
- constitutional documents e.g. articles of association, partnership agreements
- copies of powers of attorney or other authorities given by the entity.

In all transactions undertaken on behalf of an employer-sponsored pension or savings scheme the insurer should, at a minimum, undertake verification of the principal employer and the trustees of the scheme (if any). Verification of any trustees of the schemes will generally consist of an inspection of the relevant documentation, which may include:

- the trust deed and/or instrument and any supplementary documentation
- a memorandum of the names and addresses of current trustees (if any)
- extracts from public registers
- references from professional advisers or investment managers.

### **3.2.5 Enhanced measures with respect to higher risk customers and non-cooperative countries and territories**

With regard to enhanced due diligence, in general the insurer should consider taking the following measures:

- certification by appropriate authorities and professionals of documents presented
- requisition of additional documents to compliment those which are otherwise required
- performance of due diligence on identity and background of the customers and/or beneficial owner, including the structure in the event of a corporate customer
- performance of due diligence on source of funds and wealth
- obtaining senior management approval for establishing the business relationship
- conducting enhanced ongoing monitoring of the business relationship.

### *Politically exposed persons*<sup>8</sup>

The FATF Recommendations require additional due diligence measures in relation to PEP's<sup>9</sup>. For this purpose insurers should:

- have appropriate risk management systems to determine whether the customer is a PEP. The board of directors of the insurer must establish a client acceptance policy with regard to PEPs, taking account of the reputational and other relevant risks involved
- obtain senior management approval for establishing business relationships with such customers
- take reasonable measures to establish the source of wealth and source of funds, and
- conduct enhanced ongoing monitoring of the business relationship.

### *New or developing technologies*

New or developing technologies can be used to market insurance products. E-commerce or sales through the internet is an example of this. Although a non-face-to-face customer can produce the same documentation as a face-to-face customer, it is more difficult to verify their identity. Therefore, in accepting business from non-face-to-face customers an insurer should use equally effective identification procedures as those available for face-to-face customer acceptance, supplemented with specific and adequate measures to mitigate the higher risk.

### *Non-cooperative countries and territories*

Compliance by jurisdictions with the FATF Recommendations is periodically assessed by international bodies<sup>10</sup>. Jurisdictions that do not sufficiently apply the FATF Recommendations could be listed by the FATF as NCCT's. In specific circumstances, jurisdictions may be asked to impose appropriate countermeasures<sup>11</sup>. Insurers should give special attention, especially in underwriting and claims settlement, to business originating from jurisdictions which do not sufficiently apply the FATF Recommendations.

### **3.2.6 Simplified customer due diligence**

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<sup>8</sup> According to the FATF Recommendations Politically Exposed Persons (PEP's) are "individuals who are or have been entrusted with prominent public functions in a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials. Business relationships with family members or close associates of PEPs involve reputational risk similar to those with PEPs themselves. The definition is not intended to cover middle ranking or more junior individuals in the foregoing categories".

<sup>9</sup> FATF Recommendation 6.

<sup>10</sup> Mutual evaluations under the aegis of the FATF or the Financial Sector Assessment Program by IMF/World Bank.

<sup>11</sup> FATF Recommendation 21.

## DIRECTIVES

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In general, the full range of CDD measures should be applied to the business relationship. However, if the risk of money laundering or the financing of terrorism is lower (based on the insurer's own assessment), and if information on the identity of the customer and the beneficial owner is publicly available, or adequate checks and controls exist elsewhere in the system it could be reasonable for insurers to apply, simplified or reduced CDD measures when identifying and verifying the identity of the customer, the beneficial owner<sup>12</sup> and other parties to the business relationship.

Insurers should bear in mind that the FATF lists the following examples of customers where simplified or reduced measures could apply<sup>13</sup>:

- financial institutions – where they are subject to requirements to combat money laundering and the financing of terrorism consistent with the FATF Recommendations, and are supervised for compliance with those controls
- public companies that are subject to regulatory disclosure requirements
- government administrations or enterprises<sup>14</sup>.

Furthermore, the FATF states that simplified CDD or reduced measures could also be acceptable for various types of products or transactions such as (examples only):

- life insurance policies where the annual premium is no more than USD/€ 1000 or a single premium of no more than USD/€ 2500
- insurance policies for pension schemes if there is no surrender clause and the policy cannot be used as collateral
- a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme<sup>15</sup>.

### 3.2.7 Reporting of suspicious transactions

If an insurer suspects, or has reasonable grounds to suspect, that funds are the proceeds or a criminal activity or are related to terrorist financing it is required by law to report its suspicions promptly to the MOT.

An important pre-condition of recognition of a suspicious transaction is for the insurer to know enough about the customer and business relationship to recognize that a transaction, or a series of transactions, is unusual.

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<sup>12</sup> Interpretative Note no. 9 to FATF Recommendation 5.

<sup>13</sup> Jurisdictions and/or supervisors should assess from an AML and CFT perspective whether the specific circumstances in their insurance sector allow for the simplified or reduced CDD measures, as presented in this and the following paragraph, to be applied.

<sup>14</sup> Interpretative Note no. 10 to FATF Recommendation 5.

<sup>15</sup> Interpretative Note no. 12 to FATF Recommendation 5.

Suspicious transactions might fall into one or more of the following examples of categories:

- Any unusual financial activity of the customer in the context of his own usual activities
- Any unusual transaction in the course of some usual financial activity
- Any unusual linked transactions
- Any unusual or disadvantageous early redemption of an insurance policy
- Any unusual employments of an intermediary in the course of some usual transaction or financial activity e.g. payment of claims or high commission to an unusual intermediary
- Any unusual method of payment
- Any involvement of any person subject to international sanctions.

### **3.3 Organization and staff**

#### **3.3.1 Risk management**

Insurers should have in place programmes and systems to prevent money laundering and the financing of terrorism. Each programme should be sufficiently robust to effectively and efficiently handle the volume of information processed by that insurer. The programmes and systems should constitute an operational, practical and precise approach for dealing with money laundering and terrorist financing. These programmes and systems should be adapted to the group structure, organizational structure (e.g. joint back office), responsibility structure and products and market conditions.

These programmes should include:

- the development of internal policies, procedures and controls which, inter alia, should cover:
  - CDD, the detection of unusual or suspicious transactions and the reporting obligation, and the communication of these policies, procedures and controls to the employees
  - appropriate compliance management arrangements, e.g. at a minimum the designation of an AML/CFT compliance officer
  - record keeping arrangements, and
  - adequate screening procedures to ensure high standards when hiring employees
- an ongoing employee training program
- an adequately resourced and independent audit function to test compliance (e.g. through sample testing) with these policies, procedures, and controls<sup>16</sup>.

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<sup>16</sup> FATF Recommendation 15 and Methodology for assessing with anti-money laundering and combating the financing of terrorism.

## DIRECTIVES

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The development of policies, procedures and controls enables the insurer to comply with legislation and to determine the desired standards of CDD for its own organization. In order to be able to verify whether the insurer works in compliance with its internal policies, procedures and controls, an audit function should be in place. It is of importance that the audit function is independent and, if applicable, that the auditor has direct access and reports directly to management and the board of directors.

It is important that the board of directors and senior management of the insurer establish and support the developed internal policies, procedures and controls and the implementation and adherence thereto, implementation of internal AML/CFT measures must constitute a relevant priority to insurers. In addition, the board of directors and senior management of an insurer should be kept regularly informed of all significant matters relating to AML/CFT measures and whether the insurer is suspected of being used to launder money or to finance terrorism. This information should be used to evaluate the effectiveness of the programmes and to take appropriate action.

Compliance management arrangements should include the appointment of a compliance officer<sup>17</sup> at management level<sup>18</sup>. The compliance officer should be well versed in the different types of products and transactions which the institution handles and which may give rise to opportunities for money laundering and the financing of terrorism.

Insurers should ensure that:

- there is a clear procedure for staff to report suspicious of money laundering and the financing of terrorism without delay to the compliance officer
- there is a clear procedure for reporting suspicious of money laundering and the financing of terrorism without delay to the MOT, and
- all staff know to whom their suspicions should be reported.

### *Record keeping*

Insurers should keep records on the risk profile of each customer and/or beneficial owner and the data obtained through the CDD process (e.g. name, address, the nature and date of the transaction, the type and amount of current involved, and the type and identifying number of any account involved in the transaction), official identification documents and the account files and business correspondence, for at least ten years after the end of the business relationship.

Insurers should ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of clients or business relationships.

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<sup>17</sup> The term compliance officer may in some jurisdictions be referred to as the money laundering reporting officer.

<sup>18</sup> Interpretative notes to FATF Recommendation 15.

### **3.3.2 Screening of staff<sup>19</sup>**

Staff should have the level of competence necessary for performing their duties. Insurers should ascertain whether they have the appropriate ability and integrity to conduct insurance activities, taking into account potential conflicts of interests and other relevant factors, for instance the financial background of the employee.

Decisions regarding the employment of key staff should be based on a well founded judgement as to whether they meet fit and proper requirements. Insurers should keep records on the identification data obtained about key staff. The records should demonstrate the due diligence performed in relation to the fit and proper requirements.

### **3.3.3 Training of staff**

Insurers' staff should receive initial and ongoing training on relevant AML/CFT legislation, regulations, guidance and the insurers' own AML/CFT policies and procedures. The training programme should at a minimum include:

- a description of the nature and processes of laundering and terrorist financing, including new developments and current money laundering and terrorist financing techniques, methods and trends
- a general explanation of the underlying legal obligations contained in the relevant laws and regulation, and
- a general explanation of the insurers' AML/CFT policy and systems, including particular emphasis on verification and the recognition of suspicious customers/transactions and the need to report suspicions to the compliance officer.

Employees who, due to their assigned work, need more specific training can be divided into two categories.

The first category of employees is those staff who deal with:

- new business and the acceptance – either directly or via intermediaries – of new policyholders, such as sales persons
- the settlement of claims, and
- the collection of premiums or payments of claims.

They need to be made aware of their legal responsibilities and the AML/CFT policies and procedures of the insurer, in particular the client acceptance policies and all other relevant policies and procedures, the requirements of verification and records, the recognition and reporting of suspicious customers/transactions and suspicion of the financing of terrorism. They also need to be aware that suspicious, should be reported to the compliance officer in accordance with AML/CFT systems.

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<sup>19</sup> This section deals with assessment of staff other than directors and managers that are subject to fit and proper testing pursuant to Insurance Core Principles 7 (“Suitability of persons”) and the IAIS Guidance paper on fit and proper principles and their application.

## DIRECTIVES

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A higher level of instruction covering all aspects of AML/CFT policy and procedure should be provided to the second category of staff, including directors and senior management with the responsibility for supervising or managing staff, and for auditing the system. The training should include:

- their responsibility regarding AML/CFT policies and procedures
- relevant laws, including the offences and penalties arising
- procedures relating to the service of production and restraint orders (to stop writing business)
- internal reporting procedures, and
- the requirement for verification and record keeping.

In addition the compliance officer should receive in-depth training concerning all aspects of all relevant legislation and guidance and AML/CFT policies and procedures.



### **III.6 Prospective Managing Directors and members of the Supervisory Board**

The day-to-day policy of a captive insurance company must be determined by at least one natural person, while it should have a supervisory board or a comparable body of at least three natural persons in so far it concerns a legal entity.

In order to safeguard the good reputation of the financial sector of Aruba, the Centrale Bank van Aruba (the Bank) in its licensing procedure, applies certain requirements as to the integrity, knowledge and experience of directors of the captive insurance company. These criteria are also applied in cases where new directors are appointed. In view of these requirements, the Bank may object to the appointment of one or more persons who determine the day-to-day policy of a supervised institution because his, her or their knowledge is considered inadequate to engage in the captive insurance business. Likewise, the Bank may object one or more persons accepting a post involving the (co-) determination of the policy of a supervised institution if, based on the intentions or the past history of that person or those persons, the Bank holds the opinion that the interests of the policy holders of the institution could be jeopardized.

Pursuant to section 7, sub a and b, section 17 of the SOSIB and Section 5, paragraph 1a, of the SDCIC, any appointment of a new managing director and/or member of the supervisory board, needs the Bank's prior written approval. In order to assess the intended appointment in the light of the criteria above, the candidate is required to complete the Bank's questionnaire (Annex 1), sign and return it to the Bank via the institution concerned. A formal request together with the completed questionnaire should be send to the Bank.

The questions must be answered truthfully and as complete as possible. Questions relating to legal proceedings, convictions, refusal of licenses, supervision of payment or bankruptcy must be answered regardless of whether these facts occurred in Aruba or elsewhere and regardless of the nature of the facts (economic or other offenses).

The Bank's decision is taken on the basis of all available information, including that about the nature of the position and of the institutions. The answers to the questionnaire are merely one among many considerations.

Together with the completed questionnaire the applicant must submit a declaration of good conduct.

The Bank informs the institutions concerned of its decision.

The information obtained is covered by the secrecy obligation provided for in Article 23 of the State Ordinance on the Supervision of the Insurance Business.

### **III.7 Prospective (In-) Direct Shareholders - Natural Persons**

#### **Change in shareholding**

(Section 31 of the SOSIB/ section 3 of the State Degree regulating changes in ownership)

Pursuant to section 3 of the State Degree regulating changes in ownership any natural person or legal entity needs the Bank's prior written approval to hold, acquire or increase a qualifying holding in a captive insurance company or to exercise any control attaching to a qualifying holding. The prospective shareholder should complete the Bank's questionnaire for prospective shareholder (Annex 1). A formal request together with the completed form should be send to the Bank. If such an interest or control could lead to any influence on the insurance business, which is contrary to sound insurance policy, the Bank may refuse authorization.

According to section 1 of the SOSIB a qualifying holding implies a direct or indirect holding of more than 5% of the issued share capital of an insurer or the ability to exercise directly or indirectly more than 5% of the voting rights in an insurance company or the ability to exercise directly or indirectly a comparable degree of control in the insurance business.

### **III.8 Directive on the management and reporting of incidents**

#### **Management and reporting of incidents<sup>20</sup>**

Directive by virtue of section 10 of the State Ordinance on the Supervision of the Insurance Business (AB 2000 no. 82) (SOSIB) on the management and reporting of incidents that constitute a serious risk for the integrity of an insurance company.

#### **1. General**

Within the meaning of this directive, incidents are “incidents that constitute a serious risk for the integrity of the insurance company, if they concern the conduct of an officer or a person who determines the day-to-day policy of the insurance company, or of a holder of a qualifying shareholding in the insurance company or of a natural person or legal entity that performs activities for the insurance company”. In the definition of “incident”, “conduct” is understood to be an act as well as an omission.

It is vital that incidents are handled carefully and that accurate information is provided to the Centrale Bank van Aruba (the Bank) regarding incidents. Incident management is essential for the safeguarding of the integrity of an insurance company. An insurance company must ensure that the risk of disreputable conduct by officers of the company or by persons or legal entities that perform activities for the insurance company, or that have a relationship or wish to enter into a relationship with it, is limited and controlled as far as possible. This means, inter alia, that the internal organization of the insurance company must be set up in such a way that incidents that may prejudice, or have prejudiced, its integrity are detected and recorded, and that corrective measures are taken as a result. Notwithstanding this, an insurance company must take preventive measures based upon risk analysis to control the integrity risks.

#### **2. Policy regarding incidents**

2.1 An insurance company shall adopt a policy regarding the management of incidents and this shall include at least:

- a) the administrative recording of incidents;
- b) the method of incident handling to be used;
- c) the reporting of information regarding incidents.

2.2 An insurance company shall ensure that this policy is translated into organizational and administrative procedures and measures. These procedures and measures shall be integrated into the business processes and shall contribute to an integrity-conscious corporate culture.

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<sup>20</sup> This directive is primarily based on the regulation on incidents at credit institutions and insurance companies issued by the Dutch Central Bank.

### **3. Administrative recording of incidents**

An insurance company shall ensure that incidents are recorded, including at least the characteristics of the incident, information about the person or persons who have brought about the incident, and the measures taken following the incident.

### **4. Method of incident handling**

Following an incident, the insurance company shall take appropriate measures, the aims of which shall be at least to:

- a) control the risk arising;
- b) reinforce the applicable standards;
- c) limit the negative internal and external effects of the incident.

### **5. Reporting of information to the Bank**

5.1 An insurance company shall notify the Bank without delay of incidents if:

- a) the incident has been or will be reported to the judicial authorities;
- b) the continuity of the insurance company is at risk or could be at risk;
- c) there is a serious shortcoming in the set-up and/or operation of measures aimed at safeguarding the integrity of the insurance company;
- d) a serious level of reputational loss by the insurance company is likely, e.g. because of the expected publicity, or
- e) in view of the seriousness, scope and/or other circumstances of the incident, it is reasonable that the Bank should be informed because of its supervisory role.

5.2 The information referred to in section 5.1 shall include at least:

- a) the facts and circumstances of the incident;
- b) information concerning the position, capacity and function of the person or persons who have brought about the incident;
- c) the measures that have been taken or will be taken following the incident.

## **Part IV**

### ***Policy papers***

- IV.1 Policy paper Corporate Governance for Captive Insurance Companies
- IV.2 Investment Policy for Captive Insurance Companies
- IV.3 Outsourcing Arrangements

## **IV.1 Policy Paper Corporate Governance for Captive Insurance Companies**

### **1. Introduction**

This guidance applies to all licensed captive insurance companies operating in or from Aruba.

Corporate Governance is concerned with promoting corporate fairness, accountability and transparency. It is embodied through systems of direction and control that are implemented through rules and procedures so that decisions on corporate affairs can be made.

Captive insurance companies are not immune from mismanagement, nor the associated reputational and financial risks. Indeed it could be argued that the risk of corporate governance failure is higher in a captive, due to the fact that the only investor may be the parent and accounts are frequently not scrutinised by independent rating agencies.

Ultimately however, it should be the decision of the Supervisory Board (Board) to determine which corporate governance provisions should apply. Consideration should be given to the size, nature and complexity of business written by the captive, and the potential for that business to generate a reputational risk for the offshore jurisdiction.

Whilst corporate governance failures for captives cannot be totally eliminated, effective procedures can minimize specific risks.

Additionally, a captive insurer with good corporate governance may benefit when being reviewed by ratings agency.

Corporate governance is the subject of one of the International Association of Insurance Supervisors (IAIS) Core Principles.

### **2. The Supervisory Board**

Effective corporate governance flows from the Board to the captive insurance company.

#### **2.1 Function**

The function of the Board should be clearly prescribed. The Board's objectives should be stated and private transactions, self dealing, preferential treatment of favoured entities, covering of trading losses and other inordinate practices of a non-arms length basis, not entered into, without prior approval of the Board.

Management should be aware that they take instructions from the Board, and not from individual Board-members (unless the Board has ratified that instruction).

## **2.2 Composition**

The Board should ensure it has sufficient expertise to understand the issues involved in operating and controlling the captive. Furthermore, it should ensure those responsible for the daily running of the captive have the necessary skills, qualifications and competence.

The Board should include at least one person who is independent of both the captive's parent and the insurance manager.

The composition of the Board should be considered at least every three years, and the Statutes should clearly set out procedures for the appointment, removal and retirement of directors.

## **2.3 Duties of the Board**

### **2.3.1 Risk identification**

The Board should be responsible for the identification of all operational risks. Such risks would include (but not be limited to) underwriting, credit, market, liquidity, legal, business, regulatory, crime, systems and operations, information and communications technology, disaster and reputational risks. Procedures should be in place to monitor, control and report on these risks.

Any new risks should be promptly brought to the Board's attention as and when they are identified, and procedures developed to accommodate them.

### **2.3.2 Internal controls**

The Board should establish internal procedures for

- Controlling operational risks.
- Monitoring capital/solvency requirements.
- Monitoring compliance issues. In the case of a captive administered by an insurance manager, the Compliance Officer's role could be fulfilled by the corporate appointment of the insurance manager.
- Dealing with the public, if appropriate.
- Dividing responsibility between the captive's management and third party service providers.
- Custody arrangements, including bank mandates.
- Internal audit procedures and the formation of an audit committee.

Such controls should be documented in a procedures manual, which should be checked for accuracy and breadth by insurance supervisors.

The Board should also maintain documents relating to cases where the captive's corporate governance principles have failed.

### **2.3.3 Investment strategy**

The Board should develop, implement and minute an investment strategy. Such a strategy should be carefully monitored and controlled.

The investment strategy should have due regard to the issues of mismatch between assets and liabilities. Consideration should be given to the size, nature and complexity of the insurer's business. Scenario/resilience testing should be considered, to model a variety of market scenarios and changing investment and operating conditions on the captives performance.

### **2.3.4 Supervisory functions**

The Board should ensure that the duties, responsibilities, authorities and remuneration of the licensed insurance manager (if employed) are clearly defined in the management agreement, which should be reviewed at least every three years. In addition, the Board should satisfy itself that any remuneration paid to the insurance manager reflects the work required to operate the captive insurance company.

For managed captives, the corporate governance procedures of the manager are clearly important, and the regulator should review these as part of its onsite visits.

### **2.3.5 Annual review**

The Board should review its corporate governance procedures on an annual basis.

Consideration should be given to the formation of an audit committee, reporting to the independent directors of the Board.

## **3. Complaints procedures**

Where a captive is issuing policies to third parties, a complaints procedure must be in operation. Such a procedure, at the very least must advise of the complaints hierarchy existing in the captives' jurisdiction. Complaints should in the first instance be addressed by the insurance manager (or management if the captive is self managed) and ultimately progressed to the regulator and/or ombudsman. The customer should be advised of their options at all times, and provided with the relevant contact information to progress their complaint.

The captive should maintain a record of all complaints.

## **4. The role of the supervisor**

The Bank must approve the individual members and composition of the Board of a captive insurance company. This approval is dependent on the provision of sufficient information, as to allow the Bank to confirm the fitness and propriety of the proposed directors of the Board.

Any changes to the Board composition should require the Banks' prior approval.



## POLICY PAPERS

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Should information become available to the Bank which alters the Bank perception of the board, then the Bank should have the ability to alter the composition of the Board, and exercise this when necessary.

The Bank will review the corporate governance procedures of captives licensed in Aruba and ensure they are satisfied with the corporate governance procedures in place. The Bank should be comfortable with this arrangement, and that the corporate governance standards of the parent are of an equivalent or higher standard than that of the local jurisdiction.

## **IV.2 Investment Policy for Captive Insurance Companies**

### **1. Introduction**

This guidance note serves to promote sound and prudent investment management practices for a Captive Insurance Company (Captive) and assist the captive in developing investment strategies suitable to the size and complexity of their operations that will demonstrate that it is managing its investment portfolio in an appropriate manner.

A key element of any insurance business is its investment portfolio. An investment portfolio carries with it a range of investment-related risks that might affect the financial strength of a captive and, consequently, require sound management. In order that captive's can demonstrate that they manage their investment business in a sound and prudent manner they should ensure that they have a written investment strategy and procedures in place that enable them to identify, measure, report and control the main investment-related risks that they face.

Investment management processes and procedures must take into consideration the nature of the captive's liabilities, the size and the complexity of the captive's asset portfolio, ability of the captive to absorb potential losses and the overall strategic business objectives of the company. At a minimum captives should conduct a detailed analysis of the management of their assets and liabilities and ensure that safe custodial arrangements exist, that assets appropriately match liabilities and that their asset portfolios are adequately diversified and liquid to enable them to meet their and other obligations as they fall due.

### **2. Board of Directors**

The Supervisory Board ("Board") is responsible for formulating the investment policy of the captive and ensuring that it is implemented. They should, along with key management staff, possess sufficient expertise to understand the important issues related to investment management.

In formulating the investment policy the Board should analyze:

the asset/liability relationship. That is verifying that the captive will have sufficient liquid assets to meet liabilities as they fall due;

the captive's overall risk tolerant and its long-term risk and return requirement; and

the captive's solvency position.

The Board must also ensure that adequate reporting and internal control systems for the captive are in place to provide evidence that assets are being managed in accordance with the investment policy and legal and regulatory requirements.

The Board should review the adequacy of the overall investment policy at least annually to ensure that it meets the needs of the company's activities, risk tolerance, expected long-term return and solvency position.

### **3. Management and/or Insurance Manager**

The formulation of the operational policies and procedures for implementing and reviewing the investment policy is the responsibility of management. This activity might be undertaken by its Aruba resident insurance manager. In any event the insurance Manager of the captive should be well versed in and understand the captive's investment strategy and how its investments are managed. This should include ensuring that the original business plan of the captive when it applies for an insurance license includes appropriate reference to the company's proposed investment policy and that the policy is in compliance with regulatory requirements.

Management/insurance manager should ensure that all individuals conducting, monitoring and controlling investment activities are suitably qualified and have appropriate levels of knowledge and experience.

At least annually, management/insurance manager should review the adequacy of its written operational procedures and allocated resources in the light of the captive's activities and market conditions.

### **4. Investment Policy**

All captives should have a written investment policy in place which has been approved by the Board. The complexity of such a policy will depend upon the nature of the business undertaken. The policy should be flexible and adjustable to changes in internal and external market conditions and other risk factors. It should contain contingency plans to mitigate the effects of deteriorating conditions.

This guidance note highlights the areas that an investment policy should address, at a minimum:

-Risk Profile – The risk profile of the captive should set out the risks faced by the captive as well as the extent to which the captive is willing to assume various types of risk. Typically risks would fall under the headings insurance underwriting, investment, liquidity and credit risks. Scenario analysis can be used to test the investment portfolio's ability to withstand varying risk levels. The risk profile of the captive should also indicate how these risks will be mitigated. For example risks are reduced through the diversification of the investment portfolio and investing in different asset categories, markets, sectors and geographical areas.

-Allocation of Assets (asset mix) – The captive should identify how it intends to allocate its resources over broad investment categories such as equities, bonds, cash and property. The captive should also indicate what individual assets will make up each assets category and the percentages.

-Selection Criteria – The captive should indicate what criteria are to be used in the selection of broad investment categories and the individual securities or assets that form the investment portfolio. The investment policy should indicate the minimum acceptable credit or investment rating for securities investments or captives of securities and provide for the use of financial derivatives. The captives should also maintain a list of investment activities or investment practitioners that are authorized or not permitted to engage in or which indicates assets that are allowable for the purposes of the captive meeting its minimum margin of solvency.

-Concentration Limits – The captive should have clearly defined and documented securities portfolio concentration limits. This will ensure that the nature and level of an captive’s exposure to various risks such as credit risk, interest rate risk, currency risk and price risk are monitored when making investment and credit decisions. All limits need to be established in the context of the captive’s aggregate investment and credit exposure and not in isolation.

-Portfolio Performance Criteria – Risk and return are generally directly related. Consequently, the captive should have an idea of the level of return acceptable based on the risk level of the investment portfolio. The captive should also have an indication of the time frame over which the acceptable rate of return is expected to be received, along with the expected volatility of that rate.

-Selection of Investment Personnel – The investment policy should identify the criteria used for the selection of internal and external investment managers. This should include security dealers and other related counterparties. These key personnel must have the appropriate level of skills, experience and integrity to perform their duties adequately.

-Asset/Liability Management Strategy – The investment policy of captive should anticipate the captive’s short-term and long-term cash needs and address how these needs will be provided. The captive’s investment portfolio should be constituted in such a way as to reflect the cash needs of the captive and any anticipated changes in them. Investment activities should take into consideration the asset/liability position of the captive since it is important to ensure that liabilities can be settled as they fall due.

-Liquidity of Investment – The investment policy should make provisions so that assets are not liquidated unexpectedly and potentially at unfavourable prices and that the portfolio does not contain amounts of cash or low yielding liquid assets.

-Related Party Transactions – The investment policy should set out the criteria for assessing the extent and significance of related or connected party transactions.

-Accountability Requirements – The investment policy should contain a framework of accountability for all asset transactions. Each captive needs to implement accounting policies and information systems to monitor the transactions that take place in its investment portfolio.

-Valuation Policies – The investment policy should indicate the methodologies used in the valuation of assets and calculation of liabilities.

Solvency Requirements – In developing the investment policy the Board must take into consideration the solvency margin (the amount by which the total value of a captive's allowable must exceed the total amount of liabilities) requirements of the captive. Captives are required to meet a minimum level of solvency whether they are conducting general or long-term business.

#### **4. Internal Control and Internal Audit Procedures**

The investment activities of the captive must be governed by sound internal control and internal audit procedures. An internal control system in this context should ensure that investment activities are conducted in accordance with the approved policies and procedures of the captive and the applicable legislation and regulation. Internal audit procedures should be objective, transparent and clearly defined and the internal audit process should be conducted independently of those managing the assets.

Internal control systems should at a minimum include:

- procedures to ensure that investment transactions are properly documented and authorized and that the formal documentation is completed promptly and accurately;
- systems to measure, record and monitor security positions and market conditions;
- procedures to ensure that guidelines outline in the investment policy are adhered to such as;
- ensuring that restrictions on certain assets are observed;
- ensuring that the captive's diversification policy is observed;
- ensuring that any asset transaction limits are not exceeded;
- procedures to ensure that any breaches or inaccuracies in investment activity are reported on a timely basis and remedial action is taken;
- procedures to ensure that there are timely reports on investment activity; and
- procedures to ensure reconciliation of security positions and that these positions are promptly settled and reported.

Internal audits are important because they provide an objective assessment of investment performance and the integrity of the management of the investment activity. The internal audit process is also vital in the detection of problems or potential problems. The internal audit should test to determine whether certain policies are in place to ensure that:

-the captive's asset portfolio and written investment management policies and procedures are in compliance with the regulatory obligations, including Aruban laws and regulations;

## **POLICY PAPERS**

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- investment transaction are duly authorized and accurately and completely recorded;
- recorded securities exist and are valued based on the relevant laws and regulations; and
- internal control weaknesses and operating and accounting system deficiencies are identified and reported.

## IV.3 Outsourcing Arrangements

Policy Paper issued on the basis of sections 15 and 15a of the State Ordinance on the Supervision of the Credit System (SOSCS), sections 10 and 10a of the State Ordinance on the Supervision of the Insurance Business (SOSIB), section 11a of the State Ordinance on Company Pension Funds (SOCPF), and section 21 of the State Ordinance on the Supervision of the Securities Business (SOSSB).<sup>1</sup>

### 1. Introduction

Outsourcing arrangements may increase the risk profile of an institution due to, for example, reputation, compliance and operational risks arising from failure of a service provider in providing the service, breaches in security, or the institution's inability to comply with legal and regulatory requirements. An institution can also be exposed to country risk, when a service provider is located overseas, and concentration risk, when more than one service is outsourced to the same service provider. Outsourcing does not diminish the obligations of an institution, and those of its Supervisory Board and Managing Board, to comply with the relevant laws and regulations in Aruba. In this regard, it is important that an institution adopts a sound and responsive risk management framework for all of its material outsourcing arrangements.

### 2. Scope and applicability of the Policy Paper

- 2.1 This Policy Paper is applicable to all companies and institutions that fall under the scope of the SOSCS, SOSIB, SOCPF and SOSSB. Any deviation from this Policy Paper must be explained in a separate document, to be made directly available to the Centrale Bank van Aruba (CBA) upon request. In case parts of this Policy Paper are not applicable, this must also be recorded in the aforementioned document. Institutions with a limited size (e.g. credit unions) or activities may request for a dispensation of the requirements set out in this Policy Paper, provided that these institutions have policies and procedures in place with regard to outsourced services insofar material that are considered sufficiently effective by the CBA.
- 2.2 This Policy Paper provides a set of standards on sound practices on risk management of outsourcing arrangements that institutions must follow. The extent and degree to which an institution implements these standards should be commensurate with the nature of risks in, and materiality of, the outsourcing arrangement. An institution must ensure that outsourced services continue to be managed as if the services were still managed by the institution.
- 2.3 Annex 1 provides a non-exhaustive list of examples of outsourcing arrangements to which this Policy Paper is applicable, and arrangements that are not intended to be subject to this Policy Paper. It should also not be misconstrued that arrangements not

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<sup>1</sup> This Policy Paper is largely based on a policy paper on outsourcing issued by the Monetary Authority of Singapore.

## POLICY PAPERS

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defined as outsourcing need not be subject to adequate risk management and sound internal controls. Annex 2 provides guidance to an institution in assessing whether an outsourcing arrangement would be considered a material outsourcing arrangement. Annex 3 provides a template for an institution to maintain a register of its material outsourcing arrangements. This register must be made directly available to the CBA upon request.

### 3. Definitions

3.1 In this Policy Paper, unless the context otherwise requires:

3.1.1 Institution means:

Credit institutions, insurance companies, pension funds, securities brokers, asset managers, investment institutions, custodians and stock exchanges, supervised by virtue of the SOSCS, SOSIB, SOCPF and SOSSB;

3.1.2 Material outsourcing arrangement means an outsourcing arrangement:

(a) Which, in the event of a service failure or security breach, has the potential to either significantly impact an institution's:

(i) business operations, reputation or profitability, or

(ii) ability to manage risk and comply with applicable laws and regulations, or

(b) Which involves customer information and, in the event of any unauthorized access or disclosure, loss or theft of customer information, may have a significant impact on an institution's customers;

3.1.3 Outsourcing agreement means:

A written agreement setting out the contractual terms and conditions governing relationships, obligations, responsibilities, rights and expectations of the contracting parties in an outsourcing arrangement;

3.1.4 Outsourcing arrangement means:

An arrangement in which a service provider provides the institution with a service that may currently or potentially be performed by the institution itself and which includes the following characteristics:

(a) The institution is dependent on the service on an ongoing basis; and

(b) The service is integral to the provision of a financial service by the institution or the service is provided to the market by the service provider in the name of the institution;

3.1.5 Service provider means:

Any party which provides a service to the institution, including any entity within the institution's group<sup>2</sup>, whether it is located in Aruba or elsewhere;

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<sup>2</sup> This refers to the institution's Head Office or parent institution, subsidiaries, affiliates, and any entity (including their subsidiaries, affiliates and special purpose entities) that the institution exerts control over or that exerts control over the institution.



### 3.1.6 Sub-contracting means:

An arrangement where a service provider which has an outsourcing agreement with an institution, further outsources the services or a material part of the services covered under the outsourcing arrangement to another service provider.

## 4. Risk management practices

### 4.1 Responsibility of the Supervisory Board and Managing Board

4.1.1 The Supervisory Board and Managing Board of an institution play pivotal roles in ensuring a sound risk management culture and environment. While an institution may delegate day-to-day operational duties to the service provider, the responsibilities for maintaining effective oversight and governance of outsourcing arrangements, managing outsourcing risks, and implementing an adequate outsourcing risk management framework, in accordance with this Policy Paper, continue to rest with the institution, its Supervisory Board and Managing Board. The Supervisory Board and Managing Board of an institution must ensure that there are adequate processes to provide a comprehensive institution-wide view of the institution's risk exposures from outsourcing, and incorporate the assessment and mitigation of such risks into the institution's outsourcing risk management framework.

4.1.2 The Managing Board is responsible for:

- (a) Establishing a framework to evaluate the risks and materiality of all existing and prospective outsourcing arrangements and the policies that apply to such arrangements;
- (b) Developing sound and prudent outsourcing policies and procedures that are commensurate with the nature, scope and complexity of the outsourcing arrangements as well as ensuring that these policies and procedures are implemented effectively
- (c) Setting a suitable risk appetite to define the nature and extent of risks that the institution is willing and able to assume from its outsourcing arrangements;
- (d) Laying down appropriate approval authorities for outsourcing arrangements consistent with its established strategy and risk appetite;
- (e) Assessing management competencies for developing sound and responsive outsourcing risk management policies and procedures that are commensurate with the nature, scope, and complexity of the outsourcing arrangements;
- (f) Undertaking regular reviews of outsourcing strategies and arrangements for their continued relevance, safety and soundness; and
- (g) Communicating information pertaining to risks arising from its material outsourcing arrangements to the Supervisory Board in a timely manner.

4.1.3 The Supervisory Board is responsible for:

- (a) Evaluating the materiality and risks from all existing and prospective outsourcing arrangements, based on the framework established by the Managing Board;

## POLICY PAPERS

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- (b) Reviewing regularly the effectiveness of, and appropriately adjusting of, policies, standards, and procedures to reflect changes in the institution's overall risk profile and risk environment;
- (c) Monitoring and maintaining effective control of all risks from its material outsourcing arrangements on an institution-wide basis;
- (d) Ensuring that contingency plans, based on realistic and probable disruptive scenarios, are in place and regularly tested;
- (e) Ensuring that there is independent review and audit for compliance with outsourcing policies and procedures; and
- (f) Ensuring that appropriate and timely remedial actions are taken to address audit findings.

### 4.2 Evaluation of risks

4.2.1 In order to be satisfied that an outsourcing arrangement does not result in the risk management, internal control, business conduct or reputation of an institution being compromised or weakened, the Supervisory board and Managing Board need to be fully aware of and understand the risks arising from outsourcing. The institution must establish a framework for risk evaluation which should include the following steps:

- (a) Identifying the role of outsourcing in the overall business strategy and objectives of the institution;
- (b) Performing comprehensive due diligence on the nature, scope, and complexity of the outsourcing arrangements to identify and mitigate key risks;
- (c) Assessing the service provider's ability to employ a high standard of care in performing the outsourced service and meet regulatory standards as if the outsourcing arrangement is performed by the institution;
- (d) Analyzing the impact of the outsourcing arrangement on the overall risk profile of the institution, and whether adequate internal expertise and resources are available to mitigate the risks identified;
- (e) Analyzing the institution's as well as the institution's group aggregate exposure to the outsourcing arrangement, to manage concentration risk; and
- (f) Analyzing the benefits of outsourcing against the risks that may arise, ranging from the impact of temporary disruption to service, to that of a material breach in security and confidentiality, and unexpected termination of the outsourcing arrangement, and whether for strategic and internal control reasons, the institution should not enter into the outsourcing arrangement.

4.2.2 Such risk evaluations should be performed when an institution is planning to enter into a material outsourcing arrangement with an existing or a new service provider, and also re-performed periodically on existing material outsourcing arrangements, as part of the approval, strategic planning, risk management or internal control reviews of the outsourcing arrangements of the institution.

**4.3 Assessment of Service Providers**

4.3.1 In considering renegotiating or renewing an outsourcing arrangement, an institution should subject the service provider to appropriate due diligence processes to assess the risks associated with the outsourcing arrangement.

4.3.2 An institution must assess all relevant aspects of the service provider, including its capability to employ a high standard of care in the performance of the outsourcing arrangement as if the service is performed by the institution to meet its obligations as a regulated entity.

The due diligence must also take into account the physical and IT security controls the service provider has in place, the business reputation and financial strength of the service provider, including the ethical and professional standards held by the service provider, and its ability to meet obligations under the outsourcing arrangement. On-site visits at the service provider, and where possible, independent reviews and market feedback on the service provider, must also be obtained to supplement the institution's assessment. On-site visits must be conducted by persons who possess the requisite knowledge and skills to conduct the assessment.

4.3.3 The due diligence must involve an evaluation of all relevant information about the service provider. Information to be evaluated includes the service provider's:

- (a) Experience and capability to implement and support the outsourcing arrangement over the contracted period;
- (b) Financial strength and resources (the due diligence should be similar to a credit assessment of the viability of the service provider based on reviews of business strategy and goals, audited financial statements, the strength of commitments of major equity sponsors and the ability to service commitments even under adverse conditions);
- (c) Corporate governance, business reputation and culture, compliance, and pending or potential litigation;
- (d) Security and internal controls, audit coverage, reporting and monitoring environment;
- (e) Risk management framework and capabilities in respect of the outsourcing arrangement;
- (f) Disaster recovery arrangements and disaster recovery track record;
- (g) Reliance on sub-contractors;
- (h) Insurance coverage;
- (i) External environment (such as the political, economic, social and legal environment of the jurisdiction in which the service provider operates); and
- (j) Ability to comply with applicable laws and regulations, and track record in relation to its compliance with applicable laws and regulations.

4.3.4 The service provider must ensure that the employees of the service provider undertaking any part of the outsourcing agreement have been assessed to meet the institution's hiring policies for the role they are performing, consistent with the criteria that are applicable to the institution's own hiring criteria. Any adverse

findings from this assessment should be considered in light of their relevance and impact to the outsourcing arrangement.

- 4.3.5 Due diligence undertaken during the assessment process should be documented and re-performed periodically as part of the monitoring and control processes of material outsourcing arrangements. The due diligence process may vary depending on the nature, extent of risks of the arrangement, and impact on the institution in the event of a disruption to service or breach of security and confidentiality (e.g., reduced due diligence may be sufficient where the outsourcing arrangements are made within the institution's group)<sup>3</sup>. An institution must ensure that the information used for due diligence evaluation is sufficiently current. An institution must also consider the findings from the due diligence evaluation to determine the frequency and scope of audit on the service provider.

#### 4.4 Outsourcing Agreement

- 4.4.1 Contractual terms and conditions governing relationships, obligations, responsibilities, rights, and expectations of the contracting parties in the outsourcing arrangement must be carefully and properly defined in written agreements.
- 4.4.2 An institution must ensure that every outsourcing agreement addresses the risks identified during the risk evaluation and due diligence stages. Each outsourcing agreement should allow for timely renegotiation and renewal to enable the institution to retain an appropriate level of control over the outsourcing arrangement and the right to intervene with appropriate measures to meet its legal and regulatory obligations. It should, at the very least, have provisions to address the following aspects of outsourcing:
- (a) Scope of the outsourcing arrangement;
  - (b) Performance, operational, internal control and risk management standards;
  - (c) Confidentiality and security<sup>4</sup>;
  - (d) Business continuity management<sup>5</sup>;
  - (e) Monitoring and control<sup>6</sup>;
  - (f) Audit and inspection<sup>7</sup>;
  - (g) Notification of adverse developments: an institution must specify in its outsourcing agreement the type of events and the circumstances under which the service provider should report to the institution;
  - (h) Dispute resolution: an institution must specify in its outsourcing agreement the resolution process, events of default, the indemnities, remedies and recourse of the respective parties in the agreement. The institution should ensure that its contractual rights can be exercised in the event of a breach of the outsourcing agreement by the service provider;

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<sup>3</sup> In case of outsourcing within the same group, the institution must have a Service Level Agreement in place for the outsourced services. Refer to paragraph 4.10.

<sup>4</sup> Refer to paragraph 4.5.

<sup>5</sup> Refer to paragraph 4.6.

<sup>6</sup> Refer to paragraph 4.7.

<sup>7</sup> Refer to paragraph 4.8.

- (i) Default termination and early exit: an institution must have the right to terminate the outsourcing agreement in the event of default, or under circumstances where:
  - (i) the service provider undergoes a change in ownership;
  - (ii) the service provider becomes insolvent or goes into liquidation;
  - (iii) the service provider goes into receivership or judicial management;
  - (iv) there has been a breach of security or confidentiality; or
  - (v) there is a demonstrable deterioration in the ability of the service provider to perform the contracted service.

The minimum period to execute a termination provision must be specified in the outsourcing agreement. Other provisions must also be put in place to ensure a smooth transition when the agreement is terminated or being amended. Such provisions may facilitate transferability of the outsourced services to a third party. Where the outsourcing agreement involves an intra-group entity, the agreement should be legally enforceable against the intra-group entity providing the outsourced service;

- (j) Sub-contracting: an institution must retain the ability to monitor and control its outsourcing arrangements when a service provider uses a sub-contractor. An outsourcing agreement must contain clauses setting out the rules and limitations on sub-contracting. An institution must include clauses making the service provider contractually liable for the performance and risk management practices of its sub-contractor and for the sub-contractor's compliance with the provisions in its agreement with the service provider. The institution must ensure that the sub-contracting of any part of material outsourcing arrangements is subject to the institution's prior approval;
- (k) Applicable laws: agreements must include choice-of-law provisions, agreement covenants and jurisdictional covenants that provide for adjudication of disputes between the parties under the laws of a specific jurisdiction.

4.4.3 Each outsourcing agreement must be tailored to address issues arising from country risks and potential obstacles in exercising oversight and management of the outsourcing arrangements made with a service provider outside of Aruba.

## **4.5 Confidentiality and Security**

4.5.1 As public confidence in institutions is a cornerstone in the stability and reputation of the financial industry, it is vital that an institution satisfies itself that the service provider's security policies, procedures, and controls will enable the institution to protect the confidentiality and security of customer information.

4.5.2 An institution must be proactive in identifying and specifying requirements for confidentiality and security in the outsourcing arrangement. An institution must take the following steps to protect the confidentiality and security of customer information:

- (a) State the responsibilities of contracting parties in the outsourcing agreement to ensure the adequacy and effectiveness of security policies and practices, including the circumstances under which each party has the right to change security requirements. The outsourcing agreement should also address:

- (i) the issue of the party liable for losses in the event of a material breach of security or confidentiality and the service provider's obligation to inform the institution; and
  - (ii) the issue of access to and disclosure of customer information by the service provider. Customer information should be used by the service provider and its staff strictly for the purpose of the contracted service;
- (b) Disclose customer information to the service provider only on a need-to-know basis;
- (c) Ensure the service provider is able to protect the confidentiality of customer information, documents, records, and assets, particularly where multi-tenancy<sup>8</sup> arrangements are present at the service provider; and
- (d) Review and monitor the security practices and control processes of the service provider on a regular basis, including commissioning audits or obtaining periodic expert reports on confidentiality, security adequacy and compliance in respect of the operations of the service provider, and requiring the service provider to disclose to the institution breaches of confidentiality in relation to customer information.

#### **4.6 Business Continuity Management**

- 4.6.1 An institution must ensure that its business continuity is not compromised by outsourcing arrangements, in particular, of the operation of its critical systems.
- 4.6.2 An institution must take steps to evaluate and satisfy itself that the interdependency risk arising from the outsourcing arrangement can be adequately mitigated in such a way that the institution remains able to conduct its business with integrity and competence in the event of a service disruption or failure, or unexpected termination of the outsourcing arrangement or liquidation of the service provider. These should include taking the following steps:
  - (a) Determine that the service provider has in place satisfactory business continuity plans (BCP) that are commensurate with the nature, scope, and complexity of the outsourcing arrangement. Outsourcing agreements should contain requirements on the service provider in the area of business continuity, in particular, recovery time objectives (RTO), recovery point objectives (RPO), and resumption operating capacities;
  - (b) Proactively seek assurance on the state of business continuity preparedness of the service provider. It should ensure that the service provider regularly tests its BCP and that the tests validate the feasibility of the RTO, RPO, and resumption of the operating capacities. The institution should require the service provider to notify it of any test findings that may affect the service provider's performance. The institution should also require the service provider to notify it of any substantial changes in the service provider's BCP and of any adverse development that could substantially impact the service provided to the institution; and

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<sup>8</sup> Multi-tenancy generally refers to a mode of operation adopted by service providers where a single computing infrastructure (e.g., servers, databases etc.) is used to serve multiple customers (tenants).

- (c) Ensure that there are plans and procedures in place to address adverse conditions or termination of the outsourcing arrangement such that the institution will be able to continue business operations and that all documents, records of transactions and information previously given to the service provider are promptly removed from the possession of the service provider or deleted, destroyed or rendered unusable, with due regard to the applicable legislation in the country where the service provider is located.
- 4.6.3 For assurance on the functionality and effectiveness of its BCP, an institution should design and carry out regular, complete and meaningful BCP testing that is commensurate with the nature, scope and complexity of the outsourcing arrangement.
- 4.6.4 The institution must consider worst case scenarios in its BCP. Some examples of these scenarios are unavailability of the service provider due to unexpected termination of the outsourcing agreement, liquidation of the service provider and wide-area disruptions that result in collateral impact on both the institution and the service provider.

### 4.7 Monitoring and Control

- 4.7.1 An institution must establish a structure for the management and control of its outsourcing arrangements. Such a structure will vary depending on the nature and extent of risks in the outsourcing arrangements. As relationships and interdependencies in respect of outsourcing arrangements increase in materiality and complexity, a more rigorous risk management approach should be adopted. An institution also has to be more proactive in its relationship with the service provider (e.g., having frequent meetings) to ensure that performance, operational, internal control, and risk management standards are upheld.
- 4.7.2 An institution must put in place all of the following measures for effective monitoring and control of any material outsourcing arrangement:
- (a) Maintain a register of all material outsourcing arrangements and ensure that the register is readily accessible for review by the Supervisory Board and Managing Board of the institution and the CBA. The information maintained in the register must at a minimum consist of the information set out in Annex 3.
  - (b) Assign clear responsibilities within the institution for the monitoring and controlling of the outsourcing agreement;
  - (c) Periodic reviews on all material outsourcing arrangements. This is to ensure that the institution's outsourcing risk management policies and procedures, and the requirements in this Policy Paper, are effectively implemented. Such reviews must ascertain the adequacy of internal risk management and management information systems established by the institution (e.g., assessing the effectiveness of processes and metrics used to evaluate the performance and security of the service provider) and highlight any deficiency in the institution's systems of control;

## POLICY PAPERS

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(d) Reporting policies and procedures: reports on the monitoring and control activities of the institution must be reviewed by its Managing Board, while the outcome must be shared with the Supervisory Board. The institution must also ensure that any adverse development arising in any outsourcing arrangement is brought to the immediate attention of the Managing Board of the institution and service provider, and where warranted, to the institution's Supervisory Board. When adverse development occurs, prompt actions should be taken by an institution to review the outsourcing relationship for modification or termination of the agreement.

### 4.8 Audit and Inspection

4.8.1 An institution's outsourcing arrangements must not interfere with the ability of the institution to effectively manage its business activities or impede the CBA in carrying out its supervisory functions and meeting its objectives.

4.8.2 An institution must include, in all of its outsourcing agreements for material outsourcing arrangements, clauses that:

(a) Allow the institution to conduct audits on the service provider, whether by its internal or external auditors, or by agents appointed by the institution; and to obtain copies of any report and finding made on the service provider, whether produced by the service provider's internal or external auditors, or by agents appointed by the service provider, in relation to the outsourcing arrangement;

(b) Allow the CBA, where necessary or expedient, to exercise the contractual rights of the institution to:

(i) access and inspect the service provider, and obtain records and documents, of transactions, and information of the institution given to, stored at or processed by the service provider; and

(ii) access any report and finding made on the service provider, whether produced by the service provider's internal or external auditors, or by agents appointed by the service provider, in relation to the outsourcing arrangement.

4.8.3 Outsourcing agreements for material outsourcing arrangements must also include clauses that require the service provider to comply, as soon as possible, with any request from the CBA or the institution, to the service provider or its sub-contractors, to submit to the CBA any report on the security and control environment of the service provider and its sub-contractors, in relation to the outsourcing arrangement.

4.8.4 An institution must ensure that independent audits and/or expert assessments of all its material outsourcing arrangements are conducted. In determining the frequency of audit and expert assessments, the institution should consider the nature and extent of the involved risks, and the impact on the institution from the outsourcing arrangements. The scope of the audit and expert assessments should include an assessment of the service provider's security<sup>9</sup> and control environment, incident

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<sup>9</sup> The security environment refers to both the physical and IT security environments.



## POLICY PAPERS

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- management process (for material breaches, service disruptions or other material issues) and the institution's observance of this Policy Paper in relation to the outsourcing arrangement.
- 4.8.5 The independent audit and/or expert assessment on the service provider may be performed by the institution's internal or external auditors, the service provider's external auditors<sup>10</sup> or by agents appointed by the institution. The appointed persons should possess the requisite knowledge and skills to perform the engagement, and be independent of the unit or function performing the outsourcing arrangement. The Supervisory Board must ensure that appropriate and timely remedial actions are taken to address the audit findings<sup>11</sup>. Institutions must have adequate processes in place to ensure that remedial actions are satisfactorily completed.
- 4.8.6 Significant issues and concerns must be brought to the attention of the Managing Board of the institution and service provider, and where warranted, to the Supervisory Board. Actions must be taken by the institution to review the outsourcing arrangement if the risk posed is no longer within the institution's risk tolerance.
- 4.8.7 Copies of audit reports must be directly submitted by the institution to the CBA upon request. An institution must also, upon request, provide the CBA with other reports or information on the institution and service provider that is related to the outsourcing arrangement.

### 4.9 Outsourcing outside Aruba

- 4.9.1 The engagement of a service provider in a foreign country, or an outsourcing arrangement whereby the outsourced function is performed in a foreign country, may expose an institution to country risk (economic, social and political conditions and events in a foreign country) that may adversely affect the institution. Such conditions and events could prevent the service provider from carrying out the terms of its agreement with the institution. In its risk management of such outsourcing arrangements, an institution must take into account, as part of its due diligence:
- (a) Government policies;
  - (b) Political, social, and economic conditions;
  - (c) Legal and regulatory developments in the foreign country; and
  - (d) The institution's ability to effectively monitor the service provider, and execute its business continuity plans and exit strategy.
- The institution must also be aware of the disaster recovery arrangements and locations established by the service provider in relation to the outsourcing arrangement. As information and data could be moved to primary or backup sites located in foreign countries, the risks associated with the medium of transport, be it physical or electronic, should also be considered.

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<sup>10</sup> An institution should conduct its own audits to supplement the audits performed by the service provider's auditors, where necessary.

<sup>11</sup> Refer to paragraph 4.1.

## POLICY PAPERS

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- 4.9.2 Material outsourcing arrangements with service providers located outside of Aruba must be conducted in a manner so as not to hinder the CBA's efforts to supervise the Aruban business activities of the institution (i.e., from its books, accounts and documents) in a timely manner, in particular:
- (a) An institution may not enter into outsourcing arrangements with service providers operating in jurisdictions that do not uphold confidentiality clauses and agreements; and
  - (b) An institution may not enter into outsourcing arrangements with service providers in jurisdictions where prompt access to information by the CBA at the service provider may be impeded by legal or administrative restrictions.

### **4.10 Outsourcing within a group**

- 4.10.1 This Policy Paper is also applicable to outsourcing arrangements with parties within an institution's group. The expectations may be addressed within group-wide risk management policies and procedures. The institution would be expected to provide, when requested, information demonstrating the structure and processes by which its Supervisory Board and Managing Board discharge their role in the oversight and management of outsourcing risks on a group-wide basis.
- 4.10.2 Due diligence on an intra-group service provider may take the form of evaluating qualitative aspects of the service provider's ability to address risks specific to the institution, particularly those relating to business continuity management, monitoring and control, audit and inspection, including confirmation on the right of access to be provided to the CBA, to retain effective supervision over the institution, and compliance with local regulatory standards. The respective roles and responsibilities of each office in the outsourcing arrangement should be documented in writing in a Service Level Agreement.

### **4.11 Outsourcing of Internal Audit to External Auditors**

- 4.11.1 Where the outsourced service is the internal audit function of an institution, there are additional factors that an institution should take into account. One of these is the lack of independence, or the appearance of impaired independence, when a service provider is handling multiple engagements for an institution, such as internal and external audits, and consultancy services. There is doubt that the service provider, in its internal audit role, would criticize itself for the quality of the external audit or consultancy services provided to the institution. In addition, as operations of an institution could be complex and involve large transaction volumes and amounts, it should ensure service providers have the expertise to adequately complete the engagement. An institution should address these and other relevant issues before outsourcing the internal audit function. In addition, as a sound practice, institutions shall not outsource their internal audit function to the institution's external audit firm.

## POLICY PAPERS

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4.11.2 Before outsourcing the internal audit function to external auditors, an institution must satisfy itself that the external auditor is in compliance with the relevant standards, including the independency standards, regulating the accounting profession.

This Policy Paper enters into force on **July 1, 2018**.

**EXAMPLES OF OUTSOURCING ARRANGEMENTS**

- 1 The following are examples of some services that, when performed by a third party, would be regarded as outsourcing arrangements for the purposes of this Policy Paper although they are not exhaustive:
- (a) Application processing (e.g., loan origination, insurance underwriting, credit cards);
  - (b) Middle and back office operations (e.g., electronic funds transfer, payroll processing, custody operations, quality control, purchasing, maintaining the register of participants of a collective investment scheme (CIS) and sending of accounts and reports to CIS participants, order processing, trade settlement and risk management);
  - (c) Business continuity and disaster recovery functions and activities;
  - (d) Claims administration (e.g., loan negotiations, loan processing, insurance claim processing, collateral management, collection of bad loans);
  - (e) Document processing (e.g., cheques, credit card and bill payments, bank statements, other corporate payments, customer statement printing);
  - (f) Information systems hosting (e.g., software-as-a-service, platform-as-a-service, infrastructure-as-a-service);
  - (g) Information systems management and maintenance (e.g., data entry and processing, data centers, data center facilities management, end-user support, local area networks management, help desks, information technology security operations);
  - (h) Investment management (e.g., discretionary portfolio management, cash management);
  - (i) Management of policy issuance and claims operations (by managing agents);
  - (j) Manpower management (e.g., benefits and compensation administration, staff appointment, training and development);
  - (k) Marketing and research (e.g., product development, data warehousing and mining, media relations, call centers, telemarketing);
  - (l) Professional services related to the business activities of the institution (e.g., accounting, internal audit, actuarial, compliance);
  - (m) Support services related to archival, storage and destruction of data and records; and
  - (n) Cloud computing.

## POLICY PAPERS

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- 2 The following arrangements would generally **not** be considered outsourcing arrangements, falling under the scope of this Policy Paper:
- (a) Arrangements in which certain industry characteristics require the use of third party providers;
    - (i) maintenance of custody accounts;
    - (ii) telecommunication services and public utilities (e.g., electricity, SMS gateway services);
    - (iii) postal services;
    - (iv) market information services (e.g., Bloomberg, Moody's, Standard & Poor's);
    - (v) common network infrastructure (e.g., Visa, MasterCard);
    - (vi) clearing and settlement arrangements between clearing houses and settlement institutions and their members, and similar arrangements between members and non-members;
    - (vii) global financial messaging infrastructure which are subject to oversight by relevant regulators (e.g., SWIFT); and
    - (viii) correspondent banking services.
  - (b) Introducer arrangements and arrangements that pertain to principal-agent relationships:
    - (i) sale of insurance policies by agents, and ancillary services relating to those sales;
    - (ii) acceptance of business by underwriting agents; and
    - (iii) introducer arrangements (where the institution does not have any contractual relationship with customers).
  - (c) Arrangements that the institution is not legally or administratively able to provide:
    - (i) statutory audit and independent audit assessments;
    - (ii) discreet advisory services (e.g., legal opinions, independent appraisals, trustees in bankruptcy, loss adjuster); and
    - (iii) Independent consulting (e.g., consultancy services for areas which the institution does not have the internal expertise to conduct).

**MATERIAL OUTSOURCING ARRANGEMENTS**

- 1 An institution should assess the materiality in an outsourcing arrangement. In assessing materiality, the CBA recognizes that qualitative judgment is involved and the circumstances faced by individual institutions may vary. Factors that an institution should consider include:
  - (a) Importance of the business activity to be outsourced (e.g., in terms of contribution to income and profit);
  - (b) Potential impact of the outsourcing on earnings, solvency, liquidity, funding, capital, and risk profile;
  - (c) Impact on the institution's reputation and brand value, and ability to achieve its business objectives, strategy, and plans, should the service provider fail to perform the service or encounter a breach of confidentiality or security (e.g., compromise of customer information);
  - (d) Impact on the institution's customers, should the service provider fail to perform the service or encounter a breach of confidentiality or security;
  - (e) Impact on the institution's counterparties and the Aruban financial market, should the service provider fail to perform the service;
  - (f) Cost of the outsourcing as a proportion of total operating costs of the institution;
  - (g) Cost of outsourcing failure, which will require the institution to bring the outsourced activity in-house or seek similar service from another service provider, as a proportion of total operating costs of the institution;
  - (h) Aggregate exposure to a particular service provider in cases where the institution outsources various functions to the same service provider; and
  - (i) Ability to maintain appropriate internal controls and meet regulatory requirements, if the service provider faces operational problems.
- 2 Outsourcing of all or substantially all of its risk management or internal control functions, including compliance, internal audit, financial accounting and actuarial (other than performing certification activities) is to be considered a material outsourcing arrangement.
- 3 An institution should undertake periodic reviews of its outsourcing arrangements to identify new outsourcing risks as they arise. An outsourcing arrangement that was previously not material may subsequently become material from incremental services outsourced to the same service provider or an increase in volume or change in nature of the service outsourced to the service provider. Outsourcing risks may also increase when the service provider subcontracts the service or makes significant changes to its sub-contracting arrangements.
- 4 An institution should consider materiality at both the institution's level and as a group, i.e. together with the institution's branches and corporations under its control.

**REGISTER OF MATERIAL OUTSOURCING ARRANGEMENTS <sup>12</sup>**

An institution should maintain an updated register of all existing material outsourcing arrangements. The register must - at a minimum - contain the following information:

- (a) Name of service provider / sub-contractor as set out in the outsourcing agreement;
- (b) Description of outsourced service(s);
- (c) Contract renewal date (where applicable);
- (d) Service expiry (date);
- (e) Date that the institution undertook due diligence on the outsourcing / sub-contracting arrangement; and
- (f) Date that an independent audit was last conducted on the service provider / sub-contractor.

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<sup>12</sup> Refer to paragraph 4.7.

## V.1 General guidelines

Pursuant to section 6, fifth paragraph of the State Decree Captive Insurance Companies (AB 2002 no. 50) (SDCIC) the Centrale Bank van Aruba (the Bank) shall determine the models of the reporting statements.

### 1. Sending and addressing of the statements

According to section 6 paragraph 1 of the SDCIC the captive insurer shall send, within six months after the end of each financial year, statements to the Bank, which provide a clear picture of the operations carried out by the insurer and of its financial position. Mentioned statements must be submitted to:

**Centrale Bank van Aruba  
Supervision Department  
J.E. Irausquin Boulevard 8  
Oranjestad**

### 2. Scope

The statements should reflect the operations conducted in or from Aruba.

### 3. Reporting date

The reporting period of the statements must be from January 1<sup>st</sup> to December 31<sup>st</sup> of the corresponding reporting year.

### 4. Management certification

Management should state on forms that the filled out statements are true and correct.

### 5. Adding of new headings

Adding of new headings to the statements is not allowed. If it is difficult to classify a particular item, it should be included under the heading that is most suitable and a brief explanatory note should be added.

### 6. Explanation of significant changes

In case of a significant change in a balance sheet or profit and loss item compared to previous year, a separate written explanation must be provided for that change.



## REPORTING FORMS

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With important changes we refer in any case to all changes in the balance sheet and profit and loss items that consist of the greater of 10% or Afl. 1 million of the amount reported in the preceding year.

### **7. Conversion of currencies**

The amounts filled out on the statements must be stated in Aruban Florins. Amounts denominated in foreign currencies should be converted into Aruban Florins against the prevailing exchange rate at year-end.

### **8. Rounding of figures**

All amounts should be rounded off to thousand Florins. The rounding off should be effected in such a way that the total assets equal the total liabilities. If there is an amount under Afl. 500, it should be rounded off to zero; the relevant item should then show "0" (zero) or left blank.

### **9. Offsetting**

Offsetting of debit and credit balances of a similar nature is not allowed. Debit and credit balances should be reported at their corresponding amounts (i.e. gross).

### **10. Valuation of assets and liabilities**

It is required to apply the International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board (IASB) or similar internationally recognized accounting standards.

### **11. Technical provisions**

According to section 7, of the SDCIC, an insurer shall maintain adequate technical provisions, which are fully covered by admissible assets. A life insurance company must also take into account the Actuarial Guidelines for Insurance Companies issued by the Bank.

The Bank may raise objections against the nature and valuation of these assets, which objections shall be promptly addressed by the insurer.

### **12. Solvency requirements**

According to section 8, first paragraph of the SDCIC, a captive insurer must have at its disposal a minimum solvency margin amounting to:

- 1) In the case of a pure captive insurer, at least Afl. 300.000 (Aruban florins);
- 2) In the case of an association or industrial captive insurer, at least Afl. 500.000 (Aruban florins);

## REPORTING FORMS

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- 3) In the case of rent-a-captive, at least Afl. 1.000.000 (Aruban florins);
- 4) In the case of other captive insurance company a minimum solvency margin to be determined by the Bank that will range between Afl. 300.000 and Afl. 1.000.000 (Aruban florins).

Furthermore, pursuant to the second paragraph of section 8 of the SDCIC, an insurer must comply with the Solvency Guidelines issued by the Bank.

### **13. Management letter**

The management letter issued by the external auditor must be submitted together with the insurer's certified annual statements completed in the Bank's format.

### **14. Fine**

Section 16, first paragraph of the SOSIB states that, if a captive insurer does not submit its certified annual statements on time, the Bank may impose a fine of AFL 1,000 for each day the captive insurer has been in default.

**ANNUAL STATEMENTS**  
**LIFE CAPTIVE INSURANCE COMPANIES**

**REPORTING FORMS**

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**1. MANAGEMENT CERTIFICATION**

We, the undersigned, hereby certify as follows:

1. That the attached balance sheet, income statement, and other forms are true and correct.
2. That all assets, liabilities, income and expenditures for the period ending December 31, 20xx are included in these financial statements.
3. That all the assets reported are the property of the company, free of liens and claims, unless stated otherwise in these financial statements.
4. That all known capital and or surplus commitments and contingent liabilities are disclosed appropriately in these financial statements.

Name and position : \_\_\_\_\_

Signature : \_\_\_\_\_

**2. MANAGEMENT REPORT**

In this report senior-management of the company must elaborate on the most important developments occurred during the reporting year and present the company's projections on the operations of the company for the immediate future.

**REPORTING FORMS**

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**A. BALANCE SHEET**

		CURRENT YEAR	PREVIOUS YEAR
	<b>ASSETS</b>		
1.00	Investments		
2.00	Fixed Assets		
3.00	Affiliated Companies		
4.00	Current Assets		
5.00	Intangibles		
	<b>TOTAL ASSETS</b>		
	<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
6.00	Technical Provisions		
7.00	Long Term Liabilities		
8.00	Current Liabilities		
	<b>TOTAL LIABILITIES</b>		
9.00	Shareholders' Equity		
	<b>TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY</b>		

**REPORTING FORMS**

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**B. INCOME STATEMENT**

		<b>CURRENT YEAR AFL</b>	<b>PREVIOUS YEAR AFL</b>
	<b>INCOME:</b>		
1.00	Net earned premiums		
2.00	Investment income		
3.00	Other income		
	<b>TOTAL INCOME</b>		
	<b>EXPENDITURES:</b>		
4.00	Net claims incurred		
5.00	Commissions and other acquisition costs		
6.00	General and administrative expenses		
7.00	Change in technical provisions		
8.00	Policyholders' dividends		
9.00	Other expenditures		
10.00	Extraordinary results		
	<b>TOTAL EXPENDITURES</b>		
	<b>NET INCOME (LOSS) BEFORE TAXES:</b>		
11.00	Less: Corporate taxes		
	<b>NET INCOME (LOSS) AFTER TAXES</b>		
12.00	Less: Shareholders' dividend		
	<b>NET EARNINGS</b>		

**C. ACCOUNTING AND VALUATION PRINCIPLES**

Summarize the accounting and valuation principles used to prepare the statements and disclose any significant change(s) in the principles applied in comparison with previous year.



**REPORTING FORMS**

**D. NOTES TO THE BALANCE SHEET**

		<b>CURRENT YEAR AFL</b>	<b>PREVIOUS YEAR AFL</b>
<b>1.00</b>	<b>INVESTMENTS:</b>		
1.10	Shares		
1.20	Bonds		
1.30	Real Estate		
1.40	Time Deposits		
1.50	Mortgage Loans		
1.60	Policy Loans		
1.70	Other Loans		
1.71	- Secured		
1.72	- Unsecured		
1.80	Other		
	<b>Total</b>		
<b>2.00</b>	<b>FIXED ASSETS:</b>		
2.10	Real Estate		
2.20	Office Furniture and Equipment		
2.30	Other-Specify		
	<b>Total</b>		
<b>3.00</b>	<b>AFFILIATED COMPANIES:</b>		
3.10	Shares		
3.20	Loans		
3.30	Current Accounts		
	<b>Total</b>		
<b>4.00</b>	<b>CURRENT ASSETS:</b>		
4.10	Cash on Hand and at Banks		
4.20	Agents' and Brokers' Debit Balances		
4.30	Uncollected Premiums from Direct Business		
4.40	Investment Income Due Or Accrued		
4.50	Amounts Receivable from Reinsurers		
4.60	Amounts Due from Members (Mutual Companies)		
4.70	Other – Specify		
	<b>Total</b>		
<b>5.00</b>	<b>INTANGIBLES:</b>		
	(Provide details)		

**REPORTING FORMS**

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**D. NOTES TO THE BALANCE SHEET**  
(Continued)

		<b>CURRENT YEAR</b>	<b>PREVIOUS YEAR</b>
<b>6.00</b>	<b>TECHNICAL PROVISIONS:</b>		
6.10	Previous Year		
6.20	Additions		
6.30	Deductions		
	<b>Total</b>		
<b>7.00</b>	<b>MEDIUM AND LONG TERM LIABILITIES:</b>		
7.10	Funds due to Financial Institutions (Bank loans)		
7.20	Funds due to Affiliated Companies		
7.30	Other-Specify		
	<b>Total</b>		
<b>8.00</b>	<b>CURRENT LIABILITIES:</b>		
8.05	Premiums Paid in Advance		
8.10	Premiums in Suspense		
8.15	Agents' and Brokers' Credit Balances		
8.20	Benefits Payable		
8.25	Bank Overdrafts and Loans		
8.30	Amounts Due to Reinsurers		
8.35	Corporate Taxes Payable		
8.40	Dividends Payable to Policyholders		
8.45	Dividends Payable to Shareholders		
8.50	Amounts Payable to Affiliates		
8.55	Other-Specify		
	<b>Total</b>		
<b>9.00</b>	<b>SHAREHOLDERS' EQUITY:</b>		
9.10	Issued and paid-in Capital		
9.20	Reserves- Specify		
9.30	Retained Earnings/Unrelieved Losses		
	<b>Total</b>		
	<b>OFF BALANCE SHEET AND MEMORANDUM ITEMS:</b>		
	Contingent Liabilities (provide details)		
	Commitments (provide details)		
	Related Party Transactions (provide details)		

**REPORTING FORMS**

**E. NOTES TO THE INCOME STATEMENT**

		<b>CURRENT YEAR AFL</b>	<b>PREVIOUS YEAR AFL</b>
<b>1.00</b>	<b>NET EARNED PREMIUMS:</b>		
1.10	Direct Written Premiums		
1.20	Assumed Reinsurance Premiums		
	Gross Written Premiums		
1.30	Less: Ceded Reinsurance Premiums		
	<b>Total</b>		
<b>2.00</b>	<b>INVESTMENT INCOME:</b>		
<b>2.10</b>	<b>Direct Investment Income</b>		
2.11	Dividend Income		
2.12	Interest on Bonds		
2.13	Income from Rent		
2.14	Interest on Time Deposits		
2.15	Interest on Mortgage Loans		
2.16	Interest on Policy Loans		
2.17	Interest on Other Loans		
2.18	Other – Specify		
	<b>Sub-total</b>		
<b>2.20</b>	<b>Indirect Investment Income:</b>		
2.21	Revaluation Adjustments		
2.22	Capital Gain / (Loss) On Sales		
2.23	Other – Specify		
	<b>Sub-total</b>		
	<b>TOTAL INVESTMENT INCOME</b>		
<b>4.00</b>	<b>NET CLAIMS INCURRED:</b>		
4.10	Deaths Claims		
4.20	Maturities / lapses		
4.30	Surrenders		
4.40	Other –Specify		
4.50	Less: Ceded Claims Recovered		
	<b>Total</b>		
<b>6.00</b>	<b>GENERAL AND ADMINISTRATIVE EXPENSES:</b>		
6.10	Personnel costs (including social premiums)		
6.20	Other – Specify		
	<b>Total</b>		

**REPORTING FORMS**

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**F. BREAK-DOWN OF THE INVESTMENTS**

		<b>LOCAL INVESTMENTS</b>	<b>FOREIGN INVESTMENTS</b>	<b>TOTAL</b>
<b>* AFL 1000</b>				
<b>1.00</b>	<b>INVESTMENTS</b>			
1.10	Shares			
1.20	Bonds			
1.30	Real Estate			
1.31	- Own use			
1.32	- Other			
1.40	Time deposits with financial institutions			
1.50	Mortgage loans			
1.60	Policy loans			
1.70	Other loans			
1.71	- Secured			
1.72	- Unsecured			
1.80	Other – Specify			
	<b>TOTAL</b>			

**REPORTING FORMS**

**G. COVERAGE TEST<sup>1</sup>**

	<b>ADMISSABLE ASSETS</b>	<b>Outstanding Amount</b>	<b>Weight Factor</b>	<b>Weighted Assets</b>
<b>1.00</b>	<b>Investments:</b>			
1.10	Shares		80%	.....
1.20	Bonds			
	Government Bonds		100%	.....
	Corporate-High credit quality		95%	.....
	Corporate-Medium to low grade quality		85%	.....
1.30	Real Estate		90%	.....
1.40	Time Deposits		100%	.....
1.50-1.60	Mortgage and Policy Loans		100%	.....
1.71	Other Loans – secured		100%	.....
1.72	Other loans – unsecured		95%	.....
1.80	Other		65%	.....
<b>2.00</b>	<b>Fixed Assets:</b>			
2.10	Real Estate-in own use		90%	.....
2.20-2.40	Other Fixed Assets		65%	.....
<b>3.00</b>	<b>Affiliated companies<sup>2</sup></b>		90%	.....
<b>4.00</b>	<b>Current assets:</b>			
4.10	Cash on hand and at banks		100%	.....
4.20	Agents/brokers balances < 90 days		100%	.....
4.30	Uncollected Premiums, < 90 days		100%	.....
4.40	Investment Income due < 90 days		100%	.....
4.50	Reinsurance Receivables		100%	.....
4.60	Amounts due from Members		100%	.....
4.70	Other		100%	.....
	<b>Total weighted assets</b>			.....
<b>7.00-8.25</b>	<b>Less: Total Borrowings</b>			
	<b>Assets available to cover Technical Provisions</b>			.....
<b>6.00</b>	<b>Less: Technical Provisions</b>			.....
	<b>Surplus or (Deficiency)</b>			.....

For further guidance please refer to V.4 Quarterly Coverage Test Captive Insurance Companies.

<sup>1</sup> In case the company sells insured investment products, whereby the policyholder bears the complete investment risk, the investments and technical provisions associated with these products should not be included in the coverage test calculation. In such case an explanatory note should be added to the coverage test sheet.

<sup>2</sup> A current account with a company within a group is only admissible insofar it originates from the normal course of business.

**REPORTING FORMS**

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**H. SOLVENCY MARGIN REQUIREMENT**

According to section 8, first paragraph of the SDCIC, a captive insurer must have at its disposal a minimum solvency margin amounting to:

- 1) In the case of a pure captive insurer, not less than Afl. 300.000 (Aruban florins);
- 2) In the case of an association or industrial captive insurer, not less than Afl. 500.000 (Aruban florins);
- 3) In the case of rent-a-captive, not less than Afl. 1.000.000 (Aruban florins);
- 4) In the case of other captive insurance company a minimum solvency margin to be determined by the Bank that will range between Afl. 300.000 and Afl. 1.000.000 (Aruban florins).

<b>Solvency Margin Calculation Captive Insurance Companies</b>		
		<i>Amount in AFL 1000</i>
<b>Shareholders' Equity</b> (= available solvency margin)	<b>A</b>	.....
		.....
		.....
Required solvency margin	<b>B</b>	.....
<b>Surplus/(shortfall) (A-B)</b>		.....

**REPORTING FORMS**

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**I. ADMISSABLE ASSETS TO COVER THE MINIMUM SOLVENCY MARGIN**

<b>Assets to cover the applicable minimum Solvency Margin</b>	
	<i>Amount in AFL 1000</i>
1	Treasury bonds issued by the Government of Aruba; .....
2	Shares certificates, debentures, profit-sharing certificate and other similar securities; .....
3	Proof of partnership rights; .....
4	Certificates of the assets as referred to in points 2 and 3; .....
5	Scrip certificates of the assets as referred to in points 1 up to and including 3; .....
6	Acknowledgement of debt towards the insurer, not being treasury bills or debentures, issued by or guaranteed by the Government of Aruba or other public entities in Aruba; .....
7	Acknowledgement of debt towards the insurer, not being debentures, issued by companies incorporated in Aruba or issued by companies incorporated in Aruba for which a license pursuant to section 4 or 24 of the State Ordinance on the Supervision of the Credit System has been granted; .....
	Total _____

**I. AUDITORS' REPORT**



**II. ACTUARIAL REPORT**

Refer to the actuarial guidelines for life (captive) insurance companies issued by the Bank.

**III. ACTUARIAL CERTIFICATION**

Refer to the actuarial guidelines for life (captive) insurance companies issued by the Bank.

**ANNUAL STATEMENTS**  
**NON-LIFE CAPTIVE INSURANCE COMPANIES**

**REPORTING FORMS**

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**1. MANAGEMENT CERTIFICATION**

We, the undersigned, hereby certify as follows:

1. That the attached balance sheet, income statement, and other statements are true and correct.
2. That all assets, liabilities, income and expenditure for the period ending December 31, 20xx are included in these financial statements.
3. That all the assets reported are the property of the company, free of liens and claims, unless stated otherwise in these financial statements.
4. That all known capital and or surplus commitments and contingent liabilities are properly disclosed in these financial statements.

Name and position : \_\_\_\_\_

Signature : \_\_\_\_\_

**2. MANAGEMENT REPORT**

In this report senior-management of the company must elaborate on the most important developments occurred during the reporting year and present the company's projections on the operations of the company for the immediate future.

**REPORTING FORMS**

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**A. BALANCE SHEET**

		CURRENT YEAR	PREVIOUS YEAR
	<b>ASSETS</b>		
1.00	Investments		
2.00	Fixed Assets		
3.00	Affiliated Companies		
4.00	Current Assets		
5.00	Intangibles		
	<b>TOTAL ASSETS</b>		
	<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
6.00	Technical Provisions		
7.00	Long Term Liabilities		
8.00	Current Liabilities		
	<b>TOTAL LIABILITIES</b>		
9.00	Shareholders' Equity		
	<b>TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY</b>		

**REPORTING FORMS**

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**B. INCOME STATEMENT**

		<b>CURRENT YEAR AFL</b>	<b>PREVIOUS YEAR AFL</b>
	<b>INCOME:</b>		
1.00	Net earned premiums		
2.00	Investment income		
3.00	Other income		
	<b>TOTAL INCOME</b>		
	<b>EXPENDITURES:</b>		
4.00	Net claims incurred		
5.00	Commissions and other acquisition costs		
6.00	General and administrative expenses		
7.00	Change in technical provisions		
8.00	Policyholders' dividends		
9.00	Other expenditures		
10.00	Extraordinary results		
	<b>TOTAL EXPENDITURES</b>		
	<b>NET INCOME (LOSS) BEFORE TAXES:</b>		
11.00	Less: Corporate taxes		
	<b>NET INCOME (LOSS) AFTER TAXES</b>		
12.00	Less: Shareholders' dividend		
	<b>NET EARNINGS</b>		

**REPORTING FORMS**

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**C. INCOME STATEMENT BY INDEMNITY GROUP**

		<b>Accident &amp; Health</b>	<b>Motor Vehicle</b>	<b>Marine Transport &amp; Aviation</b>	<b>Property</b>	<b>Other</b>	<b>Total</b>
	<b>INCOME:</b>						
1.00	Net Earned Premiums						
2.00	Investment Income						
3.00	Other Income						
	<b>TOTAL INCOME</b>						
	<b>EXPENDITURES:</b>						
4.00	Net Claims Incurred						
5.00	Commissions and other Acquisition costs						
6.00	General and Administrative Expenses						
7.00	Changes in other Technical Provisions						
8.00	Policyholders' Dividend						
9.00	Other Expenditure						
10.00	Extraordinary Results						
	<b>NET INCOME (LOSS) BEFORE TAXES</b>						



**D. ACCOUNTING AND VALUATION PRINCIPLES**

Summarize the accounting and valuation principles used to prepare the statements and disclose any significant change in the principles applied in comparison with previous year.

**REPORTING FORMS**

**E. NOTES TO THE BALANCE SHEET**

		<b>CURRENT YEAR</b>	<b>PREVIOUS YEAR</b>
<b>1.00</b>	<b>INVESTMENTS:</b>		
1.10	Shares		
1.20	Bonds		
1.30	Real Estate		
1.40	Time Deposits		
1.50	Loans		
1.51	- Secured		
1.52	- Unsecured		
1.60	Other – Specify		
	<b>Total</b>		
<b>2.00</b>	<b>FIXED ASSETS:</b>		
2.10	Real Estate		
2.20	Office Furniture and Equipment		
2.30	Motor Vehicles		
2.40	Other – Specify		
	<b>Total</b>		
<b>3.00</b>	<b>AFFILIATED COMPANIES:</b>		
3.10	Shares		
3.20	Loans		
3.30	Current Accounts		
3.40	Other -Specify		
	<b>Total</b>		
<b>4.00</b>	<b>CURRENT ASSETS:</b>		
4.10	Cash in Hand and at Banks		
4.20	Agents' and Brokers' Debit Balances		
4.30	Uncollected Premiums from Direct Business		
4.40	Investment Income Due or Accrued		
4.50	Amounts Receivable from Reinsurers		
4.60	Amounts Due from Members (Mutual Companies)		
4.70	Other – Specify		
	<b>Total</b>		
<b>5.00</b>	<b>INTANGIBLES</b>		
	(Provide details)		

**REPORTING FORMS**

**E. NOTES TO THE BALANCE SHEET**

*(Continued)*

		<b>CURRENT YEAR</b>	<b>PREVIOUS YEAR</b>
<b>6.00</b>	<b>TECHNICAL PROVISIONS:</b>		
<b>6.10</b>	<b>NET UNEARNED PREMIUM PROVISION:</b>		
6.11	Accident and Health		
6.12	Motor Vehicle		
6.13	Marine, Transport and Aviation		
6.14	Property		
6.15	Other -Specify		
	Sub-total		
<b>6.20</b>	<b>NET CLAIMS PROVISION:</b>		
6.21	Accident and Health		
6.22	Motor Vehicle		
6.23	Marine, Transport and Aviation		
6.24	Property		
6.25	Other -Specify		
	Sub-total		
<b>6.30</b>	<b>FUNDS PROVISION:</b>		
6.31	Accident and Health		
6.32	Motor Vehicle		
6.33	Marine, Transport and Aviation		
6.34	Property		
6.35	Other - Specify		
	Sub-total		
<b>6.40</b>	<b>OTHER TECHNICAL PROVISIONS:</b>		
6.41	Accident and Health		
6.42	Motor Vehicle		
6.43	Marine, Transport and Aviation		
6.44	Property		
6.45	Other - Specify		
	Sub-total		
	<b>TOTAL</b>		
<b>7.00</b>	<b>LONG TERM LIABILITIES:</b>		
7.10	Loans from Financial Institutions		
7.20	Members' Loans/Loans Affiliates		
7.30	Other-Specify		
	<b>TOTAL</b>		

**REPORTING FORMS**

**E. NOTES TO THE BALANCE SHEET**

*(Continued)*

		<b>CURRENT YEAR</b>	<b>PREVIOUS YEAR</b>
<b>8.00</b>	<b>CURRENT LIABILITIES:</b>		
8.05	Premiums Paid in Advance		
8.10	Premiums in Suspense		
8.15	Agents' and Brokers' Credit Balances		
8.20	Claims Outstanding		
8.25	Bank Overdrafts and Loans		
8.30	Amounts Due to Reinsurers		
8.35	Corporate Taxes Payable		
8.40	Dividends Payable to Policyholders		
8.45	Dividends Payable to Shareholders		
8.50	Amounts Payable to Members – (Mutual Companies)		
8.55	Amounts Payable to Affiliated Companies		
8.60	Other – Specify		
	<b>TOTAL</b>		
<b>9.00</b>	<b>SHAREHOLDERS' EQUITY/SURPLUS-DEFICIT</b>		
	<b>ARUBA BRANCH:</b>		
9.10	Issued and paid- in Capital		
9.20	Reserves- specify		
9.30	Retained Earnings / (unrelieved losses)		
	<b>TOTAL</b>		
	<b>OFF BALANCE SHEET AND MEMORANDUM ITEMS:</b>		
	Contingent Liabilities (Provide details)		
	Commitments (Provide details)		
	Related Party Transactions (Provide details)		

**REPORTING FORMS**

**F. NOTES TO THE INCOME STATEMENT**

		<b>CURRENT YEAR</b>	<b>PREVIOUS YEAR</b>
<b>1.00</b>	<b>NET EARNED PREMIUMS:</b>		
1.10	Direct Written Premiums		
1.20	Assumed Premiums		
	Gross Written Premiums		
1.30	Less: Ceded Premiums		
	Net Written Premiums		
1.40	Change In Unearned Premium Provision		
	<b>TOTAL</b>		
<b>2.00</b>	<b>INVESTMENT INCOME:</b>		
2.10	Direct Investment Income		
2.11	Dividend		
2.12	Interest Bonds		
2.13	Income From Rent		
2.14	Interest Time Deposits		
2.15	Interest Loans		
2.16	Other – Specify		
	<b>TOTAL</b>		
<b>2.20</b>	<b>INDIRECT INVESTMENT INCOME:</b>		
2.21	Revaluation Adjustments		
2.22	Capital Gain/(Loss) On Sales		
2.23'	Capital Gain/(Loss) On Exchange Rates		
2.24	Other – Specify		
	<b>TOTAL</b>		
<b>3.00</b>	<b>OTHER INCOME-(provide details)</b>		
<b>4.00</b>	<b>NET CLAIMS INCURRED:</b>		
4.10	Direct Claims Paid		
4.20	Assumed Claims Paid		
	Gross Claims Paid		
4.30	Less: Ceded Claims Recovered		
	Net Claims Paid		
4.40	Change In Net Claims Provision		
	<b>TOTAL</b>		

**REPORTING FORMS**

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**F. NOTES TO THE INCOME STATEMENT**

*(Continued)*

		<b>CURRENT YEAR</b>	<b>PREVIOUS YEAR</b>
<b>5.00</b>	<b>CHANGES IN OTHER TECHNICAL PROVISIONS:</b>		
5.10	Change in Funds Provision		
5.20	Change in other Technical Provisions		
	<b>TOTAL</b>		
<b>7.00</b>	<b>GENERAL AND ADMINISTRATIVE EXPENSES:</b>		
7.10	Personnel costs (including social premiums)		
7.20	Other-Specify		
	<b>TOTAL</b>		

**REPORTING FORMS**

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**G. NOTES TO THE INCOME STATEMENT BY INDEMNITY GROUP**

		Direct written premium	Assumed premiums	Gross Written premiums	Ceded premiums	Net written premiums	Change in unearned premiums provisions	Net earned premium
<b>1.10</b>	<b>Accident &amp; health:</b>							
1.11	Accident							
1.12	Medical							
1.13	Disability							
1.14	Other							
	<b>Sub-total</b>							
<b>1.20</b>	<b>Motor Vehicle</b>							
1.21	All risk							
1.22	Third party liability							
1.23	Disability							
1.24	Other							
	<b>Sub-total</b>							
<b>1.30</b>	<b>Marine, transport and aviation:</b>							
1.31	Ocean Marine							
1.32	Inland Marine							
1.33	Aircraft							
1.34	Other							
	<b>Sub-total</b>							
<b>1.40</b>	<b>Property:</b>							
1.41	Fire							
1.42	Homeowners multiple peril							
1.43	Commercial multiple peril							
1.44	Business interruption							
1.45	Burglary and theft							
1.46	Other							
	<b>Sub-total</b>							
<b>1.50</b>	<b>Other:</b>							
1.51	Other - Specify							
	<b>Sub-total</b>							
	<b>TOTAL</b>							

**REPORTING FORMS**

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**H. BREAK-DOWN OF THE INVESTMENTS**

* AFL 1,000		LOCAL INVESTMENTS	FOREIGN INVESTMENTS	TOTAL
	<b>TYPE</b>			
	<b>1.00 INVESTMENTS</b>			
	1.10 SHARES			
	1.20 BONDS			
	1.30 REAL ESTATE			
	1.31 - OWN USE			
	1.32 - OTHER			
	1.40 TIME DEPOSITS WITH FINANCIAL INSTITUTIONS			
	1.50 LOANS			
	1.51 - SECURED			
	1.52 - UNSECURED			
	1.60 OTHER – SPECIFY			
	<b>TOTAL INVESTMENTS</b>			



**REPORTING FORMS**

**I. COVERAGE TEST**

* AFL 1,000	Admissible assets:	Outstanding amount	Weight Factor	Weighted Assets
<b>1.00</b>	<b>Investments:</b>		<b>%</b>	
1.10	Shares		80%	.....
1.20	Bonds:			
	Government bonds		100%	.....
	Corporate: Highest or strong credit quality		95%	.....
	Corporate: Upper medium to medium low quality		85%	.....
1.30	Real estate		90%	.....
1.40	Time deposits		100%	.....
1.51	Loans secured		100%	.....
1.52	Loans – unsecured		95%	.....
1.60	Other		65%	.....
<b>2.00</b>	<b>Fixed assets:</b>			
2.10	Real estate		90%	.....
2.20/2.30/2.40	Other fixed assets		65%	.....
<b>3.00</b>	<b>Affiliated Companies <sup>1</sup></b>		90%	.....
<b>4.00</b>	<b>Current assets</b>			
4.10	Cash in hand and at banks		100%	.....
4.20	Agents/brokers balances, 90 days and under		100%	.....
4.30	Uncollected premiums, 90 days and under		100%	.....
4.40	Investment income due, 90 days and under		100%	.....
4.50	Amounts receivable from reinsurers		100%	.....
4.60	Amounts due from members		100%	.....
4.70	Other		100%	.....
	<b>Total weighted assets</b>			.....
<b>7.00/8.25</b>	<b>Less: Total Borrowings</b>			.....
	<b>Assets available to cover Technical provisions</b>			.....
<b>6.00</b>	<b>Less: Technical provisions</b>			.....
	<b>Surplus or (Deficiency)</b>			.....

For further guidance please refer to V.4 Quarterly Coverage Test Captive Insurance Companies.

<sup>1</sup> A current account with a company within a group is only admissible insofar it originates from the normal course of business.

REPORTING FORMS

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**J. SOLVENCY MARGIN CALCULATION CAPTIVE INSURANCE COMPANIES**

<b>Solvency Margin Calculation Captive Insurance Companies</b>		
<i>Amount in AFL 1000</i>		
<b>Shareholders' Equity</b> (= available solvency margin)	<b>A</b>	.....
Required solvency margin	<b>B</b>	.....
<b>Surplus/(shortfall) (A-B)</b>		.....

**REPORTING FORMS**

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**K. ADMISSIBLE ASSETS TO COVER MINIMUM SOLVENCY MARGIN**

According to section 8, first paragraph of the SDCIC, a captive insurer must have at its disposal a minimum solvency margin amounting to:

- 5) In the case of a pure captive insurer, not less than Afl. 300.000 (Aruban florins);
- 6) In the case of an association or industrial captive insurer, not less than Afl. 500.000 (Aruban florins);
- 7) In the case of rent-a-captive, not less than Afl. 1.000.000 (Aruban florins);
- 8) In the case of other captive insurance company a minimum solvency margin to be determined by the Bank that will range between Afl. 300.000 and Afl. 1.000.000 (Aruban florins).

<b>Assets to cover the applicable minimum Solvency Margin</b>		<i>Amount in AFL 1000</i>
1	Treasury bonds issued by the Government of Aruba;	.....
2	Shares certificates, debentures, profit-sharing certificate and other similar securities;	.....
3	Certificates of the assets as referred to in points 2;	.....
4	Scrip certificates of the assets as referred to in point 3;	.....
5	Acknowledgement of debt towards the insurer, not being treasury bills or debentures, issued by or guaranteed by the Government of Aruba or other public entities in Aruba;	.....
6	Acknowledgement of debt towards the insurer, not being debentures, issued by companies incorporated in Aruba or issued by companies incorporated in Aruba for which a license pursuant to section 4 or 24 of the State Ordinance on the Supervision of the Credit System has been granted;	.....
	<b>Total</b>	_____

**I. AUDITORS' REPORT**

**II. ACTUARIAL REPORT**

**III. ACTUARIAL CERTIFICATION**

## V.4 Quarterly Coverage Test Captive Insurance Companies

### 1. Legal framework

According to article 7 of the State Decree Captive Insurance Companies (AB 2002 no. 50) (SDCIC) an insurer should maintain adequate technical provisions which are fully covered by assets. The Centrale Bank of Aruba (CBA) may raise objections against the nature and valuation of these assets, which objections shall be promptly met by the insurer and the CBA can provide general guidelines with regard to the contents and the magnitude of the technical provisions.

### 2. Purpose

The purpose of article 7 of the SDCIC is to ensure that the technical provisions are at all times fully covered by sufficient and acceptable assets in order to guarantee that an insurer can meet its actual and future obligations.

### 3. Policy

In exhibit 1 (captive life insurance companies) and 2 (captive nonlife insurance companies) the CBA has listed the categories of assets that can be maintained to cover the technical provisions with their respective weight factors. In order to address specific risk issues, such as the risk that assets could lose value, the CBA has applied the assets-risk method. This method is part of the so-called “risk-based capital” standards. According to this method, a risk factor will be assigned to each assets category. This factor is related to the riskiness of the assets. The riskiness is associated with the insurer’s assets losing value and therefore no longer being adequate to cover the liabilities. In order to determine the required amount needed to cover the risk, individual groups of assets are examined separately. The balance sheet values of the relevant assets categories used are multiplied by factors (percentages), which after they have been multiplied by a risk factor are to reflect the special risk of the asset group (excluding the interest rate risk). The lower the risk, the lower the risk factor applied. Government paper for example bears a 0% risk factor while shares bear a 20% risk factor.

### 4. Coverage test

The “total weighted assets” to cover the technical provisions is derived by adding up the sum of the assets multiplied by their respective weight factor.

The amount of the technical provision must be subtracted from the “assets to cover the technical provision” resulting in either a deficit or a surplus. In case of a deficit, the CBA must be notified thereof immediately and, furthermore, a remediation plan must be prepared and submitted to the CBA for its approval.

**REPORTING FORMS**

**Exhibit 1: COVERAGE TEST<sup>1</sup> FOR CAPTIVE LIFE INSURANCE COMPANIES**

	<b>ADMISSABLE ASSETS</b>	<b>Outstanding Amount</b>	<b>Weight Factor</b>	<b>Weighted Assets</b>
<b>1.00</b>	<b>Investments</b>			
1.10	Shares	.....	80%	.....
1.20	Bonds			
	Government Bonds	.....	100%	.....
	Corporate-High credit quality	.....	95%	.....
	Corporate-Medium to low grade quality	.....	85%	.....
1.30	Real Estate	.....	90%	.....
1.40	Time Deposits	.....	100%	.....
1.50-1.60	Mortgage and Policy Loans	.....	100%	.....
1.71	Other Loans-secured	.....	100%	.....
1.72	Other loans-unsecured	.....	95%	.....
1.80	Other investments	.....	65%	.....
<b>2.00</b>	<b>Fixed Assets:</b>			
2.10	Real Estate-in own use	.....	90%	.....
2.20-2.40	Other Fixed Assets	.....	65%	.....
<b>3.00</b>	<b>Affiliated companies <sup>2</sup></b>	.....	90%	.....
<b>4.00</b>	<b>Current assets</b>			
4.10	Cash on Hand and at Banks	.....	100%	.....
4.20	Agents'/brokers' balances, 90 days and under	.....	100%	.....
4.30	Uncollected Premiums, 90 days and under	.....	100%	.....
4.40	Investment Income, due 90 days and under	.....	100%	.....
4.50	Amounts Receivable from Reinsurers	.....	100%	.....
4.60	Amounts Due from members <sup>3</sup>	.....	100%	.....
4.70	Other – specify	.....	100%	.....
	<i>Total weighted assets</i>			.....
<b>8.00</b>	<b>Less: Current liabilities</b>			.....
	Assets available to cover Technical Provisions			.....
<b>6.00</b>	<b>Less: Technical Provisions</b>			.....
	<b>Surplus/Deficit</b>			.....
	<b>Coverage ratio (in percent)</b>			.....

<sup>1</sup> In case the company sells insured investment products, whereby the policyholder bears the complete investment risk, the investments and technical provisions associated with these products should not be included in the coverage test calculation. In such case an explanatory note should be added to the coverage test sheet.

<sup>2</sup> A current account with a company within a group is only admissible insofar it originates from the normal course of business.

<sup>3</sup> Only applicable to mutual insurance companies.



**REPORTING FORMS**

**Exhibit 2: COVERAGE TEST FOR CAPTIVE NONLIFE INSURANCE COMPANIES**

AFL	Admissible assets	Outstanding amount	Weight Factor	Weighted Assets
<b>1.00</b>	<b>Investments</b>		<b>%</b>	
1.10	Shares	.....	80%	.....
1.20	Bonds			
	Government bonds	.....	100%	.....
	Corporate: Highest or strong credit quality	.....	95%	.....
	Corporate: Upper medium to medium low quality	.....	85%	.....
1.30	Real estate	.....	90%	.....
1.40	Time deposits	.....	100%	.....
1.51	Loans-secured	.....	100%	.....
1.52	Loans-unsecured	.....	95%	.....
1.60	Other	.....	65%	.....
<b>2.00</b>	<b>Fixed assets</b>			
2.10	Real estate	.....	90%	.....
2.20/2.30/2.40	Other fixed assets	.....	65%	.....
<b>3.00</b>	<b>Affiliated Companies <sup>1</sup></b>	.....	90%	.....
<b>4.00</b>	<b>Current assets</b>			
4.10	Cash in Hand and at Banks	.....	100%	.....
4.20	Agents'/brokers' balances, 90 days and under	.....	100%	.....
4.30	Uncollected premiums, 90 days and under	.....	100%	.....
4.40	Investment income due, 90 days and under	.....	100%	.....
4.50	Amounts receivable from reinsurers	.....	100%	.....
4.60	Amounts due from members <sup>2</sup>	.....	100%	.....
4.70	Other	.....	100%	.....
	<i>Total weighted assets</i>			.....
<b>8.00</b>	<b>Less: Current liabilities</b>			.....
	Assets available to cover Technical provisions			.....
<b>6.00</b>	<b>Less: Technical provisions</b>			.....
	<b>Surplus/deficit</b>			.....
	<b>Coverage ratio (in percent)</b>			.....

- 1 A current account with a company within a group is only admissible insofar it originates from the normal course of business.
- 2 Only applicable to mutual insurance companies.

Annex 1



CENTRALE BANK VAN ARUBA

# PERSONAL QUESTIONNAIRE

&

ASSOCIATED GUIDANCE NOTES

April 1, 2020

**J.E. Irausquin Boulevard 8 P.O. Box 18 Oranjestad Aruba**

**[www.cbaruba.org](http://www.cbaruba.org)**

# GUIDANCE NOTES

## PURPOSE AND SCOPE

The Centrale Bank van Aruba ('CBA') is, amongst other things, responsible for the integrity and suitability testing of prospective Key Persons (Candidates) in relation to an entity under its supervision pursuant to:

- the State Ordinance on the Supervision of the Credit System (*Landsverordening toezicht kredietwezen* or 'SOSCS')<sup>1</sup>;
- the State Ordinance on the Supervision of the Insurance Business (*Landsverordening toezicht verzekeringsbedrijf* or 'SOSIB')<sup>2</sup>;
- the State Ordinance on the Supervision of Money Transfer Companies (*Landsverordening toezicht geldtransactiebedrijven* or 'SOSMTC')<sup>3</sup>; and
- the State Ordinance on the Supervision of Trust Service Providers (*Landsverordening toezicht trustkantoren* or 'SOSTSP')<sup>4</sup>;
- the State Ordinance on Company Pension Funds (*Landsverordening ondernemingspensioenfondsen* or 'SOCPF')<sup>5</sup>;
- the State Ordinance on the Supervision of the Securities Business (*Landsverordening toezicht effectenverkeer* or 'SOSSB')<sup>6</sup>;
- the State Decree on the Supervision of Insurance Brokers (*Landsbesluit toezicht assurantiebemiddelaars* or 'SDSIB')<sup>7</sup>;

(henceforth referred to as the 'Supervisory Laws')

Pursuant to the Supervisory Laws, the CBA's prior approval is required to appoint or become a Key Person. In this respect, relevant information must be submitted to enable the CBA to assess the integrity and suitability of the Candidate.

These guidance notes seek to assist Applicants and Candidates by clarifying areas of uncertainty that may arise when completing or answering questions contained within this Personal Questionnaire ('PQ').

When assessing integrity the CBA looks at facts and circumstances that are relevant to ascertain if the behaviour of the Candidate is in line with a sound execution of the key position. When assessing suitability the CBA looks at the knowledge, experience and professional conduct of the Candidate as evident from, for instance, education, work experience, competences and their practical application. Suitability testing takes into account the key position, the nature, scope, complexity, and risk profile of the Regulated Entity, and the composition<sup>8</sup> and functioning of the respective managing or supervisory body as a whole. If the integrity of the Candidate is not beyond doubt and/or the suitability is not sufficient to fulfil the function in question, the CBA can refuse the request for approval of the Candidate in a key position.

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<sup>1</sup> Article 5, paragraph 1, subsections a, b and c; and article 9 of the SOSCS.

<sup>2</sup> Article 6, paragraph 1, subsections a and b; and article 17 of the SOSIB.

<sup>3</sup> Article 4, paragraph 1, subsections a, b and c; and article 5, paragraphs 2 and 3 of the SOSMTC.

<sup>4</sup> Article 3, paragraph 1, subsections b, c and d; and article 5; and article 5a of the SOSTSP.

<sup>5</sup> Article 4 of the SOCPF.

<sup>6</sup> Article 19 and article 20 of the SOSSB.

<sup>7</sup> Article 6 of the SDSIB.

<sup>8</sup> In the assessment of the composition of the Supervisory Board, the CBA also takes into account the independence requirements as laid down in the Corporate Governance Policy Papers.

For the purpose of this PQ and associated guidance notes:

**Applicant** includes the Regulated Entity which has filed an application for approval to appoint a Key Person or, in case the application relates to a qualifying holding<sup>9</sup> in a Regulated Entity, the person who holds or will hold the qualifying holding.

**Candidate** means the prospective Key Person.

**CBA** means Centrale Bank van Aruba.

**Key Person** is

- a. a natural person who is a managing director or a person who otherwise (co)-determines the policy of a Regulated Entity;
- b. a natural person who is a member of the supervisory board or a comparable body of a Regulated Entity;
- c. a holder (natural person) of a qualifying holding in a Regulated Entity (excluding company pension funds) or, in case the holder of the qualifying holding is a legal person, the persons who determine the policy of this legal person.

**Regulated Entity** includes an entity that is regulated under any of the Supervisory Laws and supervised by the CBA.

## **PROCESS FOR APPROVAL**

The process for approval usually involves at least three parties:

- the Applicant;
- the Candidate;
- the CBA.

After the Candidate and the Applicant have completed the PQ, the Applicant must submit the PQ and all other requested documents to the CBA for its review and approval.

Upon completion of the assessment and after the CBA has reached a conclusion on the integrity and suitability of the Candidate (which may take up to thirteen weeks once all requested information and documents are in the CBA's possession), the CBA sends its decision to the Applicant. It is very important that the CBA be informed of the proposed commencing date. In this regard it is noteworthy to mention that the Candidate may not exercise the proposed function without the CBA's prior approval. The CBA's decision is subject to objection and appeal by both the Applicant and the Candidate in accordance with the provisions of the State Ordinance on Administrative Proceedings (*Landsverordening administratieve rechtspraak*).

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<sup>9</sup> A qualifying holding is a direct or indirect holding of ten percent or more of the issued share capital or the ability to exercise directly or indirectly ten percent or more of the voting rights or comparable control.

Notwithstanding legal procedures regarding the CBA's decision, the Candidate concerned may not act as a Key Person until the CBA has given its written approval.

It should be noted that approval by the CBA always concerns a specific position in relation to a specific Regulated Entity in specific circumstances. If circumstances change (e.g. the Regulated Entity becomes active in a new field of business), or the person concerned is to be appointed in a new Key Person position or in a Key Position at a different Regulated Entity, a new application must be filled out and submitted to the CBA (see section "*Continuing obligation to advise the CBA of changes*" below).

**The CBA reserves the right to request a PQ to be completed if, in the CBA's opinion, the person is considered to be a Key Person.**

## **REQUIRED INFORMATION**

In addition to the PQ, the following documents must be submitted to the CBA as part of the application.

### **Documents and information to be provided by the Applicant:**

- a formal request for the appointment of the proposed Candidate, including the reason(s) for the proposed appointment;
- the Regulated Entity's recruitment and selection policy and procedures. This concerns in any case the actual assessment that was followed for the recruitment and selection of the Candidate. If a suitability matrix of the body at which the Candidate will become a member is available this must also be submitted;
- the profile of the function concerned. This profile must at least contain information on the tasks and responsibilities (focus areas) and the expected time expenditure, the required knowledge, experience and competences for the function concerned; and
- the Regulated Entity's decision-making process regarding the selection of a Candidate and the considerations that led to the outcome of the selection process. The considerations must indicate the extent to which the Candidate meets the function profile, in terms of knowledge, experience, competences and professional conduct, taking into account the composition and functioning of the body of which the Candidate will become a member.

### **Documents and information to be provided by the Candidate:**

- a certified true copy of the photograph and signature page(s) of the Candidate's passport ensuring that the photograph is clear and the signature legible;<sup>10</sup>
- an extract (*uittreksel*) from the Civil Registry (*Bevolkingsregister*) regarding the Candidate not older than two (2) months;
- a declaration of good conduct (*Verklaring omtrent het gedrag*) or an equivalent declaration from the relevant judicial authority from where the Candidate is domiciled, not older than three (3) months;
- a declaration of good standing of the tax authority (*Verklaring van fiscaal gedrag*) from where the Candidate is domiciled, not older than three (3) months.
- copies of the test results of any assessment with respect to the Candidate's integrity or suitability by a regulator (in Aruba or elsewhere) in charge with financial supervision;

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<sup>10</sup> This copy must be certified by a Key Person approved by the CBA or a civil notary. The Key Person certifying the copy of the passport should state, "I certify that this is a true copy of the original page(s) of the passport of [individual's name] presented to me on [date]." The Key Person certifying should also sign and date the copy and print their name and capacity in which they have signed.

- copies of the Candidate's certificated qualifications (including proof of relevant courses attended);
- the Candidate's curriculum vitae; and
- if the Candidate holds any direct or indirect financial and/or controlling interest of ten percent or more in another institution, a copy of the articles of incorporation, the shareholders' register, an extract from the Chamber of Commerce, and the most recent financial statements of that institution.

If the CBA deems it necessary, it may ask the Applicant or Candidate for additional information. Furthermore, the CBA may invite the Candidate for an interview. The CBA may also consult with third parties, such as the references provided by the Candidate, the Chamber of Commerce and Industry Aruba, law enforcement agencies, foreign regulators in charge with financial supervision, tax authorities and any other agencies or persons that may be able to provide relevant information on the Candidate. By submitting and signing this PQ both the Applicant and the Candidate provide their consent to the information gathering by the CBA from third parties.

### **CONTINUING OBLIGATION TO ADVISE THE CBA OF CHANGES**

On an on-going basis, the CBA is to be informed of any changes to information previously submitted in the PQ and all other circumstances that can reasonably be considered relevant to the CBA's assessment of the Key Person involved. This obligation lies with the Applicant. On the basis of the new information, or other new facts or circumstances, the CBA may decide to conduct a reassessment of the Key Person's integrity and suitability.

### **RESIGNATIONS**

Should a Key Person cease to fulfill this role, the CBA should be advised by the Regulated Entity of the date that the Key Person ceased acting in this capacity and the reason for such cessation. However, should a person be a Key Person by way of his or her qualifying holding in the Regulated Entity, the CBA should be informed of any change in the qualifying holding by the person holding the (qualifying) holding.

### **COMMUNICATION WITH KEY PERSONS**

The CBA will in principle communicate with the Applicant. However, the CBA may invite the Candidate for an interview and thus have direct contact with this person. Also for clarifications on matters that regard the Applicant's antecedents, the CBA may decide to contact the Applicant directly.

### **GENERAL POINTS**

This PQ comprises of 13 sections and each section contains a number of questions. All questions contained in the PQ must be answered.

<b>All responses should be typed or written in blue ink.</b>
--

Incomplete PQs will be returned to the Applicant for completion and resubmission. The Key Person should initial all amendments to confirm they are correct.

All (other) facts and circumstances that can reasonably be considered relevant to the CBA's assessment must be disclosed in the application. Withholding such information may be considered as providing misleading information and as such may have consequences for this application and future applications.

If you have any further questions concerning the completion of this form, you can contact the CBA via e-mail address: [informationcenter@cbaruba.org](mailto:informationcenter@cbaruba.org).

### **SUBMISSION OF THE PQ**

After completion, the PQ should be signed by both the Applicant and the Candidate. The Applicant must submit its request for the appointment of the proposed Candidate, including the filled-out PQ and required documents, to the CBA in hardcopy and provide the CBA with an electronic readable version (pdf format) via e-mail address [informationcenter@cbaruba.org](mailto:informationcenter@cbaruba.org).



CENTRALE BANK VAN ARUBA

# PERSONAL QUESTIONNAIRE

**All questions must be answered.**

**Please refer to the Guidance Notes to aid completion of this Personal Questionnaire.**

All responses should be typed or written in **blue ink**.

Any attachments should be clearly referenced to the relevant question(s) and signed by the individual completing the Personal Questionnaire, as confirmation that they are complete and accurate.

The CBA reserves the right to seek references from organizations and individuals named in this Personal Questionnaire, including foreign regulatory authorities. It is important, therefore, to ensure that **full and accurate names, addresses, and contact information** are provided.

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CENTRALE BANK VAN ARUBA

*Information to be provided by the Applicant*

All responses should be typed or written in **blue ink**.

**SECTION 1**

**1.1 Name and address of the Regulated Entity at which the Candidate will become a Key Person:**

--

**1.2 In which function will the Candidate become a Key Person:**

Please provide the job title and a brief description of the role to be undertaken. If the Candidate is to fulfil more than one role, please specify.

--

**1.3 Please state the main tasks and responsibilities in respect of the function in which the Candidate will become a Key Person:**

--

**1.4 Proposed commencement date of the Key Person's duties:**

Please note that the proposed commencement is a date in the future and cannot be the same date as the Application form due to the fact that only after the CBA's approval the Key Person is allowed to exercise the proposed function.

<b>Day:</b>			<b>Month:</b>		<b>Year:</b>	
-------------	--	--	---------------	--	--------------	--

**1.5 Provide an overview of the new composition of the Managing Board or Supervisory Board after the appointment and approval of the proposed Candidate.**

Please state for each Supervisory Board member whether he/she is independent.

--

**1.6 Mark the relevant boxes to indicate the legislation under which you are seeking approval:**

<b>State Ordinance on the Supervision of the Credit System</b>	
<b>State Ordinance on the Supervision of the Insurance Business</b>	
<b>State Ordinance on the Supervision of Money Transfer Companies</b>	
<b>State Ordinance on the Supervision of Trust Service Providers</b>	
<b>State Ordinance on the Supervision of the Securities Business</b>	
<b>State Ordinance on Company Pension Funds</b>	
<b>State Decree on the Supervision of Insurance Brokers</b>	

***Information to be provided by the Candidate***

All responses should be typed or written in **blue ink**.

Please refer to the Guidance Notes to aid completion of this PQ.

**If you need more writing space to answer a question than provided by this PQ, please provide the requested details on a clearly referenced attachment. The answers provided must be legible.**

**SECTION 2 – Personal Details**

**2.1 Surname:**

	<b>Title(s):</b>	
--	------------------	--

**2.2 Given name(s):**

--

**2.3 Place of birth:**

<b>Town/City:</b>		<b>Country</b>	
-------------------	--	----------------	--

**2.4 Date of birth:**

<b>Day:</b>		<b>Month:</b>		<b>Year:</b>	
-------------	--	---------------	--	--------------	--

**2.5 Nationalities and how acquired:**

<b>Nationality:</b>		<b>Acquired:</b>	
---------------------	--	------------------	--

**2.6 Private address (including, if applicable, postal code):**

--

**Home telephone number:**

<b>Country/area code:</b>		<b>Number:</b>	
---------------------------	--	----------------	--

**Personal mobile number:**

--

**Private email address:**

--

**2.7 Business telephone number:**

<b>Country/area code:</b>		<b>Number:</b>	
---------------------------	--	----------------	--

**Business fax number:**

<b>Country/area code:</b>		<b>Number:</b>	
---------------------------	--	----------------	--

**Business email address:**

--

**2.8 Passport:**

<b>Number:</b>		<b>Expiry date:</b>	
----------------	--	---------------------	--

<b>Issuing country:</b>	
-------------------------	--

**2.9 Have you ever changed your name?**

Please include details of any changes to your name, including forenames and surnames, e.g. through marriage.

**\*YES / NO**

**\*If YES, please list all previous names (given names and surnames), the dates on which they were changed and reasons for the change.**

<b>Previous full name(s) &amp; title</b>	<b>Date changed</b>	<b>Registry at which details are recorded</b>	<b>Reason for change</b>

**2.10 Have you changed your private address at any time in the previous ten years?**

**\*YES / NO**

**\*If YES, please give details of each address and the date (mm/yy) on which it changed.**

<b>Previous address(es)</b>	<b>Date changed</b>

**2.11 Have you ever changed your nationality?**

**\*YES / NO**

**\*If YES, please list all previous nationalities, the date, how they were acquired/lost.**

<b>Previous nationalit(y)(ies)</b>	<b>Date changed</b>	<b>Acquired by</b>	<b>Lost through</b>

**2.12 Please provide the name(s) and address(es) of all banks where you hold accounts.**

<b>Name(s) of bank(s)</b>	<b>Address(es)</b>

**2.13 Are you a 'Politically Exposed Person' (PEP)?**

A PEP or Politically Exposed Person means a person who holds or held a prominent public position, as well as direct family members and direct associates of such a person.

**\*YES / NO**

**\*If YES, please give details.**

--

## SECTION 3 – Experience

*Not applicable in case the application relates to a (qualifying) holding in a Regulated Entity.*

### 3.1 Please state the number of contracted hours per week or month that you anticipate dedicating to this position.

If this position is not full-time, please explain what other roles and activities will be occupying your time. Answers such as ‘as much time as is necessary’ or similar are not acceptable and actual indicative hours are required.

### 3.2 Will you be acting as a Managing Director or Supervisory Board Member?

**\*YES / NO**

\*If YES, please provide full details on your role and what particular contribution you will bring. Please use clearly referenced attachments if needed.

\*If YES, please also give details of your current day-to-day employment position(s).

### 3.3 Employment history

Please provide details of your current employment position and your employment history. Your reasons for leaving should be categorised as follows:

1. Resignation;
2. Redundancy;
3. Retirement;
4. Termination/dismissal;
5. End of contract; and
6. Other (please provide details).

Please provide as much contact information as possible on any relevant regulator in order to accelerate the inter-regulatory checks process undertaken by the CBA.

Should you, or the Regulated Entity in relation to whom you will become a Key Person, maintain or have previously maintained a business relationship with any of your previous employers listed, please give details using a clearly referenced attachment.

<b>Name / address of employer and nature of business</b>	<b>Name of regulator</b>	<b>Position(s) held</b>	<b>Relevant dates (mm/yy)</b>	<b>Reason(s) for leaving</b>

**3.4 Please provide details of any employment or otherwise important positions, whether paid or unpaid, including memberships of a board or a committee, which you will not resign from when you will become a Key Person.**

<b>Name / address of organization and nature of business or activities</b>	<b>Name of regulator</b>	<b>Position(s) held</b>	<b>Relevant dates (mm/yy)</b>	<b>Task and responsibilities</b>	<b>Total number of contracted hours per week or month that is dedicated to the position</b>

**3.5 Please provide details of relevant professional qualifications, degrees, etc.**

Please state the awarding body (to include full name and address), the date the qualification was obtained and provide a copy of the awarding certificate.

<b>Qualification(s)</b>	<b>Date awarded (dd/mm/yy)</b>	<b>Name &amp; address of awarding body</b>



**3.6 Please provide details of past and current membership of any relevant professional body or organization and the year of admission.**

If applicable, please provide details of why your membership ceased.

<b>Membership details</b>	<b>Date of admission (dd/mm/yy)</b>	<b>Name and address of professional body or organization</b>

A relevant professional body or organization would in any case include an organization of fellow professionals.

**3.7 Please provide details of your specific experience (knowledge, capabilities, competences, etc.) relevant to the position.**

**3.8 Please provide three independent references and further details, including their names, positions, addresses, telephone numbers, e-mail addresses and relationship to you (not applicable in case the application relates to a (qualifying) holding in a Regulated Entity).**

The references should preferably have affinity with the financial or trust sector and (used to) work as your direct superior(s) or fellow (co-)policymaker(s). At least one of the three references should work for your last/current employer.

Persons who cannot act as references include persons related by consanguinity in a direct or indirect line up to and including relations in the third degree, your (former) spouse or partner.

Listed references must be notified in advance and be prepared to act in such a capacity.

<b>Name</b>	<b>Position</b>	<b>Address, telephone number(s), e-mail address(es)</b>	<b>Relationship to you</b>

## SECTION 4 – Criminal antecedents

**4.1 At any time, have you been considered a suspect in a criminal investigation in Aruba or elsewhere, or do you expect to be considered as such?**

**\*YES / NO**

\*If YES, please specify and explain the criminal offence, the state of affairs and the outcome of each case, e.g. still under investigation, conviction, acquittal, discharge from further prosecution, a settlement or (conditional) dismissal of charges. For each case, please provide details, including relevant dates, courts, current status of the proceedings (if still pending), etc.

Please also include traffic offences (minor traffic violations may be excluded).

Traffic offences include:

- joyriding;
- driving under the influence of alcohol or drugs;
- hit-and-run driving;
- driving while under a disqualification order;
- driving during suspension of driving license;
- involuntary manslaughter;
- driving with false license plates.

**4.2 Has any institution whose policy is or was (co-)determined by you, e.g. as a managing director or supervisory board member, ever been a suspect in a criminal investigation?**

**\*YES / NO**

\*If YES, please specify and explain the criminal offence, state of affairs and the outcome of each case, e.g. still under investigation, conviction, acquittal, discharge from further prosecution, a settlement or (conditional) dismissal of charges. For each case, please provide details, including relevant dates, courts, whether or not proceedings are pending or final, etc.

Where applicable, please explain how you were involved or how the offence related to your responsibilities.

This question includes the indirect (co-)determination of policies of companies through the provision of trust services as defined in Article 1 of the SOSTSP.

**4.3 Are you/ have you been involved in any criminal related matters not covered by the previous questions?**

**\*YES / NO**

\*If YES, please provide details.

--

**SECTION 5 – Personal financial antecedents**

**5.1 Do your personal financial liabilities stand in a sound relationship, by general standards, to your income and/or personal assets?**

**\*YES/NO**

\*If NO, please explain.

**5.2 Have you been in any financial problems or personal financial difficulties?**

**\*YES/NO**

\*If YES, please explain if these problems have led to any legal, debt collecting or debt recovery proceedings and how this situation was resolved (e.g. suspension of payments petition filed/declared, bankruptcy petition filed/declared, debts rescheduled, agreement with creditors).

**5.3 Do you expect, within a year from today, to run into financial difficulties leading to legal, debt collecting or debt recovery steps?**

**\*YES/NO**

\*If YES, please explain.

**5.4 Are there any other facts or circumstances on your personal financial position that could be of relevance for the integrity assessment?**

**\*YES/NO**

\*If YES, please provide details.

## SECTION 6 – Supervisory antecedents

**6.1 Have you, or has any institution whose policy is or was (co-)determined by you, ever had a permission, an authorization, a license, an exemption, a dispensation or a registration withdrawn or refused by a (financial) regulator or other authorization-granting entity?**

**\*YES/NO**

\*If YES, please provide details.

**6.2 Have you, or has any institution whose policy is or was (co-)determined by you, ever had a conflict with a foreign or domestic (financial) regulator that led to a regulatory measure, or do you expect such a situation to develop within the next twelve months?**

**\*YES/NO**

\*If YES, please explain.

**6.3 Are there any other facts or circumstances with a foreign or domestic (financial) regulator or other authorization-granting entity that could be of relevance for the integrity assessment?**

Examples would be: warning letters, normative conversations, settlement agreements with a foreign or domestic (financial) regulator and withdrawn nomination(s) for appointment.

**\*YES/NO**

\*If YES, please provide details.

## SECTION 7 – Tax related antecedents

**7.1 Have you ever received a tax punitive fine (*fiscale vergrijpboete*) that became irrevocable?**

**\*YES/NO**

\*If YES, please provide details.

**7.2 Are you currently involved in a procedure that might lead to the imposition of a tax punitive fine?**

**\*YES/NO**

\*If YES, please provide details (including the current status of the proceedings).

**7.3 Has a tax subject whose policy is or was (co-)determined by you ever received a tax punitive fine that became irrevocable?**

This question includes the indirect (co-)determination of policies of companies through the provision of trust services as defined in Article 1 of the SOSTSP.

**\*YES/NO**

\*If YES, please provide details.



**7.4 Is a tax subject whose policy is or was (co-)determined by you currently involved in a procedure that might lead to the imposition of a tax punitive fine?**

This question includes the indirect (co-)determination of policies of companies through the provision of trust services as defined in Article 1 of the SOSTSP.

**\*YES/NO**

\*If YES, please provide details (including the current status of the proceedings).

**7.5 Are there any other facts or circumstances on tax related matters that could be of relevance for the integrity assessment?**

**\*YES/NO**

\*If YES, please provide details.

## SECTION 8 – Business related financial antecedents

**8.1 Do you have a direct or indirect interest or relationship with the Regulated Entity as referred to under section 1.1, other than your proposed Key Person position?**

A direct or indirect interest may in this case be related by consanguinity or affinity in a direct or indirect line up to and including relations in the third degree, your (former) spouse or cohabitant.

**\*YES/NO**

\*If YES, please provide details.

**8.2 Has any institution whose policy is or was (co-)determined by you experienced major financial difficulties?**

This question includes the indirect (co-)determination of policies of companies through the provision of trust services as defined in Article 1 of the SOSTSP.

**\*YES/NO**

\*If YES, please explain (legal procedure, suspension of payments, bankruptcy, or other).

**8.3 Is there currently a judicial inquiry concerning, or were you ever ordered by a court of law to pay, (unpaid) debts because of liability for the bankruptcy of a legal entity pursuant to the applicable provisions of the Bankruptcy State Ordinance (*Faillissementsverordening*), the Civil Code of Aruba (*Burgerlijk Wetboek van Aruba*) or any similar provisions elsewhere?**

**\*YES/NO**

\*If YES, please provide details.

**8.4 If you answered question 8.2 or 8.3 affirmatively, please provide any particulars if you were directly involved with the financial difficulties, or with the legal proceedings, suspension of payments, bankruptcy or other, and if you were found liable on what grounds.**

**8.5 Of which other institutions are you currently a (co-)policymaker?**

**8.6 Do you hold any direct or indirect financial and/or controlling interest of ten percent or more in an other institution?**

Financial interest entails: the equity share or other similar capital providing interest which you have in an institution other than the one you work for or intend to join.

Controlling interest entails: voting rights or another similar type of controlling power at the highest level in an institution other than the one you work for or intend to join.

**\*YES/NO**

\*If YES, please provide details.

**8.7 Do these other institution(s), referred to under sections 8.5 and 8.6, maintain a commercial interest with the Regulated Entity as referred to under section 1.1?**

**\*YES/NO**

\*If YES, please provide details.

**SECTION 9 – Other antecedents**

**9.1 If you are now, or have ever been, a member of a relevant professional body or organization (refer to section 3.6), have any disciplinary or similar measures ever been taken against you?**

**\*YES/NO**

\*If YES, please explain (the measures, the organization by which, when, and the reason why).

**9.2 Have you ever been involved in a conflict with an employer?**

**\*YES/NO**

\*If YES, please provide the name of the employer(s) and explain.

**9.3 Relating to any conflict specified under question 9.2, where there any sanctions imposed on you under employment law (e.g., a warning, a reprimand, or dismissal)?**

**\*YES/NO**

\*If YES, please explain.

## SECTION 10 – Holders of a qualifying holding

*Complete this section only if you intend to become (a director of) a holder of a qualifying holding in a Regulated Entity.*

Pursuant to the Supervisory Laws, the CBA assesses the integrity of the holders of a qualifying holding in the Applicant. In case a holder of a qualifying holding is a legal person, all natural persons determining the day-to-day policy of this legal person (in any case: the legal person’s directors), must complete this PQ.

A qualifying holding is a direct or indirect holding of 10% or more of the issued capital or the right to exercise, directly or indirectly, 10% or more of the voting rights or equivalent control.

### 10.1 Please provide the following information concerning the prospective qualifying holding in the applicant.

Name(s) qualifying holder (s)	Address(es) qualifying holder(s)	Shares (%)	Preferred shares (Yes/No)	Priority shares (Yes/No)	Share certificates (Yes/No)	Voting rights (%)	Other form of control (%)	Direct (D) or Indirect (I)

### 10.2 Please explain your reasons for acquiring or increasing the qualifying holding in the Regulated Entity and your intentions regarding the qualifying holding.

**10.3 Please specify any existing relationships between the prospective holder(s) of a qualifying holding mentioned in 10.1 and the existing shareholders of the Regulated Entity.**

**10.4 Please provide the name(s) and address(es) of all other subsidiaries and affiliates of the prospective holder(s) of a qualifying holding mentioned in 10.1**

**10.5 Are you or will you be involved in the (co-)determining of the Regulated Entity's policy?**

**\*YES/NO**

**\*If YES, please explain.**

**SECTION 11 – Miscellaneous questions**

**11.1 Is there between you and the Regulated Entity any financial relationship which does not ensue directly from your (intended) function or position (e.g. a loan)?**

**\*YES/NO**

**\*If YES, please explain.**

**11.2 At any time in the past, have you been assessed with respect to integrity and suitability by a regulator (in Aruba or elsewhere) in charge of financial supervision?**

**\*YES/NO**

**\*If YES, please explain (name of regulator, period and result of the assessment).**

**11.3 Are you aware of any other facts or circumstances that could reasonably be expected to be of relevance to the CBA when assessing your personal and/or professional qualities?**

**\*YES/NO**

**\*If YES, please provide full particulars.**

**PLEASE DISCLOSE ANY OTHER FACTS THAT YOU CONSIDER MATERIAL TO THIS APPLICATION.**

## SECTION 12 – Checklist additional information and documents

Please check the corresponding box to indicate whether the documents and information listed have been included with your application (reference is made to pages 4 and 5 of the Guidance Notes).

### Documents and information to be provided by the Applicant:

- A formal request for the appointment of the proposed Candidate, including the reason(s) for the proposed appointment.
- The Regulated Entity's recruitment and selection policy and procedures.<sup>11</sup>
- The profile of the function concerned.<sup>12</sup>
- The decision-making process regarding the selection of a Candidate and the considerations that led to the outcome of the selection process.<sup>13</sup>

### Documents and information to be provided by the Candidate:

- A certified true copy of the photograph and signature page(s) of the Candidate's passport.<sup>14</sup>
- An extract (*uittreksel*) from the Civil Registry (*Bevolkingsregister*) regarding the Candidate not older than two (2) months.
- A Declaration of Good Conduct (*Verklaring omtrent het gedrag*) or an equivalent declaration from the relevant judicial authority from where the Candidate is domiciled, not older than three (3) months.
- A declaration of good standing of the tax authority (*Verklaring van fiscaal gedrag*) from where the Candidate is domiciled, not older than three (3) months.
- Test results of any assessment with respect to the Candidate's integrity or suitability by a regulator (in Aruba or elsewhere) in charge with financial supervision.
- The Candidate's certificated qualifications (including proof of relevant courses attended).
- The Candidate's curriculum vitae.
- If the Candidate holds any direct or indirect financial and/or controlling interest of ten percent or more in another institution, a copy of the articles of incorporation, the shareholders' register, an extract from the Chamber of Commerce, and the most recent financial statements, of that institution.

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<sup>11</sup> This concerns in any case the actual assessment that was followed for the recruitment and selection of the Candidate. If a suitability matrix of the body at which the Candidate will become a member is available this must also be submitted

<sup>12</sup> This profile must at least contain information on the tasks and responsibilities (focus areas) and the expected time expenditure, the required knowledge, experience and competences for the function concerned

<sup>13</sup> The considerations must indicate the extent to which the Candidate meets the function profile, in terms of knowledge, experience, competences and professional conduct, taking into account the composition and functioning of the body of which the Candidate will become a member.

<sup>14</sup> This copy must be certified by a Key Person approved by the CBA or a civil notary. The Key Person certifying the copy of the passport should state, "I certify that this is a true copy of the original page(s) of the passport of [individual's name] presented to me on [date]." The Key Person certifying should also sign and date the copy and print their name and capacity in which they have signed.



## SECTION 13 – Declaration(s)

### The Candidate

I am aware that withholding information may be considered as providing misleading information and as such may have consequences for this application and future applications.

I am also aware that it is a criminal offence to knowingly or recklessly provide any information which is false or misleading in connection to this PQ.

I confirm that the information in this form and any attachment is accurate and complete to the best of my knowledge and belief.

I agree to provide details of any changes to information in this form and any attachment immediately to the CBA.

I authorize the CBA to make such enquiries and to seek further information as it deems appropriate to verify the information given in this form. In particular, I consent to the CBA carrying out a judicial record check on any unspent convictions and convictions for relevant offences that I may have, conducting checks with other regulators, companies and institutions stated in this Personal Questionnaire and using external data sources.

I confirm that I fully understand my role(s), responsibilities and accountabilities under the Supervisory Law(s) to which this PQ relates.

Signed:

--

Date:

--

Name (BLOCK CAPITALS):

--

The Applicant (*Only in case the Applicant is not the same person as the Candidate.*)

I confirm to have completed Section 1 of the PQ fully and truthfully.

I declare to be authorised to represent the Applicant named under 1.1.

Signed:

--

Date:

--

Name (BLOCK CAPITALS):

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Position:

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**Annex 2**

**CENTRALE BANK VAN ARUBA**

**DEED OF APPOINTMENT REPRESENTATIVE  
OF CAPTIVE INSURANCE COMPANIES**

*For the implementation of Section 5 paragraph 3 of the State Decree Captive Insurance Companies (AB 2002 no.50) in conjunction with Section 7, sub a, c and d and section 17 of the State Ordinance Supervision Insurance Business (SOSIB) (AB 2000 no. 82)*

**DECLARATION**

*Please print or type*

---

Name of the licensed captive insurance company .....

---

Domiciled in .....  
*(Address and country of the insurance company)* .....

---

Which by virtue of the articles of incorporation / or by virtue of a written letter of representation issued by its authorized corporate body is represented by:

Mr. / Mrs. ....  
*(Name of the company officer representing the captive insurance company)* .....

---

In his/her capacity as .....  
*(Position of the officer who signs the declaration)* .....

---

Hereby declares:

a. That as from: .....  
*(The date of appointment of representative:  
the date cannot commence before termination  
of the appointment of the former  
representative)* .....

It appoints: .....  
Natural person<sup>i</sup>/ Legal entity<sup>ii</sup> .....  
*(Name of the natural or legal entity  
appointed as representative)*

Name of representative: .....

Residing at: .....  
*(Complete residential address of the  
representative)* .....

And holding office at: .....  
*(Complete corporate address of the  
representative)* .....

as representative of above mentioned captive insurance company, according to Section 5 paragraph 3 of the State Decree Captive Insurance Companies (AB 2002 no. 50) in order to exercise all its authorities regarding captive operations in Aruba and to comply on its behalf with the provisions of the SOSIB and said State Decree.

---

b. that when completing this deed it will comply with existing and future rules, regulations and formalities required by its country of domicile and place of incorporation for the validity of this appointment. By co-signing this deed the representative declares to have accepted this appointment.

On this ..... day of ....., 2006

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Authorized Officer

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Appointed representative

---

Name and Title

- 
- <sup>i</sup> If the representative is a natural person, he/she must submit an extract from the population Register of the Civil Registry.
  - <sup>ii</sup> If the representative is a legal entity, it must submit an authentic transcript of the Articles of Incorporation and By-laws of the legal entity and a recent Certificate (not older than 6 months) of its registration in the trade register at the Chamber of Commerce and Industry of Aruba.

Annex 3



CENTRALE BANK VAN ARUBA

QUESTIONNAIRE EXTERNAL AUDITOR  
&

ASSOCIATED GUIDANCE NOTES

July 1, 2023

## PURPOSE AND SCOPE

The Centrale Bank van Aruba's ('CBA') written approval is required for any appointment of, or change in external auditor in relation to an entity under its supervision pursuant to:

- the State Ordinance on the Supervision of the Credit System (*Landsverordening toezicht kredietwezen* or 'SOSCS')<sup>1</sup>;
- the State Ordinance on the Supervision of the Insurance Business (*Landsverordening toezicht verzekeringsbedrijf* or 'SOSIB')<sup>2</sup>;
- the State Ordinance on Company Pension Funds (*Landsverordening ondernemingspensioenfondsen* or 'SOCPF')<sup>3</sup>;
- the State Ordinance on the Supervision of the Securities Business (*Landsverordening toezicht effectenverkeer* or 'SOSSB')<sup>4</sup>; and
- the State Decree on the Supervision of Insurance Brokers (*Landsbesluit toezicht assurantiebemiddelaars* or 'SDSIB')<sup>5</sup>.

(henceforth referred to as the 'Supervisory Laws')

Beside abovementioned supervisory laws, reference is made to the supervisory directives issued by the CBA for the different sectors on the appointment of an external auditor.

These guidance notes seek to assist applicants and external auditors by clarifying areas of uncertainty that may arise when completing or answering questions contained within this Questionnaire External Auditor ('Questionnaire').

For the purpose of this Questionnaire and associated guidance notes:

**Applicant** includes the regulated entity which has filed an application for approval to appoint an external auditor.

**External auditor** as defined under section 1 of the Supervisory Laws: 'a person who is not employed by the company or institution, being a "registeraccountant" or an "accountant-administratieconsulent" registered pursuant to article 36, paragraph 2, item i, of the Dutch Law on the accounting profession (Stb. 2012, 680)'.

**Engagement quality review** is defined as an objective evaluation of the significant judgements made by the engagement team and the conclusions reached thereon, performed by the engagement quality reviewer and completed on or before the date of the engagement report.

**Engagement quality reviewer** is a partner, other individual in the firm, or an external individual, appointed by the firm to perform the engagement quality review.

**Relevant ethical requirements** are defined as the principles of professional ethics and ethical requirements that are applicable to a professional accountant when undertaking the engagement quality review (e.g., International Ethics Standards Board for Accountants' International Code of Ethics for Professional Accountants (IESBA Code) related to audits or reviews of financial statements.

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<sup>1</sup> Article 15, paragraph 1, in conjunction with article 21a, of the SOSCS.

<sup>2</sup> Article 10 in conjunction with article 15a of the SOSIB.

<sup>3</sup> Article 11a in conjunction with article 12a of the SOCPF.

<sup>4</sup> Article 98 of the SOSSB.

<sup>5</sup> Article 4, paragraph 5 of the SDSIB.

**CBA** means Centrale Bank van Aruba.

**Regulated entity** includes an entity that is regulated under the SOSCS, SOSIB, SOCPF, SOSSB, or SDSIB.

### **PRIOR WRITTEN APPROVAL**

Pursuant to the respective Supervisory Laws, the CBA's prior written approval is required for any appointment of or change in external auditor. In this respect, relevant information must be submitted to enable the CBA to assess the proposed candidate.

### **PROCESS FOR APPROVAL**

The process for approval usually involves at least four parties:

- the regulated entity ("applicant") that intends to appoint an external auditor;
- the external auditor;
- the engagement quality reviewer;
- the CBA.

After the applicant and the external auditor have completed the Questionnaire, the applicant must submit the Questionnaire and all other requested documents to the CBA for its review and approval.

Upon completion of the assessment and after the CBA has reached a conclusion, the CBA sends its decision to the applicant. The CBA's decision is subject to objection and appeal by both the applicant and the external auditor in accordance with the provisions of the State Ordinance on Administrative Proceedings (*Landsverordening administratieve rechtspraak AB 1993 no. 45*).

### **REQUIRED INFORMATION**

In addition to the Questionnaire, the following documents must be submitted to the CBA as part of the application:

- A formal request for the appointment of the proposed external auditor, including the reason(s) for the intended change.
- Draft engagement letter, including the stipulations as mentioned in the supervisory directive "Appointment of an External Auditor".
- Detailed resume/curriculum vitae of the external auditor, including an overview of the financial institutions which he/she audited during his/her career. The overview must also include the number of years worked on the engagement, and the role he/she had in relation to the engagement.
- Proof of registration of the external auditor at the "Nederlandse Beroepsorganisatie van Accountants" (including registration number).
- Detailed resume/curriculum vitae of the engagement quality reviewer, including the number of years of audit experience in the financial sector, and the role he/she had in relation to the engagement.
- Policies and procedures of the external audit firm on the appointment and eligibility of the engagement quality reviewer, the performance of the engagement quality review(er) and the documentation of the quality review. Said policies and procedures must comply with paragraphs 14 up to and including 30 of the International Standard on Quality Management 2, issued by the International Auditing and Assurance Board.

If the CBA deems this necessary, it may ask the applicant and the external auditor for additional information.

### **CONTINUING OBLIGATION TO ADVISE THE CBA OF CHANGES**

On an on-going basis, the CBA is to be informed of any changes to information previously submitted in the Questionnaire, and of any other circumstances, that can reasonably be considered relevant to the CBA's assessment of the external auditor involved. This obligation lies with the applicant. On the basis of the new information, or other new facts or circumstances, the CBA may decide to conduct a re-assessment of the external auditor.

### **CHANGE OF EXTERNAL AUDITOR**

In case of a change of the external auditor, the CBA should be informed on the reason(s) for the intended change.

### **COMMUNICATION**

The CBA will in principle communicate with the applicant. However, the CBA may invite the external auditor for an interview at its premises.

### **GENERAL POINTS**

This Questionnaire comprises of 9 sections and each section contains a number of questions. All questions contained in the Questionnaire must be answered.

<b>All responses should be typed or written in blue ink.</b>
--

Incomplete Questionnaires will be returned to the applicant for completion and re-submission.

All (other) facts and circumstances that can reasonably be considered relevant to the CBA's assessment must be disclosed in the application. Withholding such information may be considered as providing misleading information and as such may have consequences for this application and future applications.

### **SUBMISSION OF THE QUESTIONNAIRE**

After completion, the Questionnaire should be signed by both the External Auditor and the Applicant. The Applicant must submit its request for the appointment of the External Auditor, including the filled-out Questionnaire and required documents, to the CBA in hard copy and provide the CBA with an electronic readable version (pdf format) via e-mail address [informationcenter@cbaruba.org](mailto:informationcenter@cbaruba.org).





CENTRALE BANK VAN ARUBA

# QUESTIONNAIRE EXTERNAL AUDITOR

**All questions must be answered.**

**Please refer to the Guidance Notes to aid completion of this Questionnaire.**

July 1, 2023

All responses should be typed or written in **blue ink**.

Any attachments should be clearly referenced to the relevant question(s) and signed by the individual completing the Questionnaire, as confirmation that they are complete and accurate.

The CBA reserves the right to seek references from organizations and individuals named in this Questionnaire, including foreign regulatory authorities. It is important, therefore, to ensure that **full and accurate names, addresses, and contact information** are provided.



CENTRALE BANK VAN ARUBA

*Information to be provided by the applicant*

**SECTION 1**

- 1.1 Name and address of the regulated entity who requests the proposed appointment of the external auditor:**

--

- 1.2 Name and address of the audit firm of the external auditor:**

--

- 1.3 Mark the relevant boxes to indicate the legislation under which you are seeking approval:**

<b>State Ordinance on the Supervision of the Credit System</b>	
<b>State Ordinance on the Supervision of the Insurance Business</b>	
<b>State Ordinance on Company Pension Funds</b>	
<b>State Ordinance on the Supervision of the Securities Business</b>	
<b>State Decree on the Supervision of Insurance Brokers</b>	

*Information to be provided by the external auditor*

**SECTION 2 – Personal Details**

**2.1 Surname:**

	<b>Title(s):</b>	
--	------------------	--

**2.2 Given name(s):**

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**SECTION 3 – Experience**

**3.1 Employment history**

Please provide details of your current employment position and your employment history. Your reasons for leaving should be categorised as follows:

1. Resignation;
2. Redundancy;
3. Retirement;
4. Termination/dismissal;
5. End of contract; and
6. Other (please provide details).

Please provide as much contact information as possible on any relevant regulator in order to accelerate the inter-regulatory checks process undertaken by the CBA.

Should you, or the regulated entity, maintain or have previously maintained a business relationship with any of your previous employers listed, please give details using a clearly referenced attachment.

<b>Name / address of employer and nature of business</b>	<b>Name of regulator</b>	<b>Position(s) held</b>	<b>Relevant dates (mm/yy)</b>	<b>Reason(s) for leaving</b>

**3.2 Please provide details of any employment or otherwise important positions, whether paid or unpaid, including memberships of a board or a committee.**

Name / address of organization and nature of business or activities	Name of regulator	Position(s) held	Relevant dates (mm/yy)	Task and responsibilities

**3.3 Please provide details of relevant professional qualifications, degrees, etc.**

Please state the awarding body (to include full name and address), and the date the qualification was obtained.

Qualification(s)	Date awarded (dd/mm/yy)	Name & address of awarding body

**3.4 Please provide details of past and current membership of any relevant professional body or organization and the year of admission.**

If applicable, please provide details of why your membership ceased.

Membership details	Date of admission (dd/mm/yy)	Name and address of professional body or organization

A relevant professional body or organization would in any case include an organization of fellow professionals.

**3.5 Please provide details of your specific experience (knowledge, capabilities, competences, fields of expertise, etc.).**

**SECTION 4 – Quality review process**

**4.1 Detailed resume/curriculum vitae of the engagement quality reviewer, including the number of years of audit experience in the financial sector, and the role he/she had in relation to the engagement.**

**4.2 Provide a summary of the policies and procedures of the external audit firm on the appointment and eligibility of the engagement quality reviewer, the performance of the engagement quality review(er) and the documentation of the quality review.**

Said policies and procedures must comply with paragraphs 14 up to and including 30 of the International Standard on Quality Management 2, issued by the International Auditing and Assurance Board.

## **SECTION 5 – Business related financial antecedents**

**5.1 Do you have a direct or indirect interest or relationship with the regulated entity as referred to under section 1.1, other than your proposed appointment?**

A direct or indirect interest may in this case be related by consanguinity or affinity in a direct or indirect line up to and including relations in the third degree, your (former) spouse or cohabitant.

**\*YES/NO**

\*If YES, please provide details.

**5.2 Has any institution whose policy is or was (co-)determined by you experienced major financial difficulties?**

**\*YES/NO**

\*If YES, please explain (legal procedure, suspension of payments, bankruptcy, or other).

**5.3 Is there currently a judicial inquiry concerning, or were you ever ordered by a court of law to pay, (unpaid) debts because of liability for the bankruptcy of a legal entity pursuant to the applicable provisions of the Bankruptcy State Ordinance (*Faillissementsverordening*), the Civil Code of Aruba (*Burgerlijk Wetboek van Aruba*) or any similar provisions elsewhere?**

**\*YES/NO**

\*If YES, please provide details.

**5.4 If you answered question 5.2 or 5.3 affirmatively, please provide any particulars if you were directly involved with the financial difficulties, or with the legal proceedings, suspension of payments, bankruptcy or other, and if you were found liable on what grounds.**

**5.5 Do you hold directly or indirectly, shares in an other institution?**

**\*YES/NO**

\*If YES, please provide details.

**5.6 Do these other institution(s), referred to under section 5.5, maintain a commercial interest with the regulated entity as referred to under section 1.1?**

**\*YES/NO**

\*If YES, please provide details.

**SECTION 6 – Other antecedents**

**6.1 Have any disciplinary or similar measures ever been taken against you or a disciplinary complaint has been filed against you which is pending a decision by a relevant professional body or organization (refer to section 3.4)?**

**\*YES/NO**

\*If YES, please explain (the measures, the organization by which, when, and the reason why).

**6.2 Have you ever been involved in a conflict with an employer?**

**\*YES/NO**

\*If YES, please provide the name of the employer(s) and explain.

**6.3 Relating to any conflict specified under question 6.2, where there any sanctions imposed on you under employment law (e.g., a warning, a reprimand, or dismissal)?**

**\*YES/NO**

\*If YES, please explain.



**SECTION 7 – Miscellaneous questions**

**7.1 Is there between you and the regulated entity any financial relationship?**

**\*YES/NO**

\*If YES, please explain.

**7.2 At any time in the past, have you been assessed by a regulator (in Aruba or elsewhere) in charge of financial supervision?**

**\*YES/NO**

\*If YES, please explain (name of regulator, period and result of the assessment).

**7.3 Are you aware of any other facts or circumstances that could reasonably be expected to be of relevance to the CBA when assessing your personal and/or professional qualities?**

**\*YES/NO**

\*If YES, please provide full particulars.

**PLEASE DISCLOSE ANY OTHER FACTS THAT YOU CONSIDER MATERIAL TO THIS APPLICATION.**

## **SECTION 8 – Checklist additional information and documents**

Please check the corresponding box to indicate whether the documents and information listed have been included with your application (reference is made to page 3 of the Guidance Notes).

### **Documents and information to be provided by the applicant:**

- A formal request for the appointment or change of the proposed external auditor, including the reason(s) for the intended change.

### **Documents and information to be provided by the external auditor:**

- Draft engagement letter, including the stipulations as mentioned in the supervisory directive “Appointment of an External Auditor”.
- Detailed resume/curriculum vitae of the external auditor, including an overview of the financial institutions which he/she audited during his/her career. The overview must also include the number of years worked on the engagement, and the role he/she had in relation to the engagement.
- Proof of registration of the external auditor at the “Nederlandse Beroepsorganisatie van Accountants” (including registration number).
- Detailed resume/curriculum vitae of the engagement quality reviewer, including the number of years of audit experience in the financial sector, and the role he/she had in relation to the engagement.
- Policies and procedures of the external audit firm on the appointment and eligibility of the engagement quality reviewer, the performance of the engagement quality review(er) and the documentation of the quality review. Said policies and procedures must comply with paragraphs 14 up to and including 30 of the International Standard on Quality Management 2, issued by the International Auditing and Assurance Board.

**SECTION 9 – Declaration(s)**

**The external auditor**

**I am aware that withholding information may be considered as providing misleading information and as such may have consequences for this application and future applications.**

**I am also aware that it is a criminal offence to knowingly or recklessly provide any information which is false or misleading in connection to this Questionnaire.**

**I confirm that the information in this form and any attachment is accurate and complete to the best of my knowledge and belief.**

**I agree to provide details of any changes to information in this form and any attachment immediately to the CBA.**

**I authorize the CBA to make such enquiries and to seek further information as it deems appropriate to verify the information given in this form. In particular, I consent to the CBA carrying out a judicial record check on any unspent convictions and convictions for relevant offences that I may have, conducting checks with other regulators, companies and institutions stated in this Questionnaire External Auditor and using external data sources.**

**I confirm that I fully understand my role(s), responsibilities and accountabilities under the Supervisory Law(s) to which this Questionnaire relates.**

**Signed:**

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**Date:**

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**Name (BLOCK CAPITALS):**

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**The applicant**

**I confirm to have completed Section 1 of the Questionnaire fully and truthfully.**

**I declare to be authorised to represent the applicant named under 1.1.**

**Signed:**

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**Date:**

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**Name (BLOCK CAPITALS):**

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**Position:**

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