



CENTRALE BANK VAN ARUBA

December 15, 2011

The Managements of Pawnshops/Compra y
Venta Companies operating in Aruba

JD/lcw/5.5/INT/766

Re: Re-introduction regulation of pawnshops/compra y venta companies based on section 48, paragraph 3 of the State Ordinance on the Supervision of the Credit System (SOSCS)

Dear Management,

With regard to the above-mentioned subject, I would like to inform you of the following:

1. Introduction:

Pursuant to section 48, paragraph 1, of the SOSCS, any natural person or legal entity is prohibited to grant credits in the course of his or her occupation or business, or in this respect to act as an intermediary. Pawnshops/compra y venta companies that are active in the business of lending to natural persons on the security of pledged goods or the business of purchasing tangible personal property on the condition that it may be redeemed or repurchased by the seller for a fixed period of time, fall under the prohibition of section 48, paragraph 1, of the SOSCS. In accordance with section 48, paragraph 3, of the SOSCS a pawnshop may be granted a dispensation from the aforementioned prohibition, insofar the interests the SOSCS seeks to protect are sufficiently safeguarded otherwise.

2. Current policy

By letter of December 12, 2007, the Centrale Bank van Aruba (the CBA) informed of its decision as well as the reasons thereof to discontinue regulation of the pawnshops/compra y venta companies sector and to withdraw its then applicable exemption policy regarding pawnshops/compra y venta companies. However, at the same time the CBA also informed that it maintains its right to reconsider its stance in case of undesirable developments in this sector (enclosure 1). During the years following the aforementioned decision to discontinue the regulation of the pawnshop/compra y venta companies sector, the CBA continued to monitor the developments in this sector.

The CBA has noted that over the years this sector has grown considerably as evidenced by the increase in the registration of the pawnshops/compra y venta companies at the Aruban Chamber of Commerce. Furthermore, the CBA received from time to time negative information about questionable practices within this sector, inter alia related to the handling of stolen goods ("helings") and the excessive interest rates/fees applied, casting doubts on the integrity of this sector. Additionally, the Financial Action Task Force that carried out an assessment in 2008 on

T

Aruba's framework to combat money laundering and financing of terrorism criticized the fact that financial institutions with a dispensation as meant in section 48, paragraph 3, of the SOSCS, particularly those that grant loans and credits, were not subject to proper and effective supervision.

3. Re-introduction regulation:

Therefore, the CBA, based upon section 48, paragraph 3, of the SOSCS, has decided to reintroduce regulation of this sector and, subsequently, issue a new dispensation policy for pawnshops/compra y venta companies effective April 1, 2012. The conditions under which pawnshops/compra y venta companies can obtain a dispensation are outlined in the following draft documents:

1. Dispensation policy regarding pawnshops/compra y venta companies operating in Aruba based on section 48, paragraph 3 of the SOSCS (enclosure 2);
2. Guidelines on the conduct of business of pawnshops/compra y venta companies (enclosure 3);

The assessment of the fitness and properness of (prospective) members of the managing board and other co-policy makers, members of the supervisory board, and holders of qualifying holdings (see draft guidelines points 5,6 and 7) will take place on the basis of information obtained through the Personal Questionnaire (enclosure 4).

The new regulatory framework will also be explained further during an information session to be held in the month of January 2012. An invitation for the aforementioned information session will be sent by separate letter to all pawnshops/compra y venta companies on a very short term.

4. Transitional provisions:

Pawnshops/compra y venta companies already active in Aruba as of April 1, 2012, will be granted a transitional period of one year, starting from **April 1, 2012** ending on **March 31, 2013**, to amend their processes and systems in order to be able to meet the requirements set forth in aforementioned dispensation policy and to submit a formal request for a dispensation as meant in section 48, paragraph 3, of the SOSCS to the CBA. As from April 1, 2012 up to the date that the CBA takes a final decision on the formal request submitted, aforementioned pawnshops/compra y venta companies will have the same status as those companies that already are in the possession of a dispensation issued by the CBA. Please note that, therefore, compliance with the CBA's directive on the publication of effective interest rate on consumer loans (enclosure 5) is mandatory as of April 1, 2012 and also that non-compliance herewith will be treated seriously. In this respect, the CBA refers you to its Enforcement Policy of September 21, 2011 (enclosure 6). Pawnshops/compra y venta companies that have not filed a request for an exemption before the due date of March 31, 2013 must cease their activities before this date.

New pawnshops/compra y venta companies must be in the possession of a dispensation as meant in Section 48, paragraph 3, of the SOSCS before they can commence their activities in Aruba.

T

5. Additional regulation:

Finally, your attention is being drawn upon the fact that as of June 1, 2011 the State Ordinance for the Prevention and Combating of Money Laundering and Terrorist Financing (Landsverordening voorkoming en bestrijding witwassen en terrorismefinanciering) (AB 2011, No.28) applies to pawnshops/compra y venta companies as being in the business of granting credits and/or selling jewelry, as the case may be, and that compliance herewith is mandatory since its introduction on June 1, 2011.

If you have questions on the abovementioned documents, please contact Mr. Jorge Yarzagaray of the Prudential Supervision Department at telephone number 525-2195 or via e-mail j.s.yarzagaray@cbaruba.org or Mr. Rakesh Mahangoe of the Integrity Supervision Department at telephone number 525-2214 or via e-mail r.mahangoe@cbaruba.org.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'Jeanette R. Semeleer', with a stylized flourish at the end.

Jeanette R. Semeleer
President

Enclosures: 6



CENTRALE BANK VAN ARUBA

December 12, 2007

The Management of Pawnshops/Compra y
Venta Companies operating in Aruba

CLB/lw/2.413/SUP/6024 ✓

Subject: Exemption policy regarding pawnshops/compra y venta companies based on section 48, paragraph 3 of the State Ordinance on Supervision of the Credit System (SOSCS)

Dear Sirs,

In accordance with section 48, paragraph 1, of the State Ordinance on the Supervision of the Credit System (SOSCS), any natural person or legal entity is prohibited to grant credits in the course of his or her occupation or business, or in this respect to act as an intermediary. Pawnshops/compra y venta companies doing business of lending to natural persons on the security of pledged goods or as the business of purchasing tangible personal property on the condition that it may be redeemed or repurchased by the seller for a fixed period of time, fall under the prohibition of section 48, paragraph 1, of the SOSCS.

In view of the increased number of pawnshops/compra y venta companies operating in Aruba, the Centrale Bank van Aruba (the Bank) had designed an exemption policy specifically for pawnshops/compra y venta companies. This policy was mainly focused on maintaining the integrity of this sector. Reference is also being made in this regard to our letter dated February 13, 2007 (MA/lw/2.413/SUP/4694) (see enclosure).

Based upon the experience gained so far in monitoring this sector, the Bank has come to the conclusion that most, if not all, pawnshops/compra y venta companies will not be able to meet the conditions under which the Bank is willing to exempt pawnshops/compra y venta companies. This would mean that most, if not all, companies would have to cease their pawn activities.

Taking into consideration that these activities have a social function, especially for those persons that at this time have no or limited access to the financial services provided by the commercial banks and other regulated credit institutions, and also taking into account the smallness of the operations and the size of these companies, the Bank has decided to reconsider its current policy and in this regard has decided as follows.

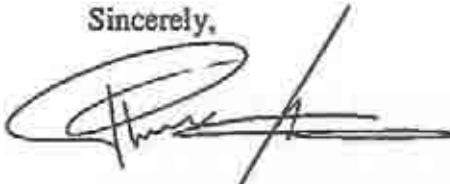
1. Effective immediately, the Bank will discontinue to regulate this sector as described in its letter of February 13, 2007. Subsequently its exemption policy

regarding pawnshops/compra y venta companies is no longer applicable. This also means that the pending exemption requests will no longer be processed and the negative decisions taken on previous exemption requests are hereby immediately revoked.

2. The Bank maintains the right to reconsider its revised policy stance in case it deems this necessary. In this regard note also that the Bank will continue to monitor the developments in this sector to ensure that there is no integrity risk to the financial system.

Should you have any questions on this revised policy you may contact Mrs. C. Linders-Bryson by telephone 5252178 or by e-mail c.m.linders-bryson@cbaruba.org

Sincerely,



Centrale Bank van Aruba

c.c. Mr. R. Marchena
Advocatenkantoor mr. M.H.J. Arends-Kock N.V.
Dominicanessenstraat 2
Oranjestad, ARUBA

Mr. P.J. Tchong
Law Offices Croes Wever Tchong
Arulex Center Punta Brabo z/n
Oranjestad, ARUBA

Enclosure: 1



CENTRALE BANK VAN ARUBA

February 13, 2007

The Management of Pawnshops/Compra y
Venta Companies operating in Aruba

MA/w/2.413/SUP/4694

Dear Sirs,

Re: Exemption policy regarding pawnshops/compra y venta companies based on section 48, paragraph 3 of the State Ordinance on Supervision of the Credit System (SOSCS)

Pursuant to Section 48, paragraph 1 of the SOSCS, any natural person or legal entity is prohibited to grant credits in the course of his or her occupation or business, or in this respect to act as an intermediary. Pawnshops/compra y venta companies doing business of lending to natural persons on the security of pledged goods or as the business of purchasing tangible personal property on the condition that it may be redeemed or repurchased by the seller for a fixed period of time, fall under the prohibition of section 48 paragraph 1 of the SOSCS.

In connection with the increased number of pawnshops/compra y venta companies operating in Aruba, the Centrale Bank van Aruba (the Bank) has meanwhile decided, based upon section 48, paragraph 3, of the SOSCS, to design an exemption policy specifically for pawnshops/compra y venta companies. This policy is mainly focused on the maintaining of the integrity of this sector.

The conditions under which pawnshops/compra y venta companies will be exempted are outlined in the following documents:

1. Exemption policy regarding pawnshops/compra y venta companies operating in Aruba based on section 48, paragraph 3 of the SOSCS;
2. Guidelines on the conduct of pawnshops/compra y venta companies;
3. Questionnaire for prospective shareholders- natural persons of pawnshops/compra y venta companies;
4. Questionnaire for prospective managing directors of pawnshops/compra y venta companies.

Pawnshops/compra y venta companies that still have not submitted a formal documented request for exemption are required to do so before March 15, 2007.

If you have questions on the abovementioned documents, please contact Mrs. A. Dijkhoff or Ms. L. Garcia by telephone at respectively 5252182 and 5252176 or by e-mail a.g.m.dijkhoff@cbaruba.org and l.m.a.garcia@cbaruba.org

Sincerely,

Centrale Bank van Aruba

Enclosures: (4)

DRAFT



CENTRALE BANK VAN ARUBA

Dispensation Policy regarding Pawnshops/Compra y Venta Companies operating in Aruba based on section 48, paragraph 3 of the State Ordinance on the Supervision of the Credit System (*Landsverordening Toezicht Kredietwezen*, AB 1998 no. 16) (SOSCS)

1. Introduction

In connection with the increased number of pawnshops/compra y venta companies operating in Aruba and the associated risks, the Centrale Bank van Aruba (the CBA) has decided to establish, based upon section 48, paragraph 3, of the SOSCS, a dispensation policy with regard to pawnshops/compra y venta companies.

2. Legal framework

Pursuant to section 48, paragraph 1, of the SOSCS any natural person or legal entity is prohibited to grant credits in the course of his or her occupation or business, or in this respect to act as an intermediary. The term "to grant credits" includes the lending of money to a third party, whereby the lender or an affiliated party obtain monetary benefits from this transaction. In this respect and in view of the underlying objective of consumer protection, which justifies a broad interpretation of "credits", pawn/compra y venta activities fall under the scope of article 48, paragraph 1, of the SOSCS, as being the business of lending to natural persons on the security of pledged goods or as the business of purchasing tangible personal property on the condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time.

In accordance with section 48, paragraph 2, of the SOSCS the aforementioned prohibition shall not apply to:

- a. the Government;
- b. the CBA;
- c. international public entities in which the Kingdom of the Netherlands participates;
- d. companies or institutions which are registered in accordance with section 28, paragraph 2, of the SOSCS.

Pursuant to section 48, paragraph 3, of the SOSCS, the CBA may, based on a to that effect written and reasoned request, grant a dispensation from the prohibition as mentioned in section 48, paragraph 1, of the SOSCS if in its opinion the interests that the SOSCS seeks to protect are adequately safeguarded.

Pursuant to section 2, paragraph 2, of the SOSCS, the CBA may attach restrictions, stipulations and conditions to granted dispensations, provided that the facts or circumstances which refer to the person or institution on which the dispensation shall apply, require this for the purpose of sound banking policy.

3. Dispensation policy pawn shops/compra y venta companies

The CBA is willing to grant pawn shops/compra y venta companies a dispensation as mentioned in section 48, paragraph 3, of the SOSCS if the following restrictions and stipulations are met on a continuous basis.

1. The pawn/compra y venta activities are conducted by a limited liability company ("naamloze vennootschap" or N.V.) registered at the Chamber of Commerce of Aruba and has an establishment permit issued by the Department of Economic Affairs, Commerce and Industry (DEZHI) to conduct pawn activities.
2. The company maintains at all times an equity of at least Afl. 50,000 (held in the form of a blocked time deposit at one of the commercial banks in Aruba).
3. The pawn/compra y venta activities are solely financed by the company's shareholders' own funds or by loans granted by the shareholders to the company. The source of the funds may not be subject to any doubts on the legality thereof.
4. The aggregate outstanding amount of the transaction(s) per individual must not exceed Afl. 3.000 at any time.
5. The properness of the holders of qualifying holding(s) of the company must be beyond any doubt; With "qualifying holding" is meant a direct or indirect holding of more than 10 percent of the issued share capital of a company or the ability to exercise directly or indirectly more than 10 percent of the voting right in a company, or the ability to exercise directly or indirectly a comparable degree of control in a company.
6. The fitness and properness of members of the managing board and other (co-) policymakers of the company must be beyond any doubt.
7. Insofar applicable, the fitness and properness of members of the supervisory board of the pawnshop/compra y venta company or any body within that company with comparable tasks must be beyond any doubt.
8. Any contemplated change with regard to the persons as mentioned in paragraph 3, under points 8, 9 and 10 must be reported in writing to the CBA; such changes may be implemented only upon prior written approval of the CBA.
9. The company must comply at all times with the CBA's guidelines on the conduct of business of pawnshops/compra y venta companies (hereinafter: the Guidelines).
10. The company must be in compliance with the Sanctions State Decree combat Terrorism and Financing of Terrorism (*Sanctiebesluit bestrijding terrorisme en terrorismefinanciering*, AB 2010, 27), the State Ordinance for the Prevention and Combating of Money Laundering and Terrorist Financing (*Landsverordening voorkoming en bestrijding witwassen en terrorismefinanciering*, AB 2011, no. 28), and the Handbook for the prevention and detection of money laundering and combating the financing of terrorism issued by the CBA on June 1, 2011 (AML/CFT Handbook).
11. The company must comply with the Directive on the Publication of Effective Interest Rate for consumer loans issued by the CBA on June 20, 2011.

4. Submission of the request

In order to evaluate whether the aforementioned restrictions and stipulations can be met on a continuous basis the written request for dispensation must be accompanied by the following information and documents:

- a. Articles of incorporation.
- b. An extract from the registry of the Aruba Chamber of Commerce and a copy of the business establishment permit issued by the DEZHI.
- c. A copy of the shareholders' register.
- d. Information on the source of funds of the shareholder(s).

- e. Filled out Personal Questionnaires (including supportive documents; see Explanatory Notes to Personal Questionnaire) for each person referred to in paragraph 3, under points 5, 6 and 7.
- f. (Audited) financial statements of the company over last three book years.
 - A description of the (intended) administrative organization and internal controls, as meant in the Guidelines
 - A policy plan as meant in the Guidelines
 - A business risk assessment as meant in Chapter 2.3, point 8 of the AML/CFT Handbook
- g. A business plan which should include the following items:
 - A description of the group/shareholders' structure, including the size of all respective shareholdings;
 - An organizational chart;
 - A description of the business activities; and,
 - A three-year financial projection (including assumptions applied).

The CBA maintains the right to request any additional information it deems necessary to evaluate a request made for a dispensation as meant in section 48, paragraph 3, of the SOSCS.

5. Effective date

This dispensation policy will come into force as of April 1, 2012.

Aruba, December 15, 2011.

DRAFT



CENTRALE BANK VAN ARUBA

GUIDELINES ON THE CONDUCT OF BUSINESS OF PAWNSHOPS / COMPRA Y VENTA COMPANIES.

I. INTRODUCTION

1. In accordance with section 48, paragraph 3 of the State Ordinance on the Supervision of the Credit System (AB 1998 no.16) (SOSCS) the Centrale Bank van Aruba (the CBA) may dispense a company from the prohibition as mentioned in section 48, paragraph 1, of said ordinance insofar the interests said ordinance seeks to protect are sufficiently safeguarded otherwise. The CBA may also attach restrictions and stipulations to such exemption. Pawnshops/compra y venta companies fall under the prohibition pursuant to section 48, paragraph 1, of the SOSCS and as such are required to request for a dispensation as meant in section 48, paragraph 3, of the SOSCS in case they want to conduct pawn/compra y venta activities.

2. In regard of the aforementioned, the CBA has established guidelines on the conduct of business of pawnshops to which all pawnshops/compra y venta companies in the possession of a dispensation must continuously adhere to.

II. GENERAL PROVISIONS

1. In this guideline the following terms shall be defined as stated below:

- a. administrative organization: all of the measures relating to the systematic collection, recording and processing of data, the purpose of which is to provide information to enable the pawnshop to be managed and operated and in order to comply with the requirement to prepare financial accounts in respect of the pawnshop;
- b. internal controls: a process effected by the managing board and other personnel, designed to provide reasonable assurance regarding the achievement of effectiveness and efficiency of operations; reliability of financial reporting; and compliance with laws and regulations;
- c. reputable conduct of business: the management and control of the processes so that the risks in relation to integrity, organization and management are minimized by the timely and correct identification, measurement, monitoring and control of said risks;
- d. integrity risk: impairment of the reputation and the existing or future threat to the financial position or earnings as a result of inadequate compliance with obligations under private, administrative, fiscal or criminal law, or with regulations or reporting requirements of supervisory authorities, or with internal standards, rules or codes of conduct;
- e. incidents: events that represent a serious risk to the reputable conduct of the business insofar as they concern the conduct of a shareholder, a supervisory board member, a director or a

member of staff, or of a third party, and events that represent a breach of the rules relating to the reputable conduct of business.

III. Guidelines relating to the management of a pawnshop/compra y venta company

Managing board

1. The managing board of a pawnshop/compra y venta company shall be charged with the day-to-day management of the activities of the company and shall be responsible for:
 - a. The organization and control of the business processes to ensure that the business is conducted in a reputable manner;
 - b. The adequate operation of a proper administrative organization; and
 - c. The adequate operation of the system of procedures and measures relating to internal controls.
2. As part of its day-to-day management, the managing board shall take measures to raise awareness of, and promote and maintain reputable conduct at all levels of the organization.

Policy plan

3. A pawnshop/compra y venta company shall have an up-to-date policy plan setting out the policy principles regarding the control of integrity risks. The policy principles shall be set out in further detail in procedures and measures that shall be made known to and complied with by all staff of the pawnshop/compra y venta company.

IV. Guidelines relating to the Administrative Organization and Internal Controls

Administrative Organization

1. A pawnshop/compra y venta company shall have an organizational chart showing the various positions in the organization and which members of staff occupy these positions.
2. A pawnshop/compra y venta company shall ensure that there is a proper segregation of duties for activities of a management, compliance and accounting nature.
3. The administrative organization of a pawnshop shall be set up in such a way that the following minimum requirements are satisfied:
 - a. the individual transactions that are carried out by the pawnshop/compra y venta company must be recorded in the financial accounts in a timely and accurate manner;
 - b. the aggregate outstanding amount of the transaction(s) per individual must not exceed Afl. 3.000 at any time;
 - c. there must be procedures and measures in place to prevent and combat money laundering and terrorism financing;
 - d. there must be procedures and measures in place to prevent and combat criminal offenses, breaches of law or any, according to generally accepted views, improper acts by the company or its employees, such as (participating in) handling of stolen goods ("helings");
 - e. for each transaction, a consecutively numbered transaction note must be issued and provided to the customer while a copy thereof must be archived and maintained for a period of at least 10 years; and,
 - f. the transaction note must contain the information mentioned in the annex to these guidelines.

4. A pawnshop/compra y venta company must have a manual of procedures in which the positions, tasks and powers of the members of staff of the pawnshop/compra y venta company, taking into account the minimum requirements laid down in respect of the administrative organization, are defined and recorded clearly and in writing, thus forming a framework for day-to-day management.
5. The manual of procedures shall be produced in Dutch or English and shall be updated periodically.
6. Each pawnshop/compra y venta company is required to appoint a compliance officer in charge with the compliance with laws, regulations and internal procedures of the pawnshop. This compliance officer must have sufficient knowledge, experience and skills and must have appropriate independence and authority. The compliance function may be outsourced; in such case the pawnshop must submit the draft outsourcing agreement to the CBA for its prior approval.
7. A pawnshop/compra y venta company shall form an opinion regarding the integrity of new and existing members of staff and shall in any event obtain information about the integrity of the person concerned from previous employers during the last five years. The pawnshop/compra y venta company shall request prior approval from the person concerned in order to obtain said information.
8. There must be procedures and measures on the proper handling of incidents. A pawnshop/compra y venta company shall inform the CBA without delay of incidents if, taking into account the seriousness, the size or other circumstances of the incident, it is reasonable to expect that the CBA should be informed thereof.

Internal controls

9. The management of a pawnshop/compra y venta company shall be responsible for the internal control system and shall periodically evaluate its effectiveness and current relevance, and, if necessary, make adjustments thereto.
10. A pawnshop/compra y venta company must have written procedures and measures relating to internal control to ensure that there can be reasonable certainty that:
 - a. its activities are being carried out in accordance with the policy principles laid down and the procedures drawn up;
 - b. transactions and obligations are being entered into with due regard of the applicable authorization procedures;
 - c. the risks of loss from irregularities, fraud and errors are minimized;
 - d. assets and liabilities are properly managed;
 - e. risks are identified, properly evaluated and quantified in a timely manner; and
 - f. reports that are submitted to the CBA comply with the requirements laid down by the CBA in respect thereof and are delivered in a timely manner.
11. A pawnshop/compra y venta must have ledger records that are set up in accordance with the system of double-entry bookkeeping.
12. The administrative organization of a pawnshop/compra y venta company must be such that each transaction, liability and claim is recorded accurately and timely (see annex 1).

13. The financial accounts of a pawnshop/compra y venta company must enable it to draw up timely and proper reports for its managing board and the CBA.
14. The financial accounts must be kept in Dutch or in English and must be available at all times to the CBA.

V. Guidelines relating to the Annual External Audit and reporting to the CBA

External auditor

1. The book year of a pawnshop / compra y venta company must coincide with the calendar year.
2. Within six months after the end of each book year the pawnshop must submit its financial statements to the CBA. The statements must be accompanied by a review report issued by an external accountant registered at the NIVRA/NOVAA or at a similar internationally recognized professional organization.
3. The external auditor must also issue on an annual basis a statement that the guidelines on the conduct of business of pawnshops/compra y venta companies are complied with. A copy of the aforementioned statement must be submitted to the CBA within six months after the end of each book year.

Reporting to the CBA

4. All pawnshops/compra y venta company are required to file in-house (unaudited) financial statements to the CBA on a quarterly basis.

Aruba, December 15, 2011

Annex 1: Minimum requirements regarding the transaction notes

At the time of making any secured personal credit loan, the pawnshop / compra y venta company (lender) shall execute and deliver to the borrower/pledger a receipt for and describing the tangible personal property subjected to secure the payment of the loan. The transaction note shall at least contain the following information and must be accompanied by a copy of a valid identification of the borrower/pledger (valid passport, driver's license or cedula):

- a) The name and address of the pawnshop/compra y venta company;
- b) The name and address of the borrower/pledger;
- c) The date of the transaction;
- d) An identification and full description of the pledged goods, including if applicable, the manufacturer, year, model and serial number of any goods pawned or received, or any identifiable marks or title on an article.
- e) With respect to jewelry, the type, weight, karat, any engraving, the number and type of gemstones and whether the item is typically worn by a man or woman;
- f) The amount of cash advanced or credit extended to the borrower/pledger;
- g) The amount which must be paid to redeem the pledged goods on the maturity date;
- h) The maturity date of the pawn transaction;
- i) The applicable fees and effective interest rate;
- j) A statement to the effect that the borrower/pledger is not obligated to redeem the pledged goods and that the pledged goods may be forfeited to the pawnbroker/compra y venta company after the specified maturity date and
- k) A declaration from the client that the goods pawned are not stolen and belong to the person that pawns them.



CENTRALE BANK VAN ARUBA

PERSONAL QUESTIONNAIRE

&

ASSOCIATED GUIDANCE NOTES

J.E. Irausquin Boulevard 8 P.O. Box 18 Oranjestad Aruba
www.cbaruba.org

PURPOSE AND SCOPE

The Centrale Bank van Aruba ('CBA') has sought to improve and streamline the application and approval process regarding 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');
- the State Ordinance on the Supervision of Insurance Business (*landsverordening toezicht verzekeringsbedrijf* or 'SOSIB');
- the State Ordinance Supervision Money Transfer Companies (*Landsverordening toezicht geldtransactiebedrijven* or 'SOSMTC'); and
- the State Ordinance on the Supervision of Trust Service Providers (*Landsverordening toezicht trustkantoren* or 'SOSTSP');

(henceforth referred to as the 'Supervisory Laws').

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').

The Supervisory Laws allow the CBA to request information necessary to assess any applications submitted. This involves gathering information on any Candidate in order that the necessary determination of Key Person status can be made.

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 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. as specified by the respective Supervisory Laws, a person who is a director or a member of the supervisory board or a comparable body, a person who (co-)determines the (day to day) policy or a person who is authorized directly or indirectly to appoint or discharge a Key Person of a Regulated Entity;
- b. as specified by the respective Supervisory Laws, (a director of a) a holder of a qualifying holding¹ in a Regulated Entity or (a director of) holder of more than five or ten percent of the issued share capital² of a Regulated Entity;
- c. a person who holds a position designated as such by the CBA pursuant to any of the Supervisory Laws.³

¹ The SOSCS and the SOSIB define a qualifying holding as a direct or indirect holding of more than five percent of the issued share capital or the ability to exercise directly or indirectly more than five percent of the voting rights or comparable control.

² Reference is made to the SOSMTC and SOSTSP, respectively.

³ For the avoidance of doubt, this includes persons who assume the responsibilities of such positions in the absence of the Key Person.

PQ means this Personal Questionnaire.

Regulated Entity includes an entity that is regulated under any of the Supervisory Laws and supervised by the CBA.

Supervisory Laws are the SOSCS, the SOSIB, the SOSMTC and the SOSTSP.

SOSCS means State Ordinance on the Supervision of the Credit System (*Landsverordening toezicht kredietwezen*).

SOSIB means State Ordinance on the Supervision of Insurance Business (*landsverordening toezicht verzekeringsbedrijf*).

SOSMTC means State Ordinance Supervision Money Transfer Companies (*Landsverordening toezicht geldtransactiebedrijven*).

SOSTSP means State Ordinance on the Supervision of Trust Service Providers (*Landsverordening toezicht trustkantoren*).

If you have any further questions concerning the completion of this form, you can contact the Integrity Supervision Department of the CBA.

PRIOR APPROVAL

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 fitness and properness of the Candidate. The requirement to submit the various questionnaires pursuant to the Supervisory Laws has been replaced with a single document referred to simply as the PQ. The PQ has been designed solely for individuals. For legal or other entity applications please contact the CBA.

PROCESS FOR APPROVAL

The process for approval usually involves at least three parties:

- the Regulated Entity that intends to appoint a person in a Key Person position ("Applicant");
- the Candidate;
- the CBA.

After the Candidate has completed the PQ, the Applicant submits the PQ and all other requested documents to the CBA for approval.

Upon completion of the assessment and after the CBA has reached a conclusion on the fitness and properness of the Candidate (which may take up to thirteen weeks), the CBA sends its decision to the Applicant. The CBA can extend the aforementioned period if more time is needed to complete the enquiries. Subsequently, it is very important that the CBA be informed of the proposed commencing date. 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*). The CBA will to the fullest extent possible substantiate its decision, but with regard to certain information and documents it may be bound by statutory secrecy provisions or confidentiality agreements with third parties.

Notwithstanding legal procedures regarding the CBA's decision, the Candidate concerned may not become a Key Position until the CBA has given its 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 is required to be submitted to the CBA.

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:

- a certified true copy of the photograph and signature page(s) of his or her passport ensuring that the photograph is clear and the signature legible. This copy must be certified by a Key Person currently 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;
- an extract (*uittreksel*) from the Civil Registry (*Bevolkingsregister*) not older than two months;
- a Declaration of Good Conduct (*verklaring van goed gedrag*) or an equivalent declaration from the relevant judicial authority from where the Candidate is domiciled, not older than 3 months;
- Copies of test results of any assessment with respect to fitness and properness by a regulator (in Aruba or elsewhere) in charge of the supervision of any sector of the financial system;
- Copies of certificated qualifications.

If the CBA deems it necessary, it may ask the Applicant for additional information on the Candidate. 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, law enforcement agencies, and foreign institutions in charge with financial supervision.

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 Regulated Entity or, in case the Key Person status is related to a (qualifying) holding in a Regulated Entity, the Key Person him/herself. 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 fitness and properness.

RESIGNATIONS

Should a Key Person cease to fulfil 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) shareholding 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.

GENERAL POINTS

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 questions contained in the PQ must be answered. All responses should be typed or written in black or blue ink.

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.



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 **black or 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.

J.E. Irausquin Boulevard 8 P.O. Box 18 Oranjestad Aruba
www.cbaruba.org



CENTRALE BANK VAN ARUBA

Information to be provided by the Applicant

All responses should be typed or written in **black or blue ink**.

SECTION 1

- 1.1 Name and address of the Regulated Entity in relation to whom the Candidate will become a Key Person:**

--

- 1.2 In what position 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 position in which the Candidate will become a Key Person:**

--

- 1.4 Proposed commencement date of the Key Person's duties:**

Day:		Month:		Year:	
-------------	--	---------------	--	--------------	--

- 1.5 Mark the relevant boxes to indicate the legislation under which you are seeking approval:**

State Ordinance on the Supervision of the Credit System	
State Ordinance on the Supervision of the Insurance Business	
State Ordinance Supervision Money Transfer Companies	
State Ordinance on the Supervision of Trust Service Providers	

Information to be provided by the Candidate

All responses should be typed or written in **black or 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, you are invited to provide the requested details on a clearly referenced attachment.

SECTION 2 – Personal Details

2.1 Surname:

	Title(s):	
--	------------------	--

2.2 Given name(s):

--

2.3 Place of birth:

Town/City:		Country	
-------------------	--	----------------	--

2.4 Date of birth:

Day:		Month:		Year:	
-------------	--	---------------	--	--------------	--

2.5 Nationalities and how acquired:

Nationality:		Acquired:	
---------------------	--	------------------	--

2.6 Private address (including, if applicable, postal code):

--

Home telephone number:

Country/area code:		Number:	
---------------------------	--	----------------	--

Personal mobile number:

--

Private email address:

--

2.7 Business telephone number:

Country/area code:		Number:	
---------------------------	--	----------------	--

Business fax number:

Country/area code:		Number:	
---------------------------	--	----------------	--

Business email address:

--

2.8 Passport:

Number:		Expiry date:	
----------------	--	---------------------	--

Issuing country:	
-------------------------	--

2.9 Have you ever changed your name?

***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.**

Previous full name(s) & title	Date changed	Registry at which details are recorded	Reason for change

Please include details of any changes to your name, including forenames and surnames, e.g. through marriage.

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.**

Previous address(es)	Date changed

2.11 Have you ever changed your nationality?

***YES / NO**

***If YES, please list all previous nationalities, the date, how they were acquired/lost.**

Previous nationalit(y)(ies)	Date changed	Acquired by	Lost through

2.12 Please provide the name(s) and address(es) of your current bankers.

Name(s) of bank	Address(es)

SECTION 3 – Experience

3.1 Please state the number of contracted hours per week that you anticipate giving to this position.

Not applicable in case the application relates to a (qualifying) holding in a Regulated Entity.

If this position is not full-time, please explain what other roles 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 Supervisory Director?

***YES / NO**

***If YES, please provide full details on your role and what particular contribution you will bring.**

--

***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.

Name / address of employer and nature of business	Name of regulator	Position(s) held	Relevant dates (mm/yy)	Reason(s) for leaving

- 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.**

Name / address of organization and nature of business or activities	Name of regulator	Position(s) held	Relevant dates (mm/yy)	Task and responsibilities

- 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 a copy of the awarding certificate.

Qualification(s)	Date awarded (dd/mm/yy)	Name & address of awarding body

- 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.

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.

- 3.7 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 them should have worked for your previous employer. If you are to continue with your current employer, for whom you have worked for 8 years or more, then at least one of your references should work for your current employer.

Persons who cannot act as referees 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, and persons who, in respect of your affairs, have an obligation of professional secrecy.

Listed references must be notified in advance and be prepared to act in such a capacity.

Name	Position	Address, telephone number(s), e-mail address(es)	Relationship to you

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 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 an executive or supervisory director, 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.

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 major 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.**

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 leading to a regulatory measure, or do you expect such a situation to develop within the next twelve months?

*YES/NO

*If YES, please explain.

--

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).**

--

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 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 five 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 that could be relevant for this assessment?**

***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.

- 10.1 Please provide a description of the prospective (qualifying) holding, including participating interest (%), number, sum and type of shares, (special) voting rights, other controlling rights, etc.

--

- 10.2 Are these interests (to be) held indirectly?

***YES/NO**

***If YES, please explain and provide the names of all the intermediate companies.**

--

- 10.3 Please explain your reasons for acquiring or increasing the (qualifying) holding in the Regulated Entity and your intentions regarding the (qualifying) holding.

--

- 10.4 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 fitness and properness by a regulator (in Aruba or elsewhere) in charge of the supervision of any sector of the financial system?

***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 – 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):

Position:

SUPERVISORY DIRECTIVES

III.12 Publication of the Effective Interest Rate (or Annual Percentage Rate (APR)) on Consumer Credit**1. Introduction**

This directive on the Publication of the Effective Interest Rate (or Annual Percentage Rate (APR)) on Consumer Credit is aimed at enhancing transparency in the local credit market and providing the public with adequate information on the costs of consumer credit.

It is issued pursuant to section 12, paragraph 1, of the State Ordinance on the Supervision of the Credit System (AB 1998, No. 16) (SOSCS).

2. Definitions

For the purpose of this directive, the following definitions shall apply:

- *Effective interest rate or APR*: reflects the “true” cost of credit, expressed as a percentage on an annual basis, taking into consideration the amortization of loans balances through periodic payments.
- *Nominal interest rate*: reflects the stated rate of interest, ignoring compounding interest or other factors.
- *Consumer credit*: comprises credit extended to individuals for personal or household use (e.g. personal loans and car loans).
- *Relevant Party*: means the licensed credit institution or the (legal) person with an exemption pursuant to article 48 of the SOSCS to extend consumer credit to the public (together hereafter referred to as “the relevant parties”).
- *Advertisement*: Any form of communication intended to persuade an audience (viewers, readers or listeners) to purchase or take some action upon products, services or ideas.

3. Disclosure of Effective Interest Rate or APR

When a relevant party offers consumer credit products to the public, for example through advertising, whereby a direct or indirect reference is made to any pricing element of this type of credit, then the relevant party must adhere to the following:

1. Disclose the “effective interest rate” or APR, in the same format as the nominal interest rate.
2. It is strictly forbidden to publish other types of interest rates, for example the add-on interest rate.
3. Insofar applicable, disclose the insurance contracts and security that need to be established in order for a person to become eligible for this type of credit.
4. Insofar applicable, disclose the penalty interest or fees applicable in case of early repayment of the loan.

SUPERVISORY DIRECTIVES

If the advertisement refers to an interest rate which will be offered for a limited period or an interest rate with a variable component that will differ for a limited period from normal rates, then the financial institution must also provide the following information:

1. The specific time frame in which the offered interest rates will be applicable.
2. The effective interest rate or APR applicable upon expiration of the aforementioned specific time frame.
3. In case of a grace period, the weighted average effective interest rate or APR during the entire term of the loan must also be disclosed.

A financial institution shall not include in its advertisement on credit such statements that:

- are aimed at the ease or speed of obtaining the credit;
- imply that current credit agreements do not or play only a subordinate role in the evaluation of credit requests;
- imply that despite negative outcome of the credit screening process or deviation from the applicable rules of conduct a client can still obtain credit;
- refer to the characteristics of the credit in which tax advantages are implied.

Furthermore, the effective interest rate or APR must be clearly mentioned in the loan agreement.

4. Calculation of Effective Interest Rate or APR

The effective interest rate or APR must be calculated according to the method outlined in the appendix to this directive.

5. Sanctions

Pursuant to section 35, paragraph 1 of the SOSCS, the CBA may impose either an administrative fine not exceeding Afl. 250,000 and/or a penalty order ("last onder dwangsom") not exceeding Afl. 250,000 in case of non-compliance with the provisions contained in this directive.

In accordance with section 53 of the SOSCS, acting in violation with section 12, paragraph 1, of the SOSCS is punishable.

June 1, 2011

Method to calculate the effective interest rate or APR

The interest on consumer credit is usually calculated on the principal amount. In those cases, the effective interest rate or APR is higher than the nominal interest rate. The allowed method for calculating the effective interest rate or effective interest rate or APR follows. Each relevant person has to ensure that the calculation of the effective interest rate or APR is done systematically in accordance with these provisions.

The monthly annuity¹ (of consumer credit) is commonly calculated by using the following formula:

$$\text{Annuity} = \frac{\text{loan amount} + (\text{loan amount} \times \text{annual nominal interest percentage} \times \text{number of years})}{\text{Number of (monthly) payments}}$$

The following example illustrates calculations using this aforementioned formula.

<i>Client</i>	<i>A</i>	<i>B</i>
Loan amount (Afl.)	10,000	10,000
Annual nominal interest rate	10%	12%
Number of years	3	2
Number of (monthly) payments	36	24

Calculation:

$$\text{Annuity A} = \frac{10,000 + (10,000 \times 0.10 \times 3)}{36} = \frac{10,000 + 3,000}{36} = 361.11$$

$$\text{Annuity B} = \frac{10,000 + (10,000 \times 0.12 \times 2)}{24} = \frac{10,000 + 2,400}{24} = 516.67$$

The effective interest rate or APR can be calculated as follows:

The use of the MS Excel RATE function is a simple and efficient method for determining the exact pricing of loans. Therefore, the CBA recommends the use of this method. For illustrative purpose we provide the following examples:

¹ The annuity, being the monthly equal payment, typically includes a principal and an interest element.

SUPERVISORY DIRECTIVES

RESULT FOR EXAMPLE A

Function Arguments			
RATE			
Nper	36	=	36
Pmt	-361.11	=	-361.11
Pv	10000	=	10000
Fv	0	=	0
Type	0	=	0
= 0.014931212			
Returns the interest rate per period of a loan or an investment. For example, use 6%/4 for quarterly payments at 6% APR.			
Type is a logical value: payment at the beginning of the period = 1; payment at the end of the period = 0 or omitted.			
Formula result = 0.014931212			
Help on this function			
		OK	Cancel

Example A

Effective interest rate or
APR (annual basis)

$$= \text{RATE} \{36, -361.11, 10000, 0, 0\} = 0.014931212$$

$$= 0.014931212 \times 12 = 0.179174544 = 17.92\%$$

RESULT FOR EXAMPLE B

Function Arguments			
RATE			
Nper	24	=	24
Pmt	-516.67	=	-516.67
Pv	10000	=	10000
Fv	0	=	0
Type	0	=	0
= 0.017976602			
Returns the interest rate per period of a loan or an investment. For example, use 6%/4 for quarterly payments at 6% APR.			
Pmt is the payment made each period and cannot change over the life of the loan or investment.			
Formula result = 0.017976602			
Help on this function			
		OK	Cancel

SUPERVISORY DIRECTIVES

Example B $= \text{RATE} \{24, -516.67, 10000, 0, 0\} = 0.017976602$
Effective interest rate or
APR (annual basis) $= 0.017976602 \times 12 = 0.215719224 = 21.57\%$

Remark:

The calculations are based on the following assumptions:

- The loan will run its full term.
- The interest percentage remains fixed during the term of the loan.
- Loan-related fees are not included.

Enforcement policy supervision Centrale Bank of Aruba

1. Introduction

If the Centrale Bank van Aruba (CBA) establishes a violation, it will assess how it will act, whether an (administrative) enforcement measure will be imposed, and, if so, which measure. For this assessment, CBA is guided by the following enforcement policy.

This policy document will discuss the policy applied by CBA to enforce the provisions of the supervisory state ordinances and the regulations based on them. The supervisory state ordinances consist of the following state ordinances: the State Ordinance on the Supervision of the Credit System ('AB' [Statute Publication Gazette] 1998 No. 16) ('SOSCS'), the State Ordinance on the Supervision of Insurance Business (AB 2000 No. 82) ('SOSIB'), the State Ordinance on the Supervision of Money Transfer Companies (AB 2003 No. 60) ('SOSMTC'), the State Ordinance on the Supervision of Trust Service Providers (AB 2009 No. 13) ('SOSTSP'), the State Ordinance Company Pension Funds (AB 1998 No. GT 17) ('SOCPF'), the State Ordinance on the Prevention and Combating of Money Laundering and Terrorist Financing (AB 2011 No. 28) ('AML/CFT State Ordinance'), and the Sanctions State Ordinance 2006 (AB 2007 No. 24) ('Sanctions State Ordinance').

Wherever in this policy document reference is made to the sectoral state ordinances, the reference includes the SOSCS, SOSIB, SOSMTC, SOSTSP, and SOCPF.

2. Legal basis

Pursuant to article 37, paragraph 4, of the AML/CFT State Ordinance, the CBA has to lay down guidelines for the exercise of the powers to impose a penalty charge order or an administrative fine and incorporate them in a policy document. Furthermore, the policy document should at any rate contain a description of the procedure to be followed when exercising aforementioned powers. The purpose of this policy document also is to comply with aforementioned obligation, but it covers the entire range of enforcement instruments.

The sectoral state ordinances and the Sanctions State Ordinance do not contain provisions as described in article 37, paragraphs 4 and 5, of the AML/CFT State Ordinance. However, the CBA deems it desirable to draw up a uniform and comprehensive enforcement policy for the enforcement of all supervisory state ordinances.

3. Supervision and enforcement

The CBA aims *inter alia* to promote and, if necessary, enforce compliance by the supervised institutions with the standards laid down in the supervisory state ordinances. The starting point is that everybody shows standard-compliant behavior of one's own accord. Regular supervision contributes considerably to this. If necessary, standard-compliant behavior can also be achieved by using informal and formal instruments (hereinafter: 'enforcement instruments'). The enforcement policy described hereinafter provides information about the starting points and factors that are important to the CBA when deciding on the deployment of enforcement instruments to achieve compliance with the standards laid down in the supervisory state

ordinances. By assessing the seriousness of the violation and other concrete circumstances of the case, the CBA arrives at appropriate actions to accomplish standard-compliant behavior in an effective manner. The starting points (part 4) and circumstances (part 5.3) mentioned hereinafter provide a framework for this assessment.

Regular supervision consists of *inter alia* the provision of information and guidance by the CBA with respect to the standards laid down in the supervisory state ordinances, the collection of data, and the conduct of investigations as to the extent to which these standards are complied with. Within this framework, the CBA will use a risk-based approach. Not every violation of the supervisory state ordinances leads to the deployment of a formal enforcement instrument. A normative conversation or a warning letter can play an important role in enforcement. This does not mean, for that matter, that, initially, a normative conversation will take place or a warning letter will be sent in all cases in which a violation of the supervisory state ordinances is established. Whether the CBA will proceed to do so will depend on the circumstances of the case.

4. Starting points

The sectoral state ordinances serve several purposes, such as promoting and safeguarding a sound financial sector, safeguarding the financial integrity of the sectors, and (to a greater or lesser extent) safeguarding the sound and controlled business operations of financial service providers. The purpose of the AML/CFT State Ordinance is to lay down rules to prevent misuse of financial institutions and designated non-financial service providers by criminals for money laundering and terrorist financing. The Sanctions State Ordinance is the basis for the further specification of (inter)national treaties or decrees implementing the international sanction measures. Sanction measures may be used in response to violations of international law or human rights and in the combat of terrorism. The AML/CFT State Ordinance and the Sanctions State Ordinance contribute considerably to the strengthening of the integrity and stability of (financial) institutions and lead to increasing confidence in the entire financial system.

One of the duties of the CBA is to supervise compliance with the supervisory state ordinances. To achieve this compliance, the CBA, as supervisory authority, has been assigned legal powers and enforcement instruments. For the exercise of these powers and the actions to be taken in case of (possible) violations, whether or not by means of informal or formal instruments, the CBA has worded a number of starting points that are line with the objectives of the sectoral state ordinances, the AML/CFT State Ordinance, and the Sanctions State Ordinance. These starting points are as follows.

a. Action aimed at achieving standard-compliant behavior

The actions of the CBA are primarily aimed at the promotion of standard-compliant behavior. The strategy of the CBA aims at everybody showing standard-compliant behavior on one's own accord. If this strategy does not lead to the result desired or is not expected to lead to the result desired, the CBA will take action, in principle, and - if necessary - enforce standard-compliant behavior by deploying (formal) enforcement instruments.

b. Action dependent on content and purport of the standard

The nature of the response of the CBA to a violation is mainly determined by the content and purport of the violated standard. Thus, violations of market access requirements, prudential requirements, and integrity requirements each require its own approach. In addition, supervisory state ordinances contain open and closed standards. Open standards create scope for supervised institutions to give substance to them in specific situations, while it is the institution's responsibility to interpret these standards correctly. This distinction makes no difference in so far as enforcement is concerned. As soon as a violation of an open or closed standard is established, the CBA will take action in both cases, in principle, in accordance with the starting point as reflected under c. However, enforcement of open standards does always require (additional) substantiation to prove that the open standard has been violated, whereas, as regards closed standards, reference to the behavior and the violated provision may sometimes be sufficient.

c. Action as soon as the CBA becomes aware of a violation (no toleration)

The CBA enforces the laws and regulations upon which it has a supervisory duty. This means that, if the CBA becomes aware of a situation in which rules are not complied with, this situation should be brought to an end. The manner in which the CBA acts to achieve this depends on the concrete situation. This starting point does not affect the fact that the CBA sets priorities in its enforcement in view of the available capacity.

d. Effective action

Taking enforcement action is at any rate aimed at ceasing the violation (or causing same to be ceased) and/or preventing any further violation or a repetition thereof. The choice to use a certain measure and the manner in which it is used should each time be assessed in a concrete situation, against the background of the specific circumstances of this case. In this way, it is determined per situation which measure is most effective.

e. Action in accordance with the general principles of proper administration

Taking enforcement action is in accordance with the general principles of proper administration. By way of illustration, reference is made to the principle of proportionality, the principle of the balancing of interests, and the principle of equality, meaning for the CBA:

- Principle of proportionality: with the instruments available to it, the CBA should always offer a proportional response to a violation as much as possible; the measure to be taken should be in line with the seriousness and nature of the violation, as well as with the other circumstances of the case.
- Balancing of interests: in each separate case, a balancing of the interests directly involved in the decision takes place.
- Principle of equality: in equal cases, equal action is taken; the enforcement instruments are deployed consistently.

5. Enforcement instruments

5.1 Deployment enforcement instruments

The enforcement instruments that can be found in the supervisory state ordinances are:

- issuing a direction, whether or not accompanied by publication;

- imposing a penalty charge order, whether or not accompanied by publication;
- imposing an administrative fine, whether or not accompanied by publication;
- deciding that an auditor or actuary is no longer authorized to make the required statement with respect to a credit institution, an insurance company or a money transfer company;
- appointing a silent receiver for a credit institution, an insurance company or a company pension fund;
- requesting the judge to declare emergency regulations and to appoint one or more administrators for credit institutions and insurance companies c.q. in the case of company pension funds requesting the appointment of an administrator;
- revoking a license or cancelling the registration.

In addition, it is also possible to report a case to the Public Prosecution's Office, where there are grounds for doing so.

Not all instruments can only be deployed until after a violation has been established. Thus, for example, the CBA is authorized, in some circumstances, to issue a direction and to appoint a silent receiver for a credit institution or an insurer, if the CBA sees signs of a development that jeopardizes or could jeopardize the solvency or - in case of a credit institution also - the liquidity of this institution.

5.2 De facto control and instructions

Pursuant to article 37, paragraph 3, of the AML/CFT State Ordinance, violations can be committed by legal entities and natural persons. Within this framework, article 53, second and third paragraph, of the Criminal Code of Aruba applies *mutatis mutandis*.

Article 53 of the Criminal Code reads as follows:

1. *Criminal offenses can be committed by persons and legal entities.*
2. *If a criminal offense is committed by a legal entity, criminal proceedings can be instituted, and the sanctions and measures provided for in the law, if they qualify for this, can be ordered*
 - a. *against this legal entity, or*
 - b. *against those who gave instructions for the act, as well as against those who actually controlled the prohibited act, or*
 - c. *against those mentioned under a and b together.*
3. *For the purposes of the first and second paragraph, a legal entity is considered equivalent to: the unincorporated company, the partnership, and the special-purpose fund.*

This means that a penalty charge order or an administrative fine pursuant to article 37 of the AML/CFT State Ordinance cannot only be imposed on the party to which the violated provision applies, but, in some circumstances, also on the party giving the instructions and the *de facto* controller.

Whether there is question of *de facto* control or instructions depends on the circumstances of the case. The following starting points can be provided:

- The term 'de facto control' is broader than 'giving instructions'. It may be sufficient that the person concerned was aware of the violation and was in the position to intervene but failed to do so. Of course, the de facto controller can be the one that took the initiative. In this case, there is less difference with giving instructions. De facto controlling the violation or giving instructions for this are considered equally grave offenses, for that matter.
- The de facto controller does not have to be familiar with all details of the violation. Knowledge of the violation in a more general sense is sufficient. This means, for example, that the de facto controller does not have to know exactly where, when, and how the violation has been committed.
- A director of a N.V. (or V.B.A.) is not always the party giving the instructions or the de facto controller by definition. It concerns the party who actually gave instructions for or de facto controlled the prohibited act. This will often be a director, but not necessarily. It may also be someone who is subordinate to the management of the corporation but, in reality, exercised de facto control.
- Both the de facto controller/party giving the instructions and the legal entity may be fined for the same violation. If applicable, several de facto controllers/parties giving instructions may also be fined, whether or not in addition to the legal entity.

The sectoral states ordinances and the Sanctions State Ordinance do not have a similar provision (yet).

5.3 Assessment deployment of enforcement instruments

5.3.1 General

The assessment on which the deployment of enforcement instruments is based includes all relevant facts and interests to be balanced.

When opting for deploying an enforcement measure in a concrete case, the CBA takes into account all relevant facts and circumstances, and it balances all interests involved. In doing so, the CBA will at any rate make the following assessments:

- which enforcement instruments can be used pursuant to the supervisory state ordinances;
- whether the deployment of informal and/or formal enforcement instruments is opportune;
- whether or not the punishment of the violator is opportune, in addition to imposing a remedial measure aimed at ending the violation and restoring compliance with the standard;
- whether or not criminal prosecution is opportune in addition to or instead of the deployment of enforcement instruments by the CBA.

More specifically, this means that, if and in so far as applicable in the concrete case, the CBA includes *inter alia* the following in its assessment:

- the interests to be protected by the violated provision and the extent to which there is question of violation of this provision;
- whether there is question of recidivism;
- what the supervisory history is;

- to what extent the violation is culpable;
- to what extent third parties have been prejudiced by the violation, and, if so, whether they have been compensated by the violator of his own accord;
- to what extent the violator benefited from the violation;
- whether the violator ended the violation of his own accord, and, if so, before or after the violator became aware of the investigation;
- whether the violator took adequate measures aimed at standard recovery and prevention of repetition of the violation at the moment that he became aware of the possible violation;
- what the duration of the violation has been;
- to what extent the violator cooperated in the investigation;
- what the financial capacity of the violator is;
- what the economic effect of the supervisory measure on the violator is;
- whether termination or prevention of repetition of the violation is necessary;
- whether a reversal of the violation is necessary or desirable;
- whether a special or general preventive effect is desirable;
- whether the violation led to social unrest;
- whether the violation led to market distortions;
- whether the confidence in the market has been prejudiced by the violation;
- whether the violator disposes of a license or entry in a register pursuant to a sectoral state ordinance;
- whether there also is question of offenses under general criminal law;
- whether the use of coercive measures under criminal law is necessary.

This enumeration of circumstances is neither comprehensive nor mandatory. This means that the enumeration is not exhaustive, and that the weighing of aforementioned circumstances may differ in each individual case.

5.3.2 Specifically as regards natural persons

Whenever the law provides for this possibility, the CBA will always assess whether it is opportune to take action against a de facto controller and/or a party giving instructions. This assessment by the CBA will include the circumstances mentioned under 5.3.1 in so far as relevant.

6. Special procedures prior to imposing a penalty charge order or an administrative fine

When the CBA intends to impose a penalty charge order or an administrative fine, the CBA will notify the party concerned of this intention in writing. In principle, the party concerned will have two weeks to express its views with respect to the intention to the CBA, either verbally or in writing. Subsequently, the CBA will make a final decision with respect to the measure to be imposed. If the CBA decides not to impose an administrative fine, the party concerned will be notified hereof in writing.

7. Legal protection

The written decision of the CBA to impose a formal measure is an order within the meaning of article 2, paragraph 1, of the Administrative Decisions Appeal State Ordinance (AB 1993 No. 45). This means *inter alia* that a party concerned may file a notice of objection with the CBA within six weeks after the date of the order, in accordance with article 9 to 11 of the Administrative Decisions Appeal State Ordinance.

Subsequently, in accordance with article 23, 26 and 27 of the Administrative Decisions Appeal State Ordinance, an appeal may be lodged against the decision of the CBA on the notice of objection with the Court of First Instance of Aruba within six weeks after the date of the decision.

Finally, an appeal may be lodged against the judgment of the Court of First Instance of Aruba, in accordance with article 53a and 53b of the Administrative Decisions Appeal State Ordinance, within six weeks after the decision on the appeal. The notice of appeal should be sent to the "Common Court of Justice of Aruba, Curaçao, St. Maarten and of Bonaire, Statia, and Saba" and be filed with the Court Registry of the Court of First Instance of Aruba.

Aruba, September 21, 2011