



**BANK OF THE NETHERLANDS ANTILLES
(CENTRAL BANK)**

INSTRUCTIONS

for the implementation of articles 3 paragraph 2, 8 paragraph 2 and 11
paragraph 1 of the
National Ordinance on the Supervision of Trust Service Providers.

WILLEMSTAD, May 2004

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1. INTRODUCTION

Pursuant to the provisions of article 3, paragraph 2 of the National Ordinance on the Supervision of Trust Service Providers (N.G. 2003, no. 114) (“the NOST”), applicants shall only be granted a license if they are active as trust offices, have their registered office in the Netherlands Antilles and fulfill the requirements laid down in the Bank's instructions concerning expertise and integrity, financial securities and business operations.

The names of the legal persons and/or the natural persons providing trust services under the responsibility of the licensee shall be placed on Exhibits "A" and "B" attached to the license by the Bank. Pursuant to article 8, paragraph 2 of the NOST certain requirements must be fulfilled for placement on the exhibits, including the instructions on expertise and integrity laid down by the Bank.

In accordance with article 11, paragraph 1 of the National Ordinance on the Supervision of Trust Service Providers, a licensed trust office shall continue to observe the instructions laid down by the Bank with regard to expertise and integrity, financial securities and business management.

This document contains the requirements and instructions referred to above.

2. DEFINITIONS

The terms and expressions used in these instructions have the meanings given to them in the National Ordinance on the Supervision of Trust Service Providers. In addition, the following definitions shall apply to these instructions:

- a) Policymaker: the director of a (registered) trust office or any other person who decides or co-decides on the policy of a (registered) trust office.

3. INSTRUCTIONS FOR THE IMPLEMENTATION OF ARTICLE 3, PARAGRAPH 2 OF THE NATIONAL ORDINANCE ON THE SUPERVISION OF TRUST SERVICE PROVIDERS

To be granted a license, the applicant shall be active as a trust office, have its registered office in the Netherlands Antilles and fulfill the requirements laid down below.

Requirements

A. Requirements on expertise

- 1) Every director, being a natural person, of the registered trust office shall have sufficient relevant knowledge¹ and/or experience² -as determined by the Bank- for the management of the trust office.
- 2) Every other policymaker being a natural person, but not being the director of the registered trust office, shall have sufficient relevant knowledge and/or experience³ –as determined by the Bank- to allow them to decide or co-decide on the policy of the registered trust office.
- 3) If the director and/or the policymaker other than the director is a legal person, every natural person representing such legal person in this matter shall have the required, relevant knowledge and/or experience –as determined by the Bank- as referred to under items A 1 and/or A 2.
- 4) If the registered trust office has a Supervisory Board made up of natural persons, such Supervisory Board shall in its entirety⁴ have sufficient relevant knowledge and/or experience –as determined by the Bank- to enable it to supervise the business operations of the registered trust office.

B. Requirements on integrity

According to the Bank, the prior record and certain acts of any of the following persons shall not be any reason to decide that the integrity (reliability⁵) of such persons is not or no longer undisputed:

- any natural person referred to under item A above;
- any holder of a qualified participating interest⁶ in the registered trust office;
- the directors and members of the Supervisory Board and all shareholders (including the Ultimate Beneficial Owners) of any holder referred to above of a qualified participating interest which is a legal person;

¹ Unless otherwise stated, this includes the relevant theoretical financial and/or business and/or legal knowledge at university or higher vocational education level and/or knowledge gathered through specific training and courses in the field of trust service provision.

² Unless otherwise stated, this includes relevant practical experience gathered over the years, including competency in being active in managerial positions and functions.

³ This includes (years of) relevant practical experience in providing trust services.

⁴ The Board must include members who have a background in finance and/or business economics and/or law.

⁵ In the Policy Guideline on Reliability Assessment of the Bank of the Netherlands Antilles (“*BBT-BNA*”) reliability is taken to be the refraining from one or more *acts* that, in the opinion of the Bank, make it impossible to carry out the position of policymaker or co-policymaker, or to hold a qualified participating interest, or to obtain a release in accordance with article 45 of the National Ordinance on the Supervision of Banking and Credit Institutions 1994 and article 2 of the NOST 2003.

⁶ The *BBT-BNA* defines a qualified participating interest as a direct or indirect participation (shareholder being “Ultimate Beneficial Owner”) for at least 5% of the contributed capital and/or the controlling rights in an institution, including any non-listed companies.

- any natural person being a director or a member of the Supervisory Board of, and any holder of a qualified participating interest in the natural person referred to under A 3 above.

Assessment of expertise and integrity

To assess the expertise and integrity (reliability) referred to in items A and B any person listed under item B shall submit to the bank a fully completed questionnaire for reliability and expertise assessment.

C. Requirements on financial securities

The written procedures for the current measures to be taken and maintained in order to protect the rights, including the moneys and/or monetary values, of international companies to which trust services will be provided and of third parties shall be submitted to the Bank. These procedures shall include at least a description of the control of and the full (physical) separation between the assets of every international company, every third party and the registered trust office and/or the legal person or legal persons placed on Exhibit “A” by means of such instruments as separate bank accounts for every client and/or if possible a trust for third-party moneys with a proper accounting system. These procedures shall form part of section B5 of the framework for administrative organization and internal control in appendix 6 to the application form.

D. Requirements on business operations

Management and appointment

- 1) The daily policy of the registered trust office shall at all times be decided on by at least one director, being a natural person residing in the Netherlands Antilles.
- 2) The appointment of any person referred to under item A shall only take place after a prior written request to and the written approval of the Bank.
- 3) If necessary, depending on the size, complexity and/or risk associated with the (total⁷) activities of the registered trust office and/or depending on the expertise of the natural persons referred to under item A, the Bank may require a larger number of policymakers, including directors, than the number specified by the registered trust office.

⁷ The total activities shall include the trust services to be provided by the trust office, including the trust services to be provided under its responsibility by persons whose placement on Exhibits “A” and “B” to the trust office's license has been applied for.

4. INSTRUCTIONS FOR THE IMPLEMENTATION OF ARTICLE 8, PARAGRAPH 2 OF THE NATIONAL ORDINANCE ON THE SUPERVISION OF TRUST SERVICE PROVIDERS

The following instructions form part of the conditions that have to be fulfilled to have the name of a legal person or a natural person placed on Exhibits “A” or “B” to the license.

Instructions

E. Instructions as to expertise

- 1) The person, being a natural person, who decides or co-decides on the policy of a legal person to be placed on exhibit “A”, and the natural person to be placed on exhibit “B”, shall have sufficient relevant knowledge and/or experience - as determined by the Bank- to provide⁸ trust services under the trust office's responsibility.
- 2) If the policymaker referred to under item E 1 is a legal person, every natural person representing such legal person in this matter shall have the required, relevant knowledge and/or experience -as determined by the Bank- referred to under item E 1.
- 3) If the legal person to be placed on Exhibit “A” has a Supervisory Board made up of natural persons, such Supervisory Board shall in its entirety have sufficient relevant knowledge and/or experience -as determined by the Bank- to supervise the business operations of such legal person.

F. Instructions as to integrity

The prior record and certain acts of any of the following persons shall not be a reason for the Bank to decide that the integrity (reliability⁹) of such persons is not or no longer undisputed:

- any natural person referred to under item E;
- any holder of a qualified participating interest in the legal person to be placed on Exhibit “A”;
- the directors, members of the Supervisory Board and all shareholders (including the Ultimate Beneficial Owners) of any holder referred to above which is a legal person;
- any natural person being a director or a member of the Supervisory Board of, and any holder of a qualified participating interest in the natural person referred to under E 2 above.

Assessment of expertise and integrity

To assess the expertise and integrity (reliability) referred to in items E and F any person listed under item F shall submit to the bank a fully completed questionnaire for reliability and expertise assessment.

⁸ See the definition under footnote 3.

⁹ See the definition under footnote 5.

5. INSTRUCTIONS FOR THE IMPLEMENTATION OF ARTICLE 11, PARAGRAPH 1 OF THE NATIONAL ORDINANCE ON THE SUPERVISION OF TRUST SERVICE PROVIDERS

A licensed trust office shall have to continue to fulfill the following instructions.

Instructions

G. Instructions as to expertise

- 1) A trust office shall have sufficient expertise for its total¹⁰ activities to fulfill the provisions of the NOST regarding the “Know Your Customer” requirements, as referred to in articles 12 and 13 of the NOST.
- 2) If necessary, depending on the size, complexity and/or risk associated with the (total) activities of a trust office and/or depending on the expertise of persons deciding or co-deciding on the policy of such activities, the Bank may give further instructions to the trust office as to the required expertise. The trust office shall carry out these instructions within the term set by the Bank.

H. Instructions as to integrity

The Bank shall have the right to give a trust office further instructions as to the integrity (reliability) of the persons involved with the (total) activities of the trust office. The trust office shall carry out these instructions within the term set by the Bank.

I. Instructions concerning financial securities

A trust office shall:

- 1) implement and where necessary update the procedure and measures referred to under item D;
- 2) carry out any further instructions as to financial securities regarding the trust office's activities given to it by the Bank within the term specified by the Bank.

J. Instructions as to business operations

Management and appointment

1. The daily policy of any legal person placed on Exhibit "A" shall at all times be decided on by at least one natural person residing in the Netherlands Antilles.
2. The natural person referred to under item J 1 and any other natural person deciding or co-deciding on the policy of the legal person placed on Exhibit “A”, and if such a legal person has a Supervisory Board, the members of the Supervisory Board of such legal person shall only be appointed following a written request to and the written approval of the Bank.
3. If necessary, depending on the size, complexity and/or risk associated with the (total) activities of a trust office and/or depending on the expertise of the policymakers deciding or co-deciding on the policy governing such activities, the Bank may demand that more policymakers, including directors, shall be appointed with the trust office and/or with any legal person placed on Exhibit "A". The trust office shall carry out these instructions within the term set by the Bank.

¹⁰ Total activities shall include the trust services provided by the trust office, including such trust services as are provided under the trust office's responsibility by persons placed on Exhibits “A” and “B” to the trust office's license.

4. Where a trust office and/or a legal person placed on Exhibit "A" does not or no longer have the number of directors and/or policymakers as laid down on the basis of items D 1 and 3 and/or J 1 and 3, this must immediately be reported to the Bank in writing by the trust office. Such report shall also specify the term within which the trust office and/or the legal person placed on Exhibit "A" shall again fulfill the number laid down by the Bank.
5. Where all directors of a trust office or the persons charged with the daily policy of a legal person placed on Exhibit "A" are staying outside the Netherlands Antilles, the trust office shall, prior to such stay, appoint a natural person, residing locally, as the person to be considered by the Bank as the relevant contact person.

Observance

A trust office shall at least ensure:

6. that there is supervision of the correct observance of all relevant acts and statutes applying to its total activities, including the national decrees relating to the NOST, and all relevant instructions and guidelines laid down by the Bank, including the present instructions and the BNA guideline for honest business operation in case of incidents and in case of integrity-sensitive positions;
7. that the Bank is informed, as referred to in article 11, paragraph 2 of the NOST, on a continuous basis and in writing, and that all the necessary documents are submitted to support such information;
8. that the necessary action is taken on the basis of the provisions of item J 6, including the drawing up and implementing of the necessary procedures and the creation of the necessary structures including the necessary functional divisions, in the organization of the trust office and the organization of any legal person placed on Exhibit "A".

Records and data concerning a trust office and the persons on its Exhibits "A" and "B"

A trust office shall keep at least the following records and information concerning its company and the persons referred to below accessible in a well-structured manner, in its office, for inspection by the Bank:

9. the books, documents and other information carriers concerning its accounts and the accounts of any legal person placed on its Exhibit "A";
10. an up-to-date extract of its registration in the trade register of the Chamber of Commerce, and an up-to-date listing of its directors and policymakers stating their full names, addresses and places of residence;
11. an up-to-date extract of the registration in the trade register of any legal person placed on Exhibit "A" and an up-to-date listing of the legal person's policymakers stating their full names, addresses and places of residence;
12. an up-to-date listing of the registration in the trade register of its director and policymaker (other than director) who are legal persons, and of the director and policymaker of any legal person placed on Exhibit "A" where they are legal persons;
13. an up-to-date listing stating the full names, addresses and places of residence of any person placed on Exhibit "B" and the positions occupied by such persons within the trust office's organization;
14. a copy of its current Articles of Association and of the Articles of Association of every legal person placed on Exhibit "A", and of the directors and policymakers referred to under item J 12;
15. an overview of the structure of the group of companies to which the trust office and the legal persons placed on its Exhibit "A" belong;
16. a compilation of all its current internal procedures and guidelines regarding its business operations and its organization chart, and of every legal person placed on Exhibit "A";

17. its certified annual accounts for the past three financial years or its non-certified annual figures if there are no certified annual accounts for the past three financial years or if there are no such certified annual accounts yet;
18. an up-to-date listing of the holders of a qualified participating interest in the trust office and in any legal person placed on Exhibit "A" ;
19. an up-to-date listing of all shareholders of the holder referred to under item J 18 being a legal person;
20. an up-to-date listing of the holders of a qualified participating interest in the director and policymaker referred to under item J 12;
21. an up-to-date file containing the names, addresses, phone numbers, contact persons and possibly e-mail addresses of all international companies to which trust services are provided;
22. an up-to-date file containing the names, addresses, phone numbers, contact persons and possibly e-mail addresses of all international companies to which no trust services are provided anymore.
23. The Bank shall have the right to give a trust office and/or a legal person placed on Exhibit "A" further instructions as to their business operation. The trust office shall carry out these instructions within the term set by the Bank.

If necessary, the Bank may permanently or temporarily deviate from one or more of the instructions laid down above in specific cases and with due consideration of the relevant interests.

6. SINGLE PROVISION OF DOCUMENTS

In the framework of the NOST and in connection with the information and/or documents to be submitted to the Bank pursuant to the previous sections, the Bank shall be following the following policy until further notice.

Information and/or documents

Where the information/documents requested concern a person, the submission of a copy of a document submitted to the Bank in identical form before shall suffice, provided that such copy is not older than 3 years and that the Bank shall not refuse to accept it. When submitting such a document, the formerly submitted document must be referred to and the reasons why the copy is submitted must be indicated. If a personal questionnaire has been submitted before, the above shall only apply where the same natural person and the same position are concerned or where the same natural person is concerned in connection with another position within the same institution or group of companies to which the institution belongs and the information in the personal questionnaire has not changed.

Refusal

If necessary the Bank shall have the right to refuse to accept the copy referred to above.