



**BANK VAN DE NEDERLANDSE ANTILLEN
(CENTRAL BANK)**

POLICY GUIDELINES
FOR FOREIGN INVESTMENT INSTITUTIONS

WILLEMSTAD, July 2003

INTRODUCTION

In processing the request for a license by a foreign investment institution, the Bank can, in accordance with article 4, paragraph 4, and article 9, paragraph 3 of the *National Ordinance on the Supervision of Investment Institutions and Administrators* (N.G. 2002, No. 137), hereafter referred to as “the NOSIA”, grant dispensation from several requirements. A ground for dispensation is the adequacy of the supervision exercised by the supervisory authority in the country where the investment institution requesting the license is domiciled.

Furthermore, the Bank can by virtue of article 5 of the NOSIA also impose restrictions or conditions on licenses issued.

This guideline addresses the Bank’s policy with respect to two categories of foreign investment institutions, namely:

- foreign investment institutions subject to adequate supervision by their home-country supervisory authority that apply for a license in the Netherlands Antilles,
- foreign investment institutions not subject to adequate home-country supervision that apply for a license in the Netherlands Antilles.

FOREIGN INVESTMENT INSTITUTIONS SUBJECT TO ADEQUATE HOME-COUNTRY SUPERVISION

In accordance with article 4 of the NOSIIA, an investment institution shall be granted a license if it and its depositary, if employed by the investment institution, comply with the requirements stipulated in the Bank's directives. However, based on article 4, paragraph 4 and article 9, paragraph 3 of the NOSIIA, the Bank can grant dispensation from certain requirements in the NOSIIA. A ground for granting a dispensation is that the investment institution be subject to adequate home-country supervision.

Determination of the adequacy of home-country supervision

Subsequent to a review of the relevant rules and regulations of the country in question and after a possible visit to that country, the Bank will judge whether the supervision exerted by the home-country supervisory authority is in line with the supervision exerted in the Netherlands Antilles pursuant to the NOSIIA. Subsequently, agreements are entered into with the home-country supervisory authority, which may provide for the exchange of (relevant) information between the two supervisory authorities. In such cases, the Bank, to a certain extent, relies on the supervision exercised by the supervisory authority in the country where the investment institution is domiciled. The institution is then, in accordance with article 9, paragraph 1, and subparagraph i of the *Directives on the Supervision of Investment Institutions and Administrators*, hereafter referred to as the "DSIIA", required to submit a declaration of its home-country supervisor that a license under the applicable law(s) has been granted.

The Bank has decided to initially adopt the list of countries that have been designated by the Dutch supervisory authority, Authority for the Financial Markets (AFM), as countries where adequate supervision on investment institutions is exerted. Consequently, investment institutions domiciled in the Netherlands, and the following jurisdictions regarded by the AFM as having adequate supervision, the United States of America¹, Jersey, Guernsey, and Luxemburg, will be eligible to obtain dispensation from certain requirements.

DISPENSATIONS

A) Dispensations from licensing requirements

When applying for a license, foreign investment institutions subject to adequate home-country supervision can receive dispensation from the provisions in article 9, paragraph 1, subparagraphs b, d, g and h of the DSIIA. In addition, dispensation can be received from the obligation to submit the Constituting Documents Questionnaire (annex A of the DSIIA) and the Prospectus Questionnaire (annex B of the DSIIA). However, in order to receive dispensation from this obligation, the Bank requires foreign investment institutions to provide their (prospective) investors in the Netherlands Antilles with some additional information. This additional information can be included in a foreign investment institution's prospectus or on a supplementary sheet in the prospectus and should contain:

¹ Provided the investment institution is registered with the Securities and Exchange Commission.

- the provision stated in sections 2.9 and 2.11 of Annex A of the DSIIA. The approval referred to in section 2.9 of Annex A of the DSIIA, should be granted by the foreign investment institution's home-country supervisory authority;
- the provision stated in sections 3.18 and 3.23 of Annex B of the DSIIA; and
- a special clause formulated as follows: '*(name of the investment institution)*' is domiciled in '*(country where the investment institution is domiciled)*' and has obtained a license there from '*(the supervisory authority in the country where the investment institution is domiciled)*'. '*(Name of the investment institution)*' is subject to the supervision exercised by '*(the supervisory authority in the country where the investment institution is domiciled)*'. The Bank van de Nederlandse Antillen, in line with its Policy Guidelines for Foreign Investment Institutions, has granted '*(name of the investment institution)*' a license pursuant to the National Ordinance on the Supervision of Investment Institutions and Administrators (N.G. 2002, No. 137). Along with the license '*(name of the investment institution)*' received dispensation from the Bank van de Nederlandse Antillen from several requirements. Further information concerning these requirements may be obtained at '*(name of the investment institution)*'.

B) Dispensations from requirements related to on-going supervision

With respect to on-going supervision, dispensation can be obtained from the requirements in article 8, paragraph 1, 2, and 5, article 9, paragraph 2 of the NOSIIA and subsequently also from the requirements in article 2, paragraph 3, article 5, paragraph 1, article 8, paragraph 2 (as far as reference is made to annex B of the DSIIA), article 10, article 11 and article 12 of the DSIIA.

The dispensations will be granted under the following conditions:

- The assessment of the competence and integrity of persons referred to in article 2, paragraph 1 and 2 of the DSIIA, should be conducted by the supervisory authority of the country where the investment institution is domiciled. The Bank should receive written notification of the approved persons within one month of the date that the approval was granted.
- Amendments to the constituting documents (e.g. articles of association of an investment company or the rules of an investment fund) are subject to the prior approval of the home supervisor of the investment institution. Written notification of the home supervisor's approval should be submitted to the Bank within one month after granting such an approval.
- The (semi-) annual reports, including the (semi-) annual accounts, must comply with the rules and regulations applicable in the home country. Copies of these reports must be submitted to the Bank within one month after the publication of these reports. Furthermore, the place where the participants can obtain copies of these reports free of charge must be made public in at least one national newspaper in the Netherlands Antilles or otherwise communicated to each of the participants in writing.
- An external auditors' report must be submitted together with the annual accounts.

- If the semi-annual account is certified by an external auditor, the auditors' report must also be submitted.
- The Bank should receive a copy of every management letter issued by the external auditor within one month after this was sent to the investment institution by the external auditor.

FOREIGN INVESTMENT INSTITUTIONS NOT SUBJECT TO ADEQUATE HOME-COUNTRY SUPERVISION

Foreign investment institutions domiciled in jurisdictions whose supervision has not been judged by the Bank or whose supervision has not been classified as adequate, are regarded by the Bank as not being subject to adequate supervision. These investment institutions are not eligible for dispensations and must comply with all the requirements applicable to investment institutions by virtue of the NOSIIA.

Furthermore, pursuant to article 5 of the NOSIIA, the Bank requires these foreign investment institutions to comply with the following additional requirements:

- The Board of Directors and the Supervisory Board, if applicable, must be available and approachable in the Netherlands Antilles upon the Bank's request.
- The external auditor must be available and approachable in the Netherlands Antilles upon the Bank's request.
- The administration of the investment institution must be such that accounting records are kept in the Netherlands Antilles, which enables retrieval of the information referred to in article 10 to 12 of the DSIIA. In practice, this implies the presence of the complete accounting records of an investment institution in the Netherlands Antilles, which forms the basis for the audit to be conducted by an external auditor. Presence in the Netherlands Antilles can also mean the availability of the accounting records through an on-line connection. Furthermore, the following records must also be present in the Netherlands Antilles:
 1. documentation and files evidencing compliance with the provisions of the National Ordinance on the Reporting of Unusual Transactions (N.G. 1996, no. 21) and the National Ordinance on the Identification when Rendering Financial Services (N.G. 1996, no. 23);
 2. minutes of the meetings of the Board of Directors, the Supervisory Board, if applicable, and of joint meetings of these bodies;
 3. copies of relevant contracts with third parties.

The Bank reserves the right to formulate additional regulations if desirable for the adequate supervision exerted by virtue of the NOSIIA or if desirable to safe-guard the integrity and adequate functioning of the financial markets.

CONCLUSION

If a foreign investment institution considers itself eligible for a dispensation of the requirements as indicated in this policy guideline, it should, along with its request for a license, submit a copy of the following documents to the *Investment Institutions Supervision Department* of the Bank at *Simon Bolivar Plein 1, Willemstad, Curaçao, Netherlands Antilles*:

- Home-country license or registration;
- Declaration of the home-country supervisory authority stating that the investment institution is currently under its supervision;
- Current Prospectus;
- Extract of Chamber of Commerce;
- Constituting documents (Articles of Association or Rules);
- Agreement as referred to in article 5, paragraph 2 of the DSIIA;
- Most recent (semi-) annual reports, including (semi-) annual accounts.

Subsequent to the review of these documents, the Bank will inform the investment institution of its decision with respect to the requested dispensation.

The Bank reserves the right to impose additional requirements or to deny a request for certain dispensations in light of a proper supervision or to safe-guard the integrity and adequate functioning of the financial markets.