



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

***POLICY GUIDELINES
ON DISPENSATION FOR TRUST SERVICE PROVIDERS***

WILLEMSTAD, May 2004

INTRODUCTION

The *National Ordinance on the Supervision of Trust Service Providers (N.G. 2003, no. 114)*, hereafter referred to as the “NOST”, was introduced to regulate trust service providers operating in or from the Netherlands Antilles. According to the NOST, trust services may only be provided by:

- (i) trust offices that have been granted a license by the Bank (and the natural and/or legal persons listed on the annex to such license), and
- (ii) natural or legal persons that have been granted a dispensation by the Bank.

These policy guidelines set out the legal basis and criteria as well as the application procedure for, and certain conditions of, dispensation under the NOST.

A trust service provider that has been granted a dispensation must (continue to) comply with certain provisions of the NOST including the know-your-customer principle.

LEGAL BASIS AND CRITERIA

Pursuant to article 2, paragraph 3 of the NOST, a natural or legal person can be granted a dispensation from the Bank if the person meets the following two criteria:

- (i) the person must not conduct a business in providing trust services, and
- (ii) there are according to the Bank well-founded reasons for the international company to have the trust services provided by such person.

These criteria are further explained under 1 and 2.

1. Not conducting a business in providing trust services

A trust service provider is considered not to conduct a business in providing trust services if directly or indirectly and individually or jointly with others:

- (i) the number of international companies to which the trust service provider provides trust services in a calendar year does not exceed ten (10), and
- (ii) the number of natural persons involved in providing the trust services does not exceed one (1), and
- (iii) the trust service provider’s income from providing the trust services, does not exceed US\$50,000 per calendar year, and
- (iv) the trust service provider that is a legal person has only one director being a natural person who is the sole shareholder and ultimate beneficial owner (UBO) of the trust service provider.

The Bank may deviate from the above criteria on a case-by-case basis if desirable for the adequate supervision arising from the NOST.

2. *“Well-founded reasons” to have the trust services provided by a person*

Examples of “well-founded reasons” for the international company to appoint a particular person as its trust service provider are according to the Explanatory Notes to the NOST the appointment of the following person as a local managing director:

- (i) an employee of the group of companies to which the international company belongs,
- (ii) a family member of the ultimate beneficiary or beneficiaries of the international company, and
- (iii) an individual with expertise in the area of business of the international company.

The Explanatory Notes contain a fourth example of a “well-founded reason”. It concerns the civil notary who:

- (a) has a good relationship with a foreign client who:
 - wishes to incorporate a Netherlands Antilles legal entity and appoint a local managing director, and
 - has not yet selected a trust office and is under time pressure,
- (b) incorporates the legal entity for such client, and
- (c) “temporarily” makes a local natural or legal person available as local managing director of such incorporated legal entity.

In this particular case the Bank considers a period of up to one (1) year as “temporary”.

Furthermore, the Bank considers the appointment of a natural person who has relevant experience, knowledge, and/or expertise in the Netherlands Antillean financial sector as a local managing director of an international company, as a “well-founded reason”.

The Bank will determine on a case-by-case basis whether other presented reasons are in its opinion “well-founded reasons” for the international company to have a person provide the requested trust services.

Pursuant to article 2, paragraph 4 of the NOST, the dispensation shall apply only to trust services rendered to the international company listed in the dispensation or to entities that are part of the group of companies listed in the dispensation. The Bank may list more than one international company in a dispensation, but will in principle not list a group of companies without specifying the names of the legal entities to which the dispensation applies.

APPLICATION PROCEDURE

A person applying for a dispensation from the Bank must:

- (i) meet all relevant requirements addressed in these policy guidelines, and
- (ii) submit a duly completed dispensation request form to the Bank.

If the Bank requires further information subsequent to the receipt of the dispensation request form, it shall grant the applicant the opportunity to provide such further information within a reasonable period of time.

The request for dispensation should be sent to the Investment Institution and Trust Supervision Department of the Bank at Simon Bolivar Plein 1, Willemstad, Curaçao, Netherlands Antilles.

CONDITIONS

Pursuant to article 2, paragraph 5 of the NOST the Bank can attach conditions to a dispensation. The following general conditions will be applied:

- (i) the Bank conducts an integrity test on the applicant, or in the case of a trust service provider that is a legal person, on its (proposed) director who is a natural person. A completed and notarized personal questionnaire should be submitted for the individual concerned. The Bank should be notified immediately of any future change in the data on the submitted personal questionnaire and the data should be submitted immediately to the Bank,
- (ii) a director of the trust service provider that is a legal person may only be replaced with the Bank's prior approval. The integrity test is performed by the Bank based on the Bank's Rule on Integrity Testing,
- (iii) all information provided by the applicant to the Bank should be complete and accurate,
- (iv) the applicant should provide the Bank with prior written notification of any of the following proposed actions:
 - sale of the trust service provider that is a legal person,
 - amendment of the articles of association of the trust service provider that is a legal person, and
 - termination of its trust services provided under the dispensation,
- (v) the applicant should have an adequate administration that includes duly (physical) segregation of the funds of each international company and the applicant, through separate bank accounts for each of these parties.

On a case-by-case basis, the Bank may attach other or additional terms and conditions to a dispensation.

Pursuant to article 2, paragraph 5 of the NOST, the conditions attached to a dispensation can be amended by the Bank. Furthermore, the dispensation may be revoked if it is abused or misused or if the conditions are not met sufficiently or at all.