

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

### **I. Introduction**

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

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

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

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

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

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

There are two characteristics that distinguish a captive insurance company.

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

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

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### B. Captive Insurance Companies - groups

The following groups of captives insurance companies are distinguished:

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

### III. Licensing process

#### A. Prerequisites

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **C. Licensing requirements**

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

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

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

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

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

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

### D. Charges

Pursuant to Section 11 and 12 of the decree:

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

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

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

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

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

**I. GENERAL**

1. Name of proposed captive insurance company:

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2. Name of parent company or sponsor:

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

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4. Principal place of business of proposed captive:

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5. Please indicate type of proposed captive.

- a. Pure captive
- b. Association or industry captive
- c. Rent-a-captive (sponsored)
- d. Other (specify)

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6. The organization form in Aruba:

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

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

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### II. ENCLOSURES

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

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

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

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

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

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

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

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

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