



POLICY RULE BANKING LICENCE REQUIREMENTS AND ADMISSION REQUIREMENTS FOR CREDIT INSTITUTIONS OPERATING IN OR FROM ARUBA

Preamble

This document – which replaces the 2009 policy rule banking licence requirements and admission requirements for credit institutions operating in or from Aruba – outlines the Bank’s policy with respect to the licence and admission requirements of credit institutions. The position of the Centrale Bank van Aruba (CBA) on shareholding in credit institutions has remained the same. The soundness of the banking industry is best served by admission of credit institutions with strong ties to existing banks, bank holding companies or financial conglomerates subject to comprehensive and effective consolidated supervision by the supervisor(s) in the country where the parent bank, bank holding company or financial conglomerate is established (the "home country supervisor(s)"). In situations where this is no longer the case “ring-fencing” measures are necessary to protect the interests of the depositors and to maintain the stability of the banking sector. This to prevent any “spill-over” effects of the possible consequences of ineffective consolidated supervision to the bank subsidiary in Aruba.

1. Introduction

The most relevant sections of the State Ordinance on the Supervision of the Credit System (AB1998 No 16) (the Ordinance) relating to the application for a banking licence are set out below. However, it remains necessary to take fully into account the complete Ordinance in order to have a full overview of the conditions and requirements stipulated in this ordinance. The ordinance (including the unofficial English translation hereof) is also available at the website of the CBA: www.cbaruba.org

2. General licence requirements for credit institutions

In accordance with section 4 of the Ordinance, a company or institution established in Aruba is prohibited from pursuing the business of a credit institution, unless it has obtained a banking licence to that end from the CBA. Furthermore, in accordance with section 24 of the Ordinance a company or institution established outside Aruba is prohibited from pursuing the business of a credit institution through a branch in Aruba, unless it has obtained a banking licence to that end from the CBA. Sections 5, 6, 7(1) and (2), and 8 to 11 of the Ordinance apply to a branch office of a credit institution established outside Aruba.

Pursuant to section 5 sub 1 of the Ordinance, the application for a licence as referred to in section 4 shall at least contain information about:

- a) The number, the names, and the past history of the persons who determine the day-to-day policy of the enterprise or institution.
- b) The number, the names, and the past history of the members of the supervisory board of the enterprise or institution or of the body of the enterprise or institution having a task comparable with that of a supervisory board.
- c) The names of those who have a qualifying holding in the enterprise or institution, as well the size of any such qualifying holding.
- d) Annual accounts or an opening balance sheet certified by an auditor.
- e) A program of operations which the enterprise or institution intends to carry on.
- f) The envisaged administrative organization and organizational structure, including the financial administration and internal controls.

In accordance with section 6 sub 1 of the Ordinance the CBA shall grant the licence as referred to in section 4, unless:

- a) the enterprise or institution does not fulfill the requirements provided for in or under sections 7 and 8 of the Ordinance.
- b) The CBA is of the opinion that the expertise of one or more persons who determine or co-determine the policy of the company or institution is insufficient in connection with the pursuit of the business of a credit institution.
- c) The CBA is of the opinion that the integrity of one or persons who determine or co-determine the policy of the company or institution is not beyond doubt in connection with the pursuit of the business of a credit institution.
- d) Without prejudice to section 17 of the Ordinance, the CBA is of the opinion that, as a result of a qualifying holding in the company or institution, the sound banking policy of the company or institution is or could be subject to an undesirable influence.
- e) The auditors opinion referred to in section 5 sub 1d of the Ordinance is not an unqualified opinion.
- f) On the grounds of information as referred to in section 5(1), under d, e, or f of the Ordinance, the CBA is of the opinion that the company or institution will not be capable to meet the supervisory requirements.
- g) The CBA is of the opinion that granting a licence would or could lead to an undesirable development of the credit system.

When assessing whether the granting of a licence would or could lead to an undesirable development of the credit system, as specified in section 6 (1) sub g of the Ordinance, the Bank will consider, inter alia, the existence of

comprehensive and effective consolidated supervision by the home country of the group as a whole, the solvency and liquidity of the institution that requests the licence, the stability and reputation of its parent company and the effect the granting of licence has or could have on:

- a) The financial solidity and integrity of the credit system.
- b) The adequate functioning of the financial markets.
- c) The interest of creditors and depositors.
- d) The soundness and stability of the financial sector.
- e) The financial reputation and integrity of Aruba.

All credit institutions have to comply continuously with all requirements and conditions pursuant to the ordinance and other relevant laws and regulations governing credit institutions.

3. Licence and admission policy for credit institutions

3.1 Licence and admission requirements applicable to all credit institutions

In order to ensure a sound development of the banking industry (refer also to section 6(1), sub d and g of the Ordinance), a credit institution will, in principle, only be considered for admission if all of the following conditions are met:

- a) The applicant will be a branch or a majority owned subsidiary of an existing bank, bank holding company or, as the case may be, financial conglomerate, subject to comprehensive and effective consolidated supervision by the home country supervisor(s).
- b) The applicant's parent bank, bank holding company or, as the case may be, financial conglomerate has adequate financial strength and a solid reputation.
- c) The supervision conducted by the home country supervisor(s) on the parent bank has an adequate level and is of a comprehensive nature.
- d) The home country supervisor(s) of the parent bank, has adopted and implemented the international standards issued by the Basel Committee on Banking Supervision in its laws, regulations, and supervisory practices, including but not limited to the revised Core Principles for Effective Banking Supervision.
- e) The home country supervisor(s) has adopted and implemented a strict enforcement policy that meets international standards.
- f) The home country supervisor(s) is able to exchange information with the CBA in accordance with the requirements of section 34 of the Ordinance.
- g) The parent bank maintains an adequate communicative and cooperative

relationship with its home country supervisor(s).

- h) The CBA will reject licence applications of shell banks. Shell banks are banks that have no physical presence (i.e., meaningful mind and management) in the country where they are incorporated and licenced, and are not affiliated to any financial services group that is subject to effective consolidated supervision.¹
- i) The “mind and management” of the Aruba subsidiary or branch office are in Aruba.

The CBA may set, depending on the circumstances, additional requirements and may also attach conditions and restrictions to a licence pursuant to section 2(2) of the Ordinance.

3.2 Additional licence requirements and admission policy with respect to branch offices of credit institutions not established in Aruba

In view of the changing market conditions and in order to be able to better protect the interest of depositors, the CBA deems the following admission policy necessary with respect to foreign credit institutions operating via branch offices.

In order to ensure a sound development of the banking industry (refer also to section 6(1), sub d and g of the Ordinance), branches of credit institutions not established in Aruba will, in principle, only be considered for a licence as referred to in section 24 of the Ordinance, if it will be a branch office of an international bank that is active in the major financial markets around the world and has a balance sheet total of at least US\$ 10 billion and an “A” rating issued by Standard & Poors or a comparable rating agency. Furthermore, the international bank must be subject to comprehensive and effective consolidated supervision by the home country supervisor(s).

It is a prerequisite that the applicant provides certified financial statements over the last three years to prove the financial soundness of the (parent) company. Important elements in the Bank's assessment of the financial strength are, among other things, capitalization, profitability, and liquidity. Furthermore, the (parent) company must have in principle at least 30 years experience in banking and an excellent track record.

The CBA may set, depending on the circumstances, additional requirements and may also attach conditions and restrictions to a licence pursuant to section 2(2) of

¹ Reference is made to the paper on ‘Shell banks and booking offices’ issued by the Basel Committee on Banking Supervision in January 2003.

the Ordinance.

3.3 Parallel-owned banking

The CBA will reject applications for a licence that would result in the creating or expanding of a parallel-owned banking structure, e.g., banks operating in different jurisdictions that, while not being part of the same financial group for regulatory consolidation purposes, have the same beneficial owner(s) and consequently, often share common management and interlinked businesses. The owner(s) may be an individual or a family, a group of private shareholders or a holding company or other entity that is not subject to banking supervision.²

3.4 Shareholding in credit institutions established in Aruba

In order to ensure a sound banking policy of the banking industry in Aruba (refer also to section 6(1) d and g of the Ordinance), the shareholding in a credit institution established in Aruba must, in any event, comply with the following condition: the credit institution shall have as a major shareholder³ a financial institution with solid financial strength and reputation subject to comprehensive and effective consolidated supervision by the home country supervisor(s).

In the event that the CBA is of the opinion that the condition of comprehensive and effective consolidated supervision by the (ultimate) home country supervisor(s) is no longer met or that there are significant doubts on the adequacy of the solvency or liquidity position of the parent bank, the shares in the Aruban bank must be transferred to a pure bank holding company⁴ (“*zuivere houdstermaatschappij*”). The shares in the Aruban bank may no longer be held, directly or indirectly, by a bank in a country where, according to the CBA, the condition of comprehensive and effective consolidated supervision conducted by that country’s supervisor(s) is no longer met. This to prevent any negative spill-over effects on the Aruba banking entity.

² Reference is made to the paper on ‘Parallel-owned banking structures’ issued by the Basel Committee on Banking Supervision in January 2003.

³ A major shareholder is considered by the CBA as a shareholder that either has a majority of the shares outstanding or a portion of the shares that in view of the Bank is significant enough to allow him to exert a material influence over the institution’s decisions and its decision making bodies.

⁴ Pure holding company: a company that has the sole purpose of being the shareholder of the Aruban bank.

4. Procedure

In accordance with section 5 sub 2 of the Ordinance, the CBA will make a decision on the application within thirteen weeks upon receipt of all relevant documents for its evaluation.

5. Required documents

The following documentations are required for evaluation of the application for a licence:

- a) A business plan for a five-year period, including the projected balance sheets and income statements.
- b) A (certified) opening balance sheet.
- c) The (draft) articles of incorporation.
- d) The annual reports over the last three fiscal years of the parent company.
- e) A list of correspondent banks.
- f) The completed Personal Questionnaire of the prospective managing and supervisory directors including the required documentation.
- g) A written statement from the home country supervisor(s) stating that the parent bank complies with the regulatory requirements of the home country.
- h) A written statement from the home country supervisor(s) that it has adopted and effectively implemented the international standards in the area of banking supervision issued by the Basel Committee on Banking Supervision.
- i) A written statement from the home country supervisor(s) that it has adopted a strict enforcement policy that meets international standards.
- j) Expert external reports evidencing a high degree of compliance with the Basel Core Principles.
- k) A detailed description of the intended administrative organization and internal controls.
- l) A list of, and the completed Personal Questionnaire of the prospective ultimate beneficial owner(s) of the credit institution with a qualifying holding as referred to in section 1 of the Ordinance.

The CBA maintains the right to request additional information.

6. Entry into force and transition period

This revised policy rule will enter into force as of January 1, 2018

Banks whose shareholders' structure is not in compliance with the condition mentioned under paragraph 3.4 above are granted a grace period of one (1) year to comply with the requirements set forth in said paragraph. The CBA may extend this period, to be decided on a case by case basis.

In the event that a major shareholder of an already licenced bank wants to sell (all or part of) its shares the CBA will only give its approval if the requirements with regard to the shareholder structure set forth in paragraphs 3.3. and 3.4 are met to the Bank's satisfaction.

Aruba, November 23, 2017