



BANK VAN DE NEDERLANDSE ANTILLEN
(CENTRAL BANK)

POLICY GUIDELINES
ON EXEMPTION REGULATION FOR ADMINISTRATORS

WILLEMSTAD, July 2003

INTRODUCTION

The primary objective of the *National Ordinance on the Supervision of Investment Institutions and Administrators* (N.G. 2002, no. 137), hereafter referred to as “the NOSIIA”, is to establish a supervisory regime for investment institutions and administrators that will promote adequate functioning of the financial markets and the position of the investors in those markets.

The Explanatory Notes state furthermore that the secondary objective of the NOSIIA is to preserve the reputation of the Netherlands Antilles as a respectable international financial jurisdiction and to promote its further development.

With respect to administrators, the Explanatory Notes state that since a large number of investment institutions are administered in the Netherlands Antilles, it is necessary also to submit administrators to a supervisory regime.

By virtue of article 21 of the NOSIIA, the Bank may, however, exempt an administrator from the prohibition contained in article 14 of the NOSIIA.

These policy guidelines state the conditions under which the Bank may grant an exemption to an administrator. These policy guidelines contain three possible scenarios, which are further described on the following pages.

A schedule outlining the scope of the exemption regulation contained in these policy guidelines is presented in the annex to these policy guidelines.

Scenario 1

The foreign administrator providing administrative services in the Netherlands Antilles is domiciled in a country where, in the Bank's judgment, adequate supervision on administrators is exercised. In this outlined scenario, the administrator is eligible for an exemption as stated in article 21 of the NOSIIA.

Motive

In determining whether a foreign administrator may be exempted from the prohibition contained in article 14 of the NOSIIA, the Bank will assess the foreign administrator, and not the investment institutions for which it provides administrative services. If the foreign administrator is domiciled in a country where, in the Bank's judgment, the administrator is subject to adequate supervision, the administrator is eligible for an exemption. This exemption basis for administrators is also discussed in the Explanatory Notes to the NOSIIA.

Subsequent to a review of the relevant rules and regulations in the country in question and after a possible visit to that country, the Bank will judge whether the supervision exerted on administrators 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 Bank and the home-country supervisory authority regarding the supervision exerted on the respective administrators.

As indicated in the *Policy Guidelines for Foreign Investment Institutions*, the Bank has classified the Netherlands, the United States of America¹, Jersey, Guernsey, and Luxemburg as countries where adequate supervision on investment institutions is exerted. However, the Bank has not yet determined the existence nor the adequacy of the supervision exerted on administrators in these countries. Therefore, administrators domiciled in these jurisdictions are regarded by the Bank as not being subject to adequate supervision and, consequently, these administrators are not eligible for an exemption as referred to in these guidelines.

Unlike foreign administrators, foreign investment institutions offering participating interests in the Netherlands Antilles are not subject to a similar exemption regime. This distinction results from the primary and secondary objectives of the NOSIIA. Both objectives are being pursued through the supervision of investment institutions as well as administrators. Nonetheless, the supervision of investment institutions offers the best possibility to achieve the primary objective (in particular investors' protection). This justifies the distinction whereby investment institutions, subject to adequate supervision elsewhere (home country supervision), cannot be exempted from the obligation imposed in the NOSIIA, whereas administrators, on the other hand, can be fully exempted. For a further explanation of the policy with respect to investment institutions and administrators domiciled outside the Netherlands Antilles, reference is made to the corresponding policy guidelines issued by the Bank.

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

Scenario 2

The foreign administrator provides administrative services in the Netherlands Antilles exclusively to exempted Netherlands Antillean investment institutions. In this outlined scenario, the administrator is eligible for an exemption as stated in article 21 of the NOSIIA. Along with its request for exemption, the foreign administrator needs to declare in writing that it complies with this scenario.

Motive

In this scenario, the investment institutions to which administrative services are provided are all known to the Bank. The Bank has considered that the administered investment institutions should be exempted from the prohibition contained in article 3, paragraph 1 of the NOSIIA. In those instances, the protection offered by the NOSIIA was deemed unnecessary or undesirable. In light hereof, the Bank has also deemed it prudent not to subject the foreign administrator that provides administrative services exclusively to one or more of these exempted investment institutions, to its supervision.

The aforementioned means that no exemption will be granted to administrators domiciled in other jurisdictions (with the exception of jurisdictions where, in the Bank's judgment, adequate supervision is exercised on administrators), that provide administrative services to one or more Netherlands Antillean investment institutions supervised by the Bank.

Scenario 3

Administrative services are provided from the Netherlands Antilles exclusively to investment institutions subject to the provisions of the NOSIIA and, therefore, required to have a license pursuant to article 3, paragraph 1 of the NOSIIA and/or to investment institutions subject to the provisions of the NOSIIA and, therefore, required to have a license pursuant to article 3, paragraph 1 of the NOSIIA but which have been exempted by the Bank, based on article 10 of the NOSIIA, from the prohibition contained in article 3, paragraph 1 of the NOSIIA.

In the scenario described, an administrator domiciled in the Netherlands Antilles is eligible for an exemption, as referred to in article 21 of the NOSIIA. Along with its request for an exemption, the Netherlands Antillean administrator needs to declare in writing that it complies with this scenario.

Motive

In this scenario, the investment institutions to which administrative services are provided are all known to the Bank. In many cases, these investment institutions are also supervised by the Bank. With regard to the remaining investment institutions, the Bank has considered that they should be exempted from the prohibition contained in article 3, paragraph 1 of the NOSIIA. In those instances, the protection offered by the NOSIIA was deemed unnecessary or undesirable. Furthermore, since the administrator in this scenario is domiciled in the Netherlands Antilles, the administrator is considered to be easily approachable, if this appears to be necessary in light of the supervision exercised on the investment institutions for which it provides administrative services. Therefore, the Bank is of the opinion that in this scenario, it is possible to meet the objectives of the NOSIIA in an appropriate manner without subjecting the administrator to the Bank's supervision.

The aforementioned means that no exemption will be granted to administrators if they provide administrative services from the Netherlands Antilles to one or more investment institutions that do not fall under the scope of the NOSIIA because they do not raise or obtain pecuniary means or other goods or offer their participating interests in or from the Netherlands Antilles.

Procedure

If a foreign administrator considers itself eligible for an exemption as described in scenario 1 of these guidelines, it should submit, along with its request for exemption, 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 administrator is currently under its supervision;
- Extract of Chamber of Commerce;
- Articles of Association;
- Most recent (semi-) annual reports.

If an administrator considers itself eligible for an exemption as described in scenario 2 or 3 of these guidelines, it should submit, along with its request for exemption, the relevant information to support the request (contained in, for example, the most recent (semi-) annual reports, the Articles of Association, or the Extracts of the Chamber of Commerce).

The Bank reserves the right to not grant or revoke an exemption 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.

Annex: Schedule scope of the Policy Guidelines on Exemption Regulation for Administrators

