

TRANSLATION

A.D. 2003

No. 114

OFFICIAL GAZETTE

NATIONAL ORDINANCE of 23 December 2003 laying down the rules for the Supervision of Trust Service Providers (The National Ordinance on the Supervision of Trust Service Providers)

IN THE NAME OF THE QUEEN!

THE GOVERNOR of the Netherlands Antilles,

considering:

that it is desirable to lay down rules concerning Trust Service Providers and to put the trust service provision sector under the supervision of the Bank of the Netherlands Antilles and to revoke the National Ordinance on the Supervision of Fiduciary Companies;

after consultation with the Advisory Council and in concert with Parliament has laid down the following National Ordinance:

CHAPTER 1 Definitions

Article 1

In this National Ordinance and the provisions based thereupon:

- a. trust services shall mean:
 1. establishing an international company or causing it to be established when such is performed by a resident of the Netherlands Antilles;
 2. acting as the local representative or the managing director, residing or established within the Netherlands Antilles, of an international company ;
 3. making natural persons or legal persons, residing or established within the Netherlands Antilles, available as the local representative or the managing director to an international company;
 4. winding up an international company or causing it to be wound up, when such is performed by a resident of the Netherlands Antilles;
- b. trust service provider shall mean: the person authorized to provide trust services pursuant to article 2;
- c. trust office shall mean: a legal person, partnership or natural person providing trust services in the framework of the exercise of their business or profession;

- d. international company shall mean: a legal person which has its registered office or its actual place of business in the Netherlands Antilles and which has been granted dispensation from the provisions of articles 9 - 15 of the National Ordinance on Foreign Exchange Transactions;
- e. the Bank shall mean: the Bank of the Netherlands Antilles;
- f. the Minister shall mean: the Minister of Finance.

CHAPTER 2

Permitted provision of trust services

Article 2

1. With the exception of the persons referred to in the second paragraph, nobody shall be allowed to provide trust services in or from the Netherlands Antilles.
2. Trust services shall only be provided by:
 - a. trust offices that have a license as referred to in article 3 and by the natural persons and legal persons listed on the exhibits to a license granted to a trust office;
 - b. persons who have been granted dispensation by the Bank.
3. Dispensation may be granted to a natural person or a legal person providing trust services for other considerations than as part of the exercise of their business, if the Bank considers that there are valid reasons for the international company to have the services provided by such person.
4. Dispensation shall only apply to services rendered to the international company listed in the dispensation certificate or to entities that are part of a group of companies listed in the dispensation certificate.
5. Conditions may be attached to the dispensation. Such conditions may be subject to change. The dispensation may be revoked if it is abused or misused, or if the conditions are not sufficiently satisfied or not satisfied at all.

CHAPTER 3

The licenses for trust offices and the relevant exhibits

§ 1 The license

Article 3

1. The Bank shall grant the license for acting as a trust office.
2. To be able to obtain a license, the applicant must have its registered office and principal place of business in the Netherlands Antilles and must satisfy the directives laid down by the Bank concerning:
 - a. competence and integrity;
 - b. financial securities; and
 - c. conduct of business.
3. Upon its request, an applicant may be granted a license on the condition that the company will limit its activities to, or refrain from providing services to, international companies with certain characteristics. The requirements of competence and integrity referred to in the second paragraph shall be adjusted to the limitations imposed.
4. The Bank shall ensure that the directives referred to in the second paragraph are made public.

Article 4

1. When filing the application for a license the applicant shall submit to the Bank such documents as are reasonably required to enable the Bank to assess whether the applicant satisfies the requirements referred to in article 3.
2. The following shall also be submitted as part of the application:
 - a. If the applicant is a natural person: his/her curriculum vitae and a copy of a valid passport duly certified to the satisfaction of the Bank, stating his/her place of residence and address.
 - b. If the applicant is a legal person: an extract of the registration of the applicant in the trade register of the Chamber of Commerce for the applicant's registered office and a notarized copy of the applicable Articles of Association, the names and addresses of the shareholders and the names and addresses of persons, other than the directors or direct or indirect shareholders, who determine or help determine the applicant's policy.
 - c. If the applicant is a partnership: the information referred to under a and b concerning each of the partners, including any silent partners, and a notarized copy of the partnership agreement showing the partnership's objective and the division of tasks among the partners.
3. If the Bank, after receiving the application, decides that it needs further information, it shall allow the applicant to submit such further information within a reasonable term to be determined by the Bank.
4. The application shall be rejected if the applicant has not or insufficiently demonstrated that it satisfies the requirements listed in article 3, if the Bank has reasons to question its integrity or if the Bank does not consider it likely that the applicant intends to meticulously observe the provisions of article 12.
5. The Bank shall decide on the application within 60 days of receiving the complete application or within 60 days of receiving the further information.

Article 5

1. The Bank shall revoke a license:
 - a. upon the licensee's request;
 - b. if the licensee has ceased to provide trust services in the framework of the exercise of its business or profession or if it has not yet commenced providing such services within a term after the granting of the license to be laid down by the Bank;
 - c. if the information or documents furnished to obtain a license prove to be incorrect or incomplete to such an extent that a different decision would have been taken if the correct and complete information and documents had been available at the time of taking the decision to grant the license;
 - d. if any new facts are discovered or circumstances take place on the grounds of which the license would have been refused if they had been known or taken place prior to the time of granting the license;
 - e. if the licensee is found not to be capable [or to be insufficiently capable] of meeting its obligations pursuant to this national ordinance or other national ordinances;
 - f. if the licensee has ceased to satisfy the requirements referred to in article 3, second paragraph;
 - g. if the license is abused or misused;
 - h. if a domestic or foreign court of law finds the licensee or one of the persons determining the policy of the trust office concerned guilty of a criminal offence (*misdrif*) that had previously been defined by the Bank.
2. If the license has been revoked, the licensee shall immediately cease providing trust services, irrespective of any appeal that may have been lodged. Notwithstanding the fact that the licensee's license has been revoked, the dispensation granted to the international company, as referred to in article 1, sub d, shall remain in force for 60 days of the date of revoking such license.
3. If the Bank decides to revoke a license as referred to in the first paragraph, it shall do so by serving a bailiff's writ on the licensed person concerned.

§ 2. Exhibits to the license

Article 6

1. The Bank shall attach to the license an exhibit "A" listing the legal persons that provide services under the licensee's responsibility for the purposes of this national ordinance.
2. When requesting to have a name placed on this exhibit, the licensee shall state the manner in which the legal person's business has been consolidated into the licensee's company or any other manner in which the legal person's activities will be involved in the supervision of the licensee.
3. The request for placement shall be accompanied by an extract of the registration in the trade register of the Chamber of Commerce for the legal person's registered office and a notarized copy of the applicable Articles of Association, the names and addresses of the shareholders and the names and addresses of persons, other than the directors or direct shareholders, who determine or help determine legal person's policy.

Article 7

1. The Bank shall attach to the license an exhibit "B" listing the natural persons that provide services under the licensee's responsibility for the purposes of this national ordinance.
2. When requesting to have a name placed on this exhibit, the licensee shall specify the position of the person concerned within the licensee's organization.
3. The request for placement shall be accompanied by the person's curriculum vitae and a copy of a valid passport duly certified to the satisfaction of the Bank, stating the person's place of residence and address.

Article 8

1. If the Bank, after receiving a request for placement on one of the exhibits, decides that it needs further information, it shall allow the petitioner to submit such further information within a reasonable term to be determined by the Bank.
2. Placement on the exhibit shall be refused if the Bank is of the opinion that the activities of the natural or legal person will not, or insufficiently, be involved in the supervision of the licensee or if the requirements of competence and integrity laid down by the Bank are not satisfied.
3. The Bank shall decide on the request within 60 days of receiving the request or within 60 days of receiving the further information.

Article 9

1. The placement on an exhibit as referred to in articles 6 or 7 shall be cancelled by the Bank:
 - a. upon the licensee's or the placed person's request;
 - b. if the information or documents furnished to obtain a license prove to be incorrect or incomplete to such an extent that a different decision would have been taken if the correct and complete information and documents had been available at the time of deciding on the application;
 - c. if any new facts are discovered or circumstances take place on the grounds of which placement would have been refused if they had been known or taken place prior to the time of placement on the exhibit;
 - d. if it is found that the activities of the person placed on the exhibit are no longer sufficiently involved in the supervision of the licensee;
 - e. if the activities no longer satisfy the requirements referred to in article 8, second paragraph;
 - f. if a domestic or foreign court of law finds the licensee or any of the policymakers of the trust office concerned guilty of money laundering, fraud, unlawful enrichment to the detriment of an international company, terrorist financing or any other criminal act previously defined by the

Bank

2. In the events listed in the first paragraph, the person involved shall immediately cease its activities, irrespective of any appeal that may have been lodged. Notwithstanding the fact that the licensee's license has been revoked the dispensation granted to the international company, as referred to in article 1, sub d, shall remain in force for 60 days of the date of revoking such license.

Article 10

1. The Bank shall keep a register of trust offices.
2. A trust office licensed pursuant to Article 3 shall be entered in the register by the Bank on the very date of granting the license. In addition, the Bank shall enter the exhibits referred to in articles 6 and 7, and any amendments made to them, in the register under the trust office concerned.
3. A trust office whose license has been revoked shall be removed from the register. The exhibits shall also be deregistered.
4. The registration of a trust office as well as the removal from the register shall be published in the Curaçaosche Courant within two weeks of the day on which this was effected. The costs of publication of the entry in the register and the removal from the register shall be for the account of the person who has been granted the license or whose license has been revoked.
5. The Bank may decide to delay the publication of a removal referred to in the fourth paragraph until a time to be decided by the Bank if such publication could seriously harm the interests of the party concerned.
6. In the month of January of every year a list of registered trust offices as per 31 December of the preceding year shall be published in the Curaçaosche Courant.
7. The Bank shall keep a copy of the register open to public inspection free of charge.

Article 11

1. A licensed trust office shall undertake to continue to observe the directives laid down by the Bank with regard to expertise and integrity, financial securities and business management.
2. A trust office shall be obliged to continuously inform the Bank of intended changes to its Articles of Association, the composition of its shareholders, Management Board and Board of Supervisory Directors, and to the facts and circumstances concerning the natural or legal persons placed on one of the exhibits to the license. The Bank shall test this information to the instructions referred to in the first paragraph and/or the instructions referred to in article 8, second paragraph.

CHAPTER 4

Obligatory information collection and reporting by the trust service providers

§ 1. Obligatory information collection by the trust service providers

Article 12

1. For every international company to which a trust service provider provides trust services it shall have data demonstrating:
 - a. the direct and indirect source or sources of the capital entered into the company at the time of incorporation and afterwards; and
 - b. the person or persons who can directly or indirectly make claims to the distribution, capital and the surplus after dissolution.
2. By national decree constituting general measures rules can be laid down regarding the manner in

which the providers of trust services should satisfy the requirements referred to in the first paragraph.

Article 13

1. A trust service provider that can no longer avail of the updated data referred to in article 12 for an international company to which it provides trust services shall immediately cease its service provision. It can request the Bank to allow it to continue its service provision.
2. The Bank can only agree to the request, referred to in the first paragraph, by laying down conditions aimed at regulating the availability of data or at ensuring the proper dissolution of the international company concerned.
3. A trust service provider who ceases its service provision due to any of the provisions of the previous paragraphs of this article cannot be held liable by interested parties or third parties for any resulting damage or loss unless in the event of intention or gross negligence on the part of the trust service provider.

Article 14

1. The trust service provider shall be held to keep secret the data referred to in article 12 in respect of everyone, with the exception of the Bank.
2. The obligation referred to in the first paragraph shall not apply:
 - a. to the extent that the non-disclosure would violate any reporting obligation or any other obligation pursuant to the National Ordinance Reporting of Unusual Transactions;
 - b. if the trust service provider is called on to act as a witness in the context of an investigation, a preliminary judicial investigation or a trial in court concerning a criminal offence.
3. The first and second paragraphs shall also apply to the natural or legal persons placed on the exhibits to a license and their staff, if any, as well as to a trust office's staff not placed on such exhibits.

§ 2. Reporting to the Bank

Article 15

A trust service provider shall immediately notify the Bank:

- a. if it ceases its provision of services to a foreign company pursuant to the provisions of article 13;
- b. if it has indications that one or several persons and entities appointed in or by a national decree or a ministerial decree with the purpose of implementing article 4 or article 4a of the National Ordinance on Foreign Exchange Transactions are the source or the sources of capital, as referred to in article 12, first paragraph, sub a, or can make claims as referred to in article 12, first paragraph, sub b.

Article 16

1. Before 30 April of any year, a trust service provider shall submit to the Bank a certified statement specifying that an investigation has been carried out into the availability of the data referred to in article 12 as on the first day of January of the year in question.
2. The trust service provider's statement referred to in the first paragraph shall also specify that the trust service provider has the availability of the data referred to in article 12 concerning every international company to which it provides trust services. If this cannot be stated without reservation, this will be explained in more detail in the statement, listing the international companies to which the reservation applies.

1. Every year, every trust office shall submit annual accounts including at least a balance sheet and a profit and loss account with explanatory notes on the past financial year in a form to be laid down by the Bank and within a time to be laid down by the Bank in advance. The obligations referred to in this paragraph shall also apply to legal persons who have been granted dispensation as referred to in article 2, second paragraph sub b.
2. The Bank can order a trust office to submit reporting statements with regard to its business if the Bank thinks that this is necessary in the interest of effective supervision.

CHAPTER 5 Implementation

§ 1. Supervision

Article 18

The Bank shall see to it that any trust service provider has been licensed to do so, pursuant to article 2.

Article 19

The Bank shall see to it that anyone who is licensed for the provision of trust services has the availability of the data referred to in article 12 and that the rules referred to in the second paragraph of article 12 have been observed when collecting and maintaining the data.

Article 20

1. The Bank officials appointed by the President of the Bank shall be responsible for the supervision of the observance of the provisions laid down in or by virtue of this Ordinance. Such appointment shall be published in the Curaçaosche Courant.
2. Only to the extent that such is reasonably required for the performance of their duties, the persons appointed by virtue of the first paragraph shall have the power to:
 - a. ask any information;
 - b. demand access to all financial accounts, documents and other information carriers and to make copies of such or to take such with them temporarily.
3. By national decree constituting general measures, rules can be laid down regarding the way in which the persons appointed pursuant to the first paragraph carry out their tasks.
4. The persons appointed pursuant to the first paragraph shall always be given all cooperation that is demanded on the grounds of the second paragraph.

§ 2. Costs

Article 21

The cost associated with the implementation of the provisions laid down by or pursuant to this National Ordinance shall be charged to the providers of trust services. By national decree containing general measures, further rules shall be laid down concerning the passing on of such cost.

§ 3. Administrative penalty

Article 22

1. If a trust service provider fails to satisfy its obligations resulting from this National Ordinance or fails to satisfy such obligations in time, the Bank may impose a fine on the trust service provider for every day that it has been negligent as regards the performance of its obligations.
2. The amount of the fine for the various offences shall be laid down by a national decree containing general measures.
3. Prior to imposing a fine, the Bank shall send the trust service provider concerned written notification of its intent to impose a fine and shall allow it to remedy its failure within a reasonable period.

CHAPTER 6

Non-disclosure and penal provisions

Article 23

1. Anyone carrying out any task pursuant to the implementation of this national ordinance or of decisions taken pursuant to this national ordinance shall be prohibited from making any further or other use of or giving any other or further publicity to data or information provided or received pursuant to this national ordinance or obtained during the examination of books, records or other information carriers than required for the execution of such task or than required by this national ordinance.
2. Notwithstanding the provisions of the first paragraph the Bank shall be authorized to report a suspected offence. In cases where the Bank has reported a suspected offence, or in cases where the Bank is called on to act as a witness or an expert, the Bank shall be authorized to furnish information as part of the investigation, the preliminary judicial investigation or the court hearing.
3. The Bank may, notwithstanding the first paragraph, periodically publish the most important data derived from data or information gained during the execution of the task assigned to it pursuant to this National Ordinance, provided that such data is not traced back to individual trust service providers. After permission in writing of the trust service provider concerned, data with regard to individual trust service providers may be published.

Article 24

1. Notwithstanding article 23 the Bank may furnish data or information obtained during the performance of the task assigned to it pursuant to this National Ordinance to governmental institutions on the Netherlands Antilles or abroad or to foreign government-appointed institutions charged with the supervision of trust service providers, unless:
 - a. the objective for which such data or information is going to be used is insufficiently specified;
 - b. the intended use of the data or information is not in keeping with the framework of the supervision of trust service providers;
 - c. the furnishing of the data or information would not be in keeping with the rules of the Netherlands Antilles or with public order or the data or information relates to individual international companies;
 - d. the non-disclosure of the data or information is not sufficiently guaranteed;
 - e. it is reasonable to assume that the furnishing of the data or information will or could conflict with the interest that this national ordinance attempts to protect; or
 - f. there is insufficient guarantee that the data or information will not be used for any other objective than the one for which it is furnished.
2. Notwithstanding article 23, the Bank shall have the authority to report any data and information

obtained while carrying out its duties to the Unusual Transactions Reporting Center, referred to in the National Ordinance Reporting of Unusual Transactions.

Article 25

1. The provision of trust services as part of one's business without the required license shall be punishable by up to one year's imprisonment and a fine of up to five hundred thousand guilders or by one of these punishments.
2. The provision of trust services other than as part of one's business without being licensed pursuant to article 2 shall be punishable by up to one year's imprisonment and a fine of up to two hundred and fifty thousand guilders or by one of these punishments.
3. Any intentional violation of the articles 12, first paragraph, 14, first paragraph, 15, 17, 20, fourth paragraph, and 23, first paragraph shall be punishable by up to four years' imprisonment and a fine of up to five hundred thousand guilders or by one of these punishments.
4. Any violation of the articles 12, first paragraph, 14, first paragraph, 15, 17, 20, fourth paragraph, and 23, first paragraph, shall be punishable by up to one year's imprisonment and a fine of up to two hundred and fifty thousand guilders or by one of these punishments.
5. The acts made punishable by the first and third paragraphs shall be considered criminal offences (*misdrifven*). The acts made punishable by the second and fourth paragraphs shall be considered punishable offences (*overtredingen*).

CHAPTER II

Transition Provisions And Final Provisions

Article 26

The following new paragraph shall be added to article 11 of the Central Bank Statute 1985:

6. The Bank shall carry out the supervision of trust service providers pursuant to the National Ordinance on the Supervision of Trust Service Providers.

Article 27

1. The National Ordinance on the Supervision of Fiduciary Companies shall be revoked.
2. Trust offices that are already active as such shall report to the Bank within thirty days of this national ordinance entering into force. The Bank will then grant them a temporary license. This temporary license will expire six months after this National Ordinance has taken effect.
3. The transfer to the Bank of the information carriers in the possession of the Supervisory Board concerning fiduciary activities can be arranged by national decree.
4. Transitional arrangements will be made for the benefit of the staff employed by the Supervisory Board concerning fiduciary activities.
5. The arrangements for liquidating the assets of the Supervisory Board concerning fiduciary activities shall be laid down in a national decree.

Article 28

This national ordinance shall enter into force after the day of publication of the Official Gazette in which it has been published.

Article 29

This National Ordinance may be cited as: National Ordinance on the Supervision of Trust Service Providers.

The Minister of Finance
E.T.M. DE LANNOOY

Curaçao, 23 December 2003
F.M. DE LOS SANTOS GOEDGEDRAG

The Minister of Justice,
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