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REGULATION ON COMPLAINTS HANDLING FOR SUPERVISED NATURAL AND/OR LEGAL PERSONS

May 2017

PREFACE

The *Centrale Bank van Curaçao en Sint Maarten* (the Bank) promotes fair and transparent financial markets. The Bank is the independent supervisor in the markets of savings, loans, investments, trust services, pensions, and insurance. The Bank also promotes prudent financial services to consumers and supervises the fair and efficient working of the financial markets in Curaçao and Sint Maarten. Our objective is to increase consumer and business confidence in the financial markets, both locally and internationally. In this way, the Bank contributes to the prosperity and economic reputation of Curaçao and Sint Maarten.

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1. Definitions

For the purposes of this Regulation, the following definitions apply:

The Bank: the *Centrale Bank van Curaçao en Sint Maarten*

Services: services provided by supervised institutions.

EBA: European Banking Authority

EIOPA: European Insurance and Occupational Pensions Authority

ESMA: European Securities and Markets Authority

Complaint: an expression of dissatisfaction - justified or not - addressed to a supervised institution by a complainant or his/her representative relating to a product or service.

Complainant: a natural or legal person making a complaint at a supervised institution and having an interest in it.

National Ordinance Actualization and Harmonization Supervision Ordinances Centrale

Bank van Curaçao en Sint Maarten: National Ordinance, containing general provisions, of the 23rd of November 2015, amending the National Ordinance on the Supervision of Banking and Credit Institutions 1994, National Ordinance on the Supervision of the Insurance Industry, National Ordinance on the Supervision of Security Exchanges, National Ordinance on the Supervision of Investment Institutions and Administrators, National Ordinance on the Supervision of Trust Service Providers, National Ordinance of Insurance Brokerage Business, and National Ordinance on the Supervision of Money Transfer Companies.

Supervised institutions: natural and legal persons supervised by the Bank, who are in the possession of a license, dispensation, or exemption from the Bank.

Products: products offered by supervised institutions.

Regulation: this Regulation, which comprises the provisions regarding complaints handling by supervised institutions.

2. Introduction

2.1 Why have a Regulation on complaints handling?

Proper complaints management is essential for the focus on client interests, but it also provides valuable input into creating sound and sustainable supervised institutions and realizing corporate goals. With an effective complaints process, the economic value of customer signals becomes apparent, which should have a self-reinforcing effect.

Proper handling and registration of consumers' complaints is paramount to creating confidence in the supervised institution concerned and the financial sector. Therefore, it is important to lay down provisions by means of this Regulation.

2.2 What purpose does the Regulation serve?

To protect consumers, this Regulation seeks to:

- a. clarify expectations relating to the supervised institution's complaints procedures;
- b. provide provisions on giving information to the public, including potential complainants, in order to, among other things, promote the quality of services provided;
- c. provide provisions on complaint procedures, supervise the execution of implemented procedures, and perform analyses to promote service provision; and
- d. harmonize - where possible - the procedures of supervised institutions for the handling of all complaints they receive.

2.3 Who does the Regulation apply to?

This Regulation is applicable to all institutions under the Bank's supervision that offer products and services in Curaçao¹ and fall under one or more of the following national ordinances as amended by the National Ordinance Actualization and Harmonization Supervision Ordinances Centrale Bank van Curaçao en Sint Maarten:

- National Ordinance on the Supervision of Banking and Credit Institutions 1994 (N.G. 1994, no. 4).
- National Ordinance of the 4th of October 1990 containing regulations concerning the Supervision of the Insurance Industry (N.G. 1990, no. 77).
- National Ordinance on the Supervision of Security Exchanges (N.G. 1998, no. 252).
- National Ordinance on the Supervision of Investment Institutions and Administrators (N.G. 2002, no. 137).
- National Ordinance on the Supervision of Trust Service Providers (N.G. 2003, no. 114).
- National Ordinance of Insurance Brokerage Business (N.G. 2003, no. 113).
- National Ordinance on the Supervision of Money Transfer Companies (N.G. 2014, no. 86).

This implies that the Regulation is applicable to supervised institutions that are in the possession of a license, dispensation, or exemption pursuant to the aforementioned national ordinances as amended by the National Ordinance Actualization and Harmonization Supervision Ordinances. The Regulation is not yet applicable to supervised institutions falling under any national ordinance other than the aforementioned and with which the national ordinance is not yet harmonized, such as the National Ordinance on Corporate Pension Funds (N.G. 1985, no. 44).

These provisions do not apply if a supervised institution receives a complaint about products or services other than those supervised by the Bank, unless reasonably necessary in the interest of the Bank's supervision of the institution concerned. The latter may be the case if the relevant products or services pose a threat to the institution's sound conduct of business.

¹ This Regulation is provisionally in effect in Curaçao only, since the harmonization law is not yet in force in Sint Maarten.

2.4 What is the basis of the Regulation?

This Regulation is based primarily on the internationally agreed guidelines for complaints handling for the securities (ESMA) and banking (EBA) sectors of May 27, 2014 (JC 2014 43). The guidelines are identical to the existing EIOPA guidelines for complaints handling for the insurance sector.

2.5 Which products and services are covered by the Regulation?

This Regulation is applicable to all products and services offered by supervised institutions by virtue of their license, exemption, or dispensation.

2.6 What is the legal status of this document?

The enactment of the National Ordinance Actualization and Harmonization Supervision Ordinances Centrale Bank van Curaçao en Sint Maarten brought along changes in several supervisory laws and empowered the Bank to lay down provisions regarding complaints handling. The power to lay down provisions has already been addressed in the National Ordinance of 25th September 2014 regulating the supervision of money transaction offices (National Ordinance on the Supervision of Money Transaction Offices).

Provisions include, among others, regulations regarding complaints handling. The articles pursuant to which provisions can be laid down are stated below by national ordinance:

- Article 6a, paragraph 1 of the National Ordinance on the Supervision of Banking and Credit Institutions 1994 (N.G. 1994, no. 4).
- Article 18a, paragraph 1 of the National Ordinance on the Supervision of the Insurance industry (N.G. 1990, no. 77).
- Article 3a, paragraph 1 of the National Ordinance on the Supervision of Security Exchanges (N.G. 1998, no. 252).
- Article 9, paragraph 1 and article 18, paragraph 1 of the National Ordinance on the Supervision of Investment Institutions and Administrators (N.G. 2002, no. 137).
- Article 11, paragraph 1 of the National Ordinance on the Supervision of Trust Service Providers (N.G. 2003, no. 114).
- Article 8b, paragraph 1 of the National Ordinance of Insurance Brokerage Business (N.G. 2003, no. 113).
- Article 9, paragraph 1 of the National Ordinance on the Supervision of Money Transfer Companies (N.G. 2014, no. 86).

The Regulation becomes effective as of May 5, 2017, with a transition period of six (6) months. This implies that supervised institutions are required to comply with the provisions set out in this Regulation no later than November 5, 2017.

2.7 What are the consequences of violation of this Regulation?

Violation of any of the provisions set out in this Regulation is subject to sanctions by the Bank, pursuant to the national ordinances referred to in paragraph **“Who does the Regulation apply to?”** and as amended by the National Ordinance Actualization and Harmonization Supervision Ordinances Centrale Bank van Curaçao en Sint Maarten.

The articles pursuant to which violations are subject to sanctions are stated below by national ordinance:

- Article 48b and article 48k and article 50 (penalty provisions) of the National Ordinance on the Supervision of Banking and Credit Institutions 1994 (N.G. 1994, no. 4).
- Article 79c and article 79l and article 122 (penalty provisions) of the National Ordinance on the Supervision of the Insurance industry (N.G. 1990, no. 77).
- Article 12b and 12k and article 15 (penalty provisions) of the National Ordinance on the Supervision of Security Exchanges (N.G. 1998, no. 252).
- Article 32b and 32k and article 38 (penalty provisions) of the National Ordinance on the Supervision of Investment Institutions and Administrators (N.G. 2002, no. 137).
- Article 21b and article 22a and article 25 (penalty provisions) of the National Ordinance on the Supervision of Trust Service Providers (N.G. 2003, no. 114).
- Article 23a and article 23j and article 24 (penalty provisions) of the National Ordinance of Insurance Brokerage Business (N.G. 2003, no. 113).
- Article 29 and article 38 and article 74 (penalty provisions) of the National Ordinance on the Supervision of Money Transfer Companies (N.G. 2014, no. 86).

3. Provisions

3.1 Complaints management policy

Supervised institutions should ensure that:

- a) a “complaints management policy” is implemented. This policy should be up-to-date and defined and endorsed by the supervised institution’s management, who should also be responsible for the implementation of the policy and for monitoring compliance with it;
- b) the “complaints management policy” is set out in a (written) document, for example as part of an internal control manual. The policy could, for example, include an elaboration of the different provisions described in this chapter; and
- c) the “complaints management policy” is made available to all relevant staff of the supervised institution through an adequate internal channel.

3.2 Complaints management function

The supervised institutions should ensure that they have a complaints management function which enables complaints to be investigated fairly and possible conflicts of interest to be identified and mitigated. The supervised institutions also should ensure that those who fulfill the complaints management function possess adequate knowledge and experience to perform their task and that the activities relating to the complaints management function do not conflict with any other (operational) activities. The person responsible for the handling of a complaint must never handle a complaint relating to his/her own work.

3.3 Registration and confirmation

The supervised institutions should ensure that complaints are internally registered in an appropriate manner, for example, through one secure centralized electronic register, which should include:

- a) the name and address of the complainant;
- b) the complaint, with date of receipt;
- c) a description of the complaint and its possible impact on the institution, for example, if the complaint leads to a large claim against the institution or financial loss;
- d) the outstanding and resolved complaints; and
- e) a description of the manner in which the complaint was handled and, if applicable, the date the complaint was resolved.

The supervised institution confirms receipt of the complaint and informs the complainant in writing, through a letter or e-mail, for example.

The Bank emphasizes that making complaints can be done in various ways (e.g., by sending a letter and/or submitting an accessible online complaint form on the website of the supervised institution). Furthermore, the manner in which complaints can be made should be as easy and accessible as possible.

3.4 Reporting

The supervised institutions should ensure that they provide information - whether upon request or mandatory - on complaints and complaints handling to the competent authorities, such as the supervisor or court of justice. These data should include the number of complaints received, the timeline, the manner in which the complaint was resolved, and an overview of all correspondence.

3.5 Internal follow-up of complaints handling

The supervised institutions should ensure that procedures are set up and implemented that monitor the analyses of complaints-handling data on a regular basis. This requirement is designed to ensure that supervised institutions detect and address any recurring or structural problems and potential legal and operational risks, which can be done, for example, by:

- a. analyzing individual complaints to find the root causes of the complaint;
- b. considering whether such root causes also may affect other processes or products, and
- c. correcting such root causes where reasonable to do so.

The outcome of the analyses should be regularly reviewed (at least every 6 months) by the highest level of management. The supervised institution should take minutes of this meeting.

3.6 Provision of information

These provisions ensure that supervised institutions:

- a) provide written information about their complaints-handling procedure upon request or when confirming receipt of a complaint;
 - b) publish details of their complaints-handling process in an easily accessible manner, for example, in brochures, pamphlets, contractual documents, or via the supervised institution's website;
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- c) provide clear, accurate, and up-to-date information about their complaints-handling procedure, including:
 - i. details on how to submit a complaint, for example, the type of information to be provided by the complainant and the contact details of the person and department to whom the complaint should be directed;
 - ii. the procedure that will be followed when handling a complaint – for example, when the confirmation of receipt will be sent, indicative handling timelines, the availability of a competent authority, or a mechanism for alternative dispute settlement, etc.; and
 - iii. the manner in which the complainant will be informed about further handling of the complaint.

3.7 Procedures for responding to complaints

The supervised institutions should:

- a) gather and investigate all relevant evidence and information regarding the complaint;
- b) communicate in plain - for the complainant - easily intelligible language;
- c) indicate the timeframe in which the complaint shall be handled within two (2) weeks after receiving the complaint;
- d) provide a response without any unnecessary delay or at least within the specified and agreed time limits. When a supervised institution cannot provide a response within these time limits, it should inform the complainant about the causes of the delay and indicate when the investigation into the complaint is expected to be completed; and
- e) ensure that when providing a final decision that does not fully satisfy the complainant's demand (or any final decision, where national rules require it), a thorough explanation of the supervised institution's position on the complaint is included. The supervised institution should communicate that the complainant has the option to maintain the complaint, for example the availability of the court, a mechanism for alternative dispute settlement (if applicable), etc.

3.8 Recordkeeping

The supervised institution should keep all data regarding the complaint for at least ten (10) years after the complaint is resolved.

3.9 Final provision

At the request of an individual supervised institution, the Bank may decide that the supervised institution concerned does not fully, or to a lesser degree, have to comply with certain provisions. The Bank will make that decision, only if the supervised institution submits a request providing sufficient reasons for such a decision.

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