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# **POLICY RULE ON THE VIOLATION OF THE NORUT AND NOIS LEGISLATIONS AND THE PROVISIONS AND GUIDELINES ON AML & CFT**

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**CURAÇAO AND SINT MAARTEN**

## I LEGAL BASIS

In accordance with the latest amendments to the National Ordinance on the Reporting of Unusual Transactions (N.G.<sup>1</sup> 1996, no. 21) (“NORUT<sup>2</sup>”) and the National Ordinance on Identification of clients when Rendering Services (N.G. 1996, no. 23) (“NOIS<sup>3</sup>”) the Centrale Bank van Curaçao en Sint Maarten (“Central Bank”) has the authority to impose sanctions on the (financial) institutions which fall under its supervision that do not (timely) comply with the obligations set forth in these legislations.

In addition, the Central Bank has the authority to impose sanctions on the (financial) institutions which fall under its supervision that do not adhere to the compulsory requirements as set forth in the Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing issued by the Central Bank (“Provision and Guidelines on AML & CFT”).

The Central Bank’s authority to issue the Provisions and Guidelines on AML & CFT is based on the following provisions:

- Article 22h, paragraph 3 NORUT
- Article 11, paragraph 3 NOIS; and
- Other supervisory legislations<sup>4</sup>

The enforcement of sanctions is based on the following provisions:

- Articles 22a, 22b, 22e and 23 NORUT;
- Articles 9, 9a, 9d and 10 NOIS;
- National Decree Penalties and Fines Reporters Unusual Transactions (“NDPFRUT<sup>5</sup>”); and
- National Decree Penalties and Fines Service Providers (“NDPFSP<sup>6</sup>”).

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<sup>1</sup> N.G.: National Gazette, official national publication: “publicatieblad” of “afkondigingsblad” in Dutch.

<sup>2</sup> N.G. 2010, no. 41: Stipulating the incorporation of the applicable text of the National Ordinance on the Reporting of Unusual Transactions in the National Gazette.

<sup>3</sup> N.G. 2010, no. 40: Stipulating the incorporation of the applicable text of the National Ordinance on Identification of client when Rendering Services in the National Gazette.

<sup>4</sup> See appendix II for the legal basis regarding the other supervisory legislation plus the abbreviation of these legislations used in this Policy Rule.

<sup>5</sup> N.G. 2010, no. 71

<sup>6</sup> N.G. 2010, no. 70

## II PURPOSE & SCOPE

This policy rule defines the Central Bank's options to impose sanctions on supervised (financial) institutions and/or individuals when these do not adhere to the NORUT, NOIS, and the Provisions and Guidelines on AML & CFT.

## III ENFORCEMENT PROCEDURE

This section outlines the sanctions and actions that the Central Bank can take against violations of the NORUT, NOIS and the compulsory requirements of the Provisions and Guidelines on AML & CFT.

1. **Penalty<sup>7</sup> and administrative fine<sup>8</sup>**
2. **Public Notice**
3. **Referral for criminal investigation or prosecution**
4. **Other actions and (administrative) sanctions**

### 1. Penalty and administrative fine

The violations committed under the NORUT, NOIS, and the Provisions and Guidelines on AML & CFT are subject to a penalty and/or an administrative fine. These sanctions are imposed for each individual violation.

This means that if, for example, 10 transactions have not been reported or a client has not been identified 10 times, there are 10 violations in the sense of the NORUT and NOIS, respectively.

The scope of the penalty seeks to undo or avoid further violation and/or repetition of a violation. The penalty is a recovery sanction. Depending on the seriousness of the violation, and the relevance of undoing this as soon as possible, the Central Bank will establish the amount of the penalty.

Unlike the penalty, the administrative fine has the character of a penal sanction.

According to the NDPFRUT and the NDPFSP the Central Bank can amongst other things moderate the imposed administrative fine (if in appropriate cases the imposition of administrative fines for various violations is disproportionate or failing to comply with the NORUT or NOIS is justified)<sup>9</sup>. The Central Bank can also impose the maximum penalty or administrative fine amount in the event the same violation occurs within one year (recidivism)<sup>10</sup>.

Listed below are the articles of the NORUT and NOIS under which the Central Bank may impose a penalty and/or an administrative fine and some other powers and obligations of the Central Bank in this case.

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<sup>7</sup> Penalty: "Dwangsom" in Dutch

<sup>8</sup> Administrative fine: "Boete" in Dutch

<sup>9</sup> Article 2, paragraph 2, and article 3 paragraph 2, of the NDPFRUT and NDPFSP, respectively

<sup>10</sup> Article 4, paragraph 1, of the NDPFRUT and NDPFSP, respectively

## A. Penalties

The violation of the obligations imposed by or pursuant to the following articles is subject to a maximum penalty of NAf. 500,000.

### *NORUT*

- Article 11<sup>11</sup>
- Article 12, paragraph 2<sup>14</sup>
- Article 13<sup>16</sup>
- Article 22h, paragraph 3<sup>18</sup>

### *NOIS*

- Article 2, paragraph 1, 2<sup>12</sup>, and 5<sup>13</sup>
- Article 3<sup>15</sup>
- Article 5, paragraph 1 through 4<sup>17</sup>
- Article 6<sup>19</sup>
- Article 7<sup>20</sup>
- Article 8<sup>21</sup>
- Article 11, paragraph 3<sup>22</sup>

Based on article 22h, paragraph 3, juncto article 22a NORUT and article 11, paragraph 3, juncto article 9 NOIS violation of the compulsory requirements in the Provisions and Guidelines on AML & CFT are also subject to a maximum penalty of NAf. 500,000. A list of these requirements is included in Appendix I to this Policy Rule. It concerns all the provisions that the (financial) institutions or individuals “must” comply with.

The Central Bank will indicate in the Decree<sup>23</sup> to impose a penalty the term in which the violator can execute a mandate without a penalty being forfeited.

The amount due can be collected by way of a writ of execution, increased by the costs of the collection. The writ of execution shall be served on the violator by means of a bailiff’s notification and will produce an entitlement to enforcement<sup>24</sup>.

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<sup>11</sup> Obligation to report unusual transactions

<sup>12</sup> Obligation to identify the client before rendering any service

<sup>13</sup> Obligation to identify the client before rendering any service

<sup>14</sup> Obligation to provide additional information to the Reporting Center

<sup>15</sup> Obligation to establish the identification of the client

<sup>16</sup> Indication how to report unusual transactions

<sup>17</sup> Obligation to identify the representative

<sup>18</sup> Process of reporting of unusual transaction and additional information

<sup>19</sup> Obligation to document the data received

<sup>20</sup> Obligation of record keeping

<sup>21</sup> Prohibition to render services without identification

<sup>22</sup> Process of identification of client, reporting of unusual transaction and additional information

<sup>23</sup> Decree: “Beschikking” in Dutch

<sup>24</sup> Article 22a, paragraph 3 through 5, NORUT and article 9, paragraph 3 through 5, NOIS

## **B. Administrative fines**

The violation of the obligations imposed by or pursuant to the following articles is subject to a maximum administrative fine of NAf. 1,000<sup>25</sup>.

### *NORUT*

- Article 11
- Article 12, paragraph 2
- Article 13
- Article 22h, paragraph 3

### *NOIS*

- Article 2, paragraph 1, 2, and 5
- Article 3
- Article 5, paragraph 1 through 4
- Article 6
- Article 7
- Article 8
- Article 11, paragraph 3

Based on article 22h, paragraph 3, juncto article 22b NORUT and article 11, paragraph 3, juncto article 9a NOIS violation of the compulsory requirements in the Provisions and Guidelines on AML & CFT are also subject to a maximum administrative fine of NAf. 1,000. A list of these requirements is included in Appendix I to this Policy Rule. It concerns all the provisions that the (financial) institutions or individuals “must” comply with.

Before proceeding to imposing a fine, the Central Bank shall inform the (financial) institution or individual in writing of the intention to impose a fine, stating the grounds on which the intention is based, and shall offer him the opportunity to redress the omission within a reasonable term<sup>26</sup>.

## **2. Public Notice**

In order to promote the observance of the NORUT, NOIS, and the Provisions and Guidelines on AML & CFT the Central Bank can bring to the notice of the public the fact with respect to which an order for a penalty or an administrative fine is imposed, the violated instruction and also the name, the address and the domicile of the person on whom the order for a penalty or the administrative fine is imposed<sup>27</sup>.

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<sup>25</sup> See article 3, paragraph 1 of the NDPFRUT and article 3, paragraph 1 of the NDPFSP

<sup>26</sup> Article 22b, paragraph 3, NORUT and article 9a, paragraph 3, NOIS

<sup>27</sup> Article 22e, paragraph 1, NORUT and Article 9d, paragraph 1, NOIS

### **3. Referral for criminal investigation or prosecution**

In case of violation of or acting contrary to the provisions in the relevant articles mentioned in article 23 NORUT, or violation of regulations set by or pursuant to the relevant articles mentioned in article 10 NOIS, and the compulsory requirements in the Provisions and Guidelines on AML & CFT the Central Bank may immediately refer the violation to the Public Prosecutor for further (criminal) investigation and prosecution. An example of a case where the Central Bank may immediately refer the violation to the Public Prosecutor for further (criminal) investigation and prosecution is that the Central Bank, during an onsite examination, takes notice of serious or grave violation of the NORUT, NOIS or the compulsory requirements in the Provisions and Guidelines on AML & CFT.

Furthermore, if the supervised (financial) institution or individual does not comply with its obligations, even after an increased penalty or administrative fine, the Central Bank shall report such to the Public Prosecutor, while transferring the relevant documents related to the case in view of (criminal) prosecution<sup>28</sup>.

### **4. Other actions and (administrative) sanctions**

Although the Central Bank has the authority to impose the sanctions as referred to in paragraph III, under 1, 2 and 3, this Policy Rule reflects that the Central Bank will consider other actions and (administrative) sanctions, before determining the appropriate enforcement response to a violation. This has to do with the Central Bank's realization, that there are aggravating or mitigating factors that may play a role.

Based on other supervisory legislations listed in Appendix II to this Policy Rule, the Central Bank can impose the following, non exhaustive, actions or (administrative) sanctions on the supervised (financial) institutions or individuals.

#### **1. Issuance of an order /direction/instruction<sup>29</sup>**

If a supervised (financial) institution is found not to satisfy the requirements, rules, restrictions or instructions laid down by or pursuant to the relevant supervisory legislations, the Central Bank can issue an instruction specifying that the supervised (financial) institution must satisfy such requirements, rules, restrictions or instructions within the time specified by the Central Bank.

In some cases the Central Bank can also make public the issuance of the instruction<sup>30</sup>.

#### **2. The appointment of a trustee/administrator<sup>31</sup>**

In case the Central Bank is of the opinion that its request stated in an order has not or not adequately been complied with within the term specified by the Central Bank then the Central Bank can by registered letter serve notice to the supervised (financial) institution that, with effect from the date stipulated by the Central Bank, all or particular organs of the supervised (financial) institution may only exercise their powers after approval by one or more persons appointed by the Central Bank and with due observance of the instructions of said persons. The Central Bank may also take

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<sup>28</sup> Article 4, paragraph 3, of the NDPFRUT and NDPFSP, respectively

<sup>29</sup> Article 22, paragraph 1, NOSBCI, article 33 NOSIIA and article 33, paragraph 1, RFETCSM

<sup>30</sup> Article 33, paragraphs 1 and 2 PRETCSM

<sup>31</sup> Article 22, paragraphs 2 and 3, NOSBCI, and article 34, paragraphs 1 and 2, NOSIIA

this action if special circumstances threaten an adequate functioning of certain supervised (financial) institutions.

### **3. Penalizing of violation**<sup>32</sup>

If the (financial) institution fails to satisfy its obligations resulting from the relevant supervisory legislations or fails to satisfy such obligations in time, the Central Bank can impose an administrative fine on the (financial) institution. In some cases the Central Bank can also impose a penalty.

### **4. Revocation of the license or dispensation**<sup>33</sup>

In case the supervised (financial) institution or individual refuses to comply with or is in violation of the provisions and the compulsory requirements as stipulated in the relevant supervisory legislations and the Provisions and Guidelines on AML & CFT, respectively, the Central Bank can revoke the license or dispensation of the supervised (financial) institution or individual.

### **5. Public Notice**<sup>34</sup>

The Central Bank can bring to the notice of the public the fact with respect to which an order for a penalty or an administrative fine is imposed, the violated instruction and also the name, the address and the domicile of the person on whom the order for a penalty or the administrative fine is imposed.

### **6. Referral for criminal investigation or prosecution**<sup>35</sup>

In case of violation of regulations set by or pursuant to the relevant articles mentioned in the penal provisions of the supervisory legislations, the Central Bank may immediately refer the violation to the Public Prosecutor for further (criminal) investigation and prosecution. An example of a case where the Central Bank may immediately refer the violation to the Public Prosecutor for further (criminal) investigation and prosecution is that the Central Bank during an onsite examination takes notice of serious or grave violation of the NORUT, NOIS or the compulsory requirements in the Provisions and Guidelines on AML & CFT.

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<sup>32</sup> Article 46 NOSBCI, article 35 NOSIIA, articles 35 and 43 RFETCSM and article 22 NOSTSP

<sup>33</sup> Article 9 NOSBCI, articles 11 and 22 NOSIIA, article 22 RFETCSM and articles 5 and 9 NOSTSP

<sup>34</sup> Article 69 RFETCSM

<sup>35</sup> Article 50 NOSBCI, article 38 NOSIIA, article 81 RFETCSM and article 25 NOSTSP

#### **IV OBJECTION AND REVIEW**

In accordance with the National Ordinance regulating Administrative Law (N.G. 2001, 79) objection or appeal against a decision of the Central Bank is possible within six weeks.

#### **V DISCLAIMER**

The headings used in this policy rule, moreover its footnotes and appendixes are for convenience use only and such headings are not to be used in determining the entire meaning or interpretation of this policy rule.

**Centrale Bank van Curaçao en Sint Maarten  
June 2011**

**Dr. E.D. Tromp  
President**