



CBCS POLICY RULE ON INTEGRITY TESTING

Policy rule regarding the integrity testing of (candidate)(co-)policymakers from institutions under supervision of the Bank, and also (candidate)holders of qualifying interests in these institutions, and other persons involved

Regarding, inter alia:

article 3, paragraph 2, subsections b, c and d; article 4, paragraph 1, subsections d, e and f; article 9, paragraph 1, subsection a; and article 23, paragraph 2 of the National Ordinance on the Supervision of the Banking and Credit System (1994 NOSBCS); article 17 of the National Ordinance on the Supervision of the Insurance Sector (1990 NOSIS); article 4 of the National Decree on Special Licenses (NDSL); article 19 of the National Ordinance on the Supervision of Corporate Pension Funds (NOSCPF 1985); article 6, paragraph 1, subsection b on the National Ordinance on the Insurance Brokerage Business (NOIBB 2003); article 2 of the National Ordinance on the Supervision of Stock Exchanges (1998 NOSSE); article 4, paragraph 1, and article 15, paragraph 1 of the National Ordinance on the Supervision of Investment Institutions and Administrators (2002 NOSIIA); and articles 3, 4, 5, 6, 7, 8, 9, and 11 of the National Ordinance on the Supervision of Trust Service Providers (2003 NOSTSP)

Definitions

Article 1

1. Integrity

For the purposes of this policy, integrity is understood as abstaining from one or more *courses of action* that, in the opinion of the Bank, form an impediment to discharging the position of (co-) policymaker, or to holding a qualifying interest, or to obtaining a dispensation in pursuance of article 45 of the 1994 NOSBCS and article 2 of the 2003 NOSTSP.

2. Courses of action

This includes at least one ***course of action*** (commission and/or omission) demonstrating the absence of qualities such as:

- a) truthfulness;
- b) a sense of responsibility;
- c) law-abidingness;
- d) openness;
- e) sincerity;
- f) prudence;
- g) punctuality;
- h) honesty;
- i) discretion;
- j) uprightness;
- k) any other qualities (to be determined).



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3. Antecedents

This regards intentions, actions, and criminal, financial, supervisory, and other antecedents. The criminal and financial, supervisory, and other antecedents comprise the facts and circumstances referred to in annexes A1, A2, and annexes B, C, and D.

4. Supervision Act

This covers, either jointly or separately, the following ordinances/decrees: the 1994 NOSBCS, 1990 NOSIS and their respective implementation decrees, the 1985 National Ordinance on the Supervision of Corporate Pension Funds, the 2003 National Ordinance on the Insurance Brokerage Business, the 1998 National Ordinance on the Supervision of Stock Exchanges, the 2002 National Ordinance on the Supervision of Investment Institutions and Administrators, the 2003 National Ordinance on the Supervision of Trust Service Providers, and also other and future supervisory regulations.

5. Persons involved

5.1. Policymakers and participants in supervised institutions

This includes each and every (and any future) body of any institution supervised by the Central Bank of **Curaçao and Sint Maarten**, notably:

- a) (candidate)(co-)policymaker¹ such as Director, Board Member, or Investment Manager/Adviser;
- b) (candidate)member¹ of a Board of Supervisory Directors or Supervisory Board;
- c) (candidate)holder² of a qualifying interest.³

5.2. Other persons involved

This includes:

- a) any natural person or legal entity who applies for, or has been granted dispensation in pursuance of article 45 of the 1994 NOSBCS, for the purpose of extending credit on a regular basis or of raising funds by means of the issue of, among other things, debt instruments; and any natural person or legal entity who applies for, or has been granted dispensation in pursuance of article 2 of the 2003 NOSTSP, for the purpose of providing trust services;
- b) the (candidate)(co-)policymaker¹ of an institution that applies for, or has been granted dispensation in pursuance of article 45 of the 1994 NOSBCS, for the purpose of extending credit on a regular basis or of raising funds by means of the issue of, among other things, debt instruments; the (candidate)(co-)policymaker¹ of a legal entity that applies for, or has been granted, dispensation in pursuance of article 2 of the 2003 NOSTSP, for the purpose of providing trust services, with the exception of the (candidate)(co-)policymaker of a group financing company or an international credit institution referred to in article 2 and article 3 of the National Decree laying down general measures (National Gazette 1995, No. 219);
- c) the (candidate)holder² of a qualifying interest³ of an institution that applies for, or has been granted dispensation in pursuance of article 45 of the 1994 NOSBCS, for the purpose of

¹ If this is a legal entity, then the natural person who holds the position with the institution on its behalf, as well as the (candidate)(co-)policymaker, the (candidate)member of the Board of Supervisory Directors or Supervisory Board, and the (candidate)holder of a qualifying interest within the legal entity will be referred to as 'persons involved'. The Central Bank of **Curaçao and Sint Maarten** may in this case also test the persons involved.

² If this is a legal entity, then the (candidate)(co-)policymaker, the (candidate)member of the Board of Supervisory Directors or Supervisory Board, and the (candidate)holder of a qualifying interest within the legal entity will be referred to as 'persons involved'. The Central Bank of **Curaçao and Sint Maarten** may in this case also test the persons involved.

³ A direct or indirect holding (shareholder as Ultimate Beneficial Owner) equal to or exceeding 10% of the nominal capital of a (non) public-listed enterprise or institution (financial interest equal to or exceeding 10%), or the ability to exercise directly or indirectly the voting rights in a (non) public-listed enterprise or institution equal to or exceeding 10% (controlling interest equal to or exceeding 10%), as well as the sole proprietor of the insurance brokerage business.



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extending credit on a regular basis or of raising funds by means of the issue of, among other things, debt instruments; the (candidate)holder² of a qualifying interest³ of a legal entity that applies for, or has been granted, dispensation in pursuance of article 2 of the 2003 NOSTSP, for the purpose of providing trust services, with the exception of the (candidate)holder of a qualifying interest of a group financing company or an international credit institution referred to in article 2 and article 3 of the National Decree laying down general measures (National Gazette 1995, No. 219).

Points of Departure

Article 2

The CBCS Policy Rule on Integrity Testing:

- a) provides for a uniform integrity test laid down in writing;
- b) is based on the antecedent check as determined in the *Supervision Act*;
- c) is applicable to all persons involved as contemplated in article 1, paragraph 5;
- d) serves to warrant the integrity of that part of the financial sector that is subject to supervision or any dispensation arrangement of CBCS, by testing the abovementioned *persons involved*.

Application

Article 3

The testing of the integrity of the persons involved takes place with the required regularity – every 3 years – and is also applicable for other occasions for reasons deemed valid by the Bank, such as for verification and/or in case of change of *antecedents* before termination of the stipulated period, and in case of a reported incident.⁴

Article 4

The Bank judges the integrity of the person involved by testing or verifying, on the basis of the latter's antecedents, if such party gives evidence, or has given evidence, of *such courses of action* as a result of which his integrity is not (no longer) beyond doubt.⁵

Article 5

The Bank gains insight into the antecedents from, among other things:

- a) the questionnaire completed by the person involved in accordance with the model laid down by the Bank;
- b) information from local and/or foreign bodies (designated on behalf of the government) in charge of financial supervision (of markets, natural persons, and legal persons);
- c) the possibility of applying to the Office of the Public Prosecutor for information from police registers;
- d) consulting files of other (local) designated bodies;
- e) information acquired from investigations made by the Bank itself; and

⁴ The result of the integrity testing, as mentioned in article 3, remains valid for three years for all (co-)policy functions, as permitted herewith per person by the Bank, starting with the first reported (co-)policy function. Hereby, every three years, local as well as international screening takes place. However, if the place of residence of the person involved has been solely Central Bank of **Curaçao and Sint Maarten**, only local, not international screening takes place. An exception to this rule is every (co-)policymaker of a supervised institution that also is (co-)policymaker of one or more foreign-based institutions.

⁵ See also 'Synopsis of the Policy Rule on Integrity Testing'.



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- f) references.

Weighing of Interests

Article 6

1. To the Bank the integrity of the person involved is not beyond doubt (any longer), if in the weighing of interests, such person's antecedents, in the opinion of the Bank, evidence one or more courses of action, as contemplated by article 1, subsection 2.
2. The Bank includes in its judgment:
 - a) in common cases, the interrelation between the course(s) of action underlying any antecedent and the other circumstances of the case;
 - b) the interests which the Supervision Act aims to protect; and also
 - c) the other interests of the financial sector and of the person involved.
3. Considering the nature and the seriousness of the criminal acts mentioned in annex A2, courses of action underlying such criminal acts are considered in advance to be incompatible with the interests which the Supervision Act aims to protect. In this connection, the Bank establishes that the integrity is not (no longer) beyond doubt, if the antecedents of the person involved prove that the latter has been sentenced by irrevocable court decision for a criminal act as mentioned in annex A2 that is not yet 8 years old (the so-called 'guillotine provision').
4. If the antecedents of the person involved can be qualified as facts and circumstances in the sense of both annex A1 and annex A2, then the provision of article 6, third paragraph referred to above will be applicable, unless 8 or more years have elapsed since the day such judgment became irrevocable.

Result of Test and Acts of Supervision

Article 7

1. Within 60 days of receipt of an official request for a position as contemplated by article 1, subsection 5, the Bank will inform the relevant institution under its supervision, or the other person involved, by registered letter of the result of the integrity test conducted by the Bank.
2. The Bank will state in its letter the independent grounds for its decision and actions to be taken.
3. If the integrity test has not been completed within the period of 60 days referred to, the Bank will so inform the applicant.

Article 8

If the Bank concludes that the integrity is not (no longer) beyond doubt, and further that no direct consequences result from the Supervision Act itself, the Bank as the supervisory authority will be entitled to the powers belonging to it by operation of the Supervision Act, such as giving an indication; refraining from granting, canceling, modifying, or refusing a license or dispensation, as the case may be; or making an application for a committed act to be undone.



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Entry into Force

Article 9

This policy rule will become effective on the day of publication of the resolution adopted by the Board of Governors to that effect, of which the present policy rule forms an integral part.



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SYNOPSIS OF THE BNA POLICY RULE ON INTEGRITY TESTING

The Bank gives an explanation of:

A. THE CONCEPT OF INTEGRITY

By 'integrity' the Bank means that the person involved does not give evidence of courses of action which, in the opinion of the Bank, form an impediment to the discharging of his (future) position, or to holding a qualifying interest, or to obtaining a dispensation in pursuance of article 45 of the 1994 NOSBCS and article 2 of the 2003 NOSTSP.

B. THE CONCEPT OF COURSES OF ACTION

Courses of action are understood to be both commission and omission (e.g., with regard to subordinates or otherwise). Both a commission and an omission may prove that the person involved gives evidence of such qualities that, in the opinion of the Bank, suggest that ***his integrity is not (no longer) beyond doubt***. This disqualification for integrity implies that after the test there is doubt with regard to his integrity, or with regard to the discharge of his (future) position, or with regard to the holding of a qualifying interest, or to obtaining a dispensation in pursuance of article 45 of the 1994 NOSBCS and article 2 of the 2003 NOSTSP.

C. WEIGHING ANTECEDENTS AND JUDGMENT REGARDING INTEGRITY

1. The policy rule contains a number of annexes listing the criminal (Annexes A1 and A2), financial (Annex B), supervisory (Annex C), and other (Annex D) antecedents or courses of action, which play a role in some way when forming an opinion. The person involved must himself inform the Bank of any antecedents, by filling in the questionnaire. This implies not only the antecedents included in the policy rule, but all antecedents, i.e., all other information with respect to his past that may seem relevant for the integrity testing by the Bank.
2. The Bank forms its own opinion with regard to an antecedent. The policy rule indicates in what manner the Bank gains insight into the antecedents. The concept 'antecedents' includes also both actions and intentions. As far as the antecedents summed up in the annexes are concerned, the existence of a single antecedent will not be considered a criterion of the judgment of the Bank with regard to integrity. In this connection, the Bank judges not only on the ground of antecedents stated on the lists, but also the correlation between certain courses of action.
3. In this judgment the Bank will include:
 - a) the interrelation between the course(s) of action underlying any antecedent and the other circumstances of the case;
 - b) the interests which the Supervision Act aims to protect; and also
 - c) the other interests of the financial sector and of the person involved.
4. Evidence of punishable acts as mentioned in Annex A1, does not lead by definition to a disqualification for integrity. Moreover, an antecedent which in itself would be of little interest to the Bank, in combination with other factors or courses of action of the person involved, may be the 'straw that breaks the camel's back' and induce the Bank to judge that the integrity is not beyond doubt. For instance, an acquittal by the criminal judge or the absence of a certain reaction in the field of criminal law will not imply in advance that there could not exist any doubt as to the integrity of the person involved. Inversely, in principle, it will also be possible that the Bank, with due observance of all (supervisory) interests, reaches the conclusion that the existence of an antecedent, except those mentioned in Annex A2, does not raise doubt as to the integrity of the person involved.



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5. A number of courses of action, however, are considered so serious by the Bank that they qualify in advance as incompatible with the interests that the Supervision Act aims to protect. These courses of action are included in Annex A2, which implies that in case the person involved has been irrevocably sentenced for a criminal act mentioned in Annex A2, which is not yet 8 years old, the supervising authority will establish that their integrity is not (no longer) beyond doubt. This is also referred to as the 'guillotine provision' and leads the Bank by definition to a disqualification for integrity. Annex A2 contains an exhaustive list of antecedents; the other annexes are not exhaustive.
6. If an antecedent in the field of criminal law can be qualified as an antecedent in the sense of Annex A1, and also Annex A2, in which an irrevocable sentence is involved in the last-mentioned case which is not yet 8 years old, then the foregoing will be equally applicable to the judgment with regard to integrity.
7. The financial antecedents that (may) give an indication or risk factor with respect to integrity are included in Annex B. These are subdivided into personal and business-related. The personal financial antecedents refer particularly to the person's financial situation. Financial difficulties can make a person vulnerable, for example, for conflict of interest and misappropriation. The business-related antecedents give a picture of eventual financial difficulties that arise or have arisen at an institution whose policy was (co-)determined by the person involved.
8. Annex C sees to the relation with the public bodies and the supervisory authority (ties) with respect to integrity. Not every difference of opinion with the Supervisory Authority leads to a disqualification for integrity. A trend to unwillingness when complying with the formal lawful decisions by the Supervisory Authority, as well as incorrect or incomplete information, may well lead to disqualification for integrity.
9. Annex D includes the section 'other antecedents'. It includes also conflicts or incidents with the previous employer regarding compliance, for example, with the rules of conduct, but also measures imposed by an organization of fellow professionals, such as the Bar Association and the Federation of Accountants.
10. Insofar as the antecedents of the person involved as stated in Annexes A1, B, C, and D occurred 8 or more years prior, the Bank may consider them less weighty than antecedents that occurred within a period of 8 years.



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ANNEX A1

ANTECEDENTS IN THE FIELD OF CRIMINAL LAW AS CONTEMPLATED BY ARTICLE 1, THIRD PARAGRAPH, AND ARTICLE 6, FOURTH PARAGRAPH

Antecedents in the field of criminal law will be understood to be in any case:

1. Sentences in cases of violation of penal provisions (inclusive of foreign countries)

The person involved has been ***sentenced by decision of the court*** on the ground of (attempt to, preparation for, causing the commission of, provocation of – including abortive provocation, article 46a of the Penal Code – participation in the commission of and/or complicity in) one or a number of the punishable acts summed up below, from:

- Supervision Act
- Penal Code (Second Book)
- Penal Code (Third Book)
- Income Tax Ordinance
- Profit Tax Ordinance
- Wage Tax Ordinance
- Opium National Ordinance
- Fire Arms Ordinance
- Arms Ordinance
- Ordinance of April 20, 1932, laying down a number of regulations in the field of civil law, with regard to cases of collision, running into or running over with motor vehicles, and laying down regulations for disqualification from driving motor vehicles
- National Ordinance providing for penalization of money laundering
- National Ordinance providing for compulsory reporting of unusual transactions
- National Ordinance providing for identification of financial services.

Sentences will be understood to include sentences in countries abroad on the ground of violation of one or a number of penal provisions in force in any such country, comparable to those mentioned hereinbefore.

2. Transactions with the Office of the Public Prosecutor in case of violation of penal provisions (inclusive of countries abroad)

The person involved has made a voluntary payment as contemplated in article 76 of the Penal Code in connection with one or a number of punishable acts mentioned hereinbefore under 1.

Transactions will be understood to include transactions performed abroad with relevant competent authorities, with regard to violation of one or a number of penal provisions in force in any such country, comparable to those mentioned hereinbefore.

3. (Conditional) dismissal, acquittal, or discharge from prosecution (inclusive of countries abroad)

The person involved is either not (further) prosecuted, or acquitted or discharged from prosecution in connection with one or a number of the punishable acts mentioned hereinbefore under 1.



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(Conditional) dismissal, discontinuance of prosecution, acquittal or discharge from prosecution will be understood to include similar sentences and actions in countries abroad with regard to violation of one or a number of penal provisions in force in any such country, comparable to those mentioned hereinbefore.

4. Other facts and circumstances

- official records and reports with regard to punishable acts mentioned under 1.
- similar official documents with equal evidentiary value in countries abroad.
- other facts or circumstances.

ANNEX A2

ANTECEDENTS IN THE FIELD OF CRIMINAL LAW AS CONTEMPLATED BY ARTICLE 1, THIRD PARAGRAPH, AND ARTICLE 6, THIRD AND FOURTH PARAGRAPHS

Sentences (inclusive of countries abroad)

The person involved has been ***sentenced by irrevocable decision of the court*** on the ground of (attempt to, preparation for, causing the commission of, provocation of and/or complicity in) one or a number of the punishable acts summed up below:

- insider trading in securities transactions (National Ordinance regulating the Supervision of Stock Exchanges);
- serious larceny, embezzlement, forgery, false testimony, injury to creditors or entitled parties (Penal Code);
- money laundering (National Ordinance providing for penalization of money laundering);
- violation supervision act.

ANNEX B

FINANCIAL ANTECEDENTS AS CONTEMPLATED BY ARTICLE 1, THIRD PARAGRAPH

With regard to the person involved, financial antecedents, relevant to the judgment of the underlying course(s) of action, will be understood to be in any case:

Personal

- *legal, debt collecting or debt recovery proceedings completed, arising from major financial problems;*
- *a suspension of payments, bankruptcy, debt restructuring or creditor's accord has been filed for, adjudicated, and/or annulled;*



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- currently (potentially) involved, or expected to become involved *in legal proceedings arising from financial problems (Curaçao and Sint Maarten or elsewhere)*;
- by general standards an *unsound financial relation* between the private financial obligations *and the income and/or capital*.

Business-related

- *bore (joint) policy responsibility with current or former employer(s) or any company or legal person with considerable financial problems, followed by legal proceedings (Curaçao and Sint Maarten or elsewhere)*;
- as stated in the preceding item, with *a suspension of payments or bankruptcy or an emergency arrangement* filed for or adjudicated;
- *sentenced to pay unpaid debts in case of liability for bankruptcy of a company or a legal person*;
- other facts or circumstances that evidence involvement with one or a number of financial courses of action, insofar as reasonably relevant to the Bank.

ANNEX C

SUPERVISORY ANTECEDENTS AS CONTEMPLATED BY ARTICLE 1, THIRD PARAGRAPH

Supervisory antecedents, relevant to the judgment of the underlying course(s) of action, will be understood to be in any case:

- *supplying incorrect and/or incomplete data (including questionnaire), within the scope of official financial supervision (Curaçao and Sint Maarten or elsewhere)*;
- *denial of admission to the Curaçao and Sint Maarten, or license, or dispensation within the scope of official financial supervision, to the person involved/other person or a related company or legal person in which the person involved /other person previously bore (joint) policy responsibility (Curaçao and Sint Maarten or elsewhere)*;
- *cancellation of admission to Curaçao and Sint Maarten, or license, or dispensation within the scope of official financial supervision with regard to the person involved/other person or a related company or legal person in which the person involved /other person previously bore (joint) policy responsibility (Curaçao and Sint Maarten or elsewhere)*;
- *arising conflicts within the scope of official financial supervision, giving rise to any action as against the person involved/other person or as against the related company or legal person in which the person involved /other person previously bore (joint) policy responsibility (Curaçao and Sint Maarten or elsewhere)*;
- *subject to an emergency rule and/or undisclosed custody on the part of the Bank or supervising body abroad*;
- other facts or circumstances that *evidence involvement with one or a number of financial courses of action*, insofar as reasonably relevant to the Bank;



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ANNEX D

OTHER ANTECEDENTS AS CONTEMPLATED BY ARTICLE 1, THIRD PARAGRAPH

With regard to the person involved, other antecedents, relevant to the judgment of the underlying course(s) of action, will be understood to be in any case:

- *denial of the Ministerial approval or amendment of the articles of incorporation of the company by the Minister of Justice, with regard to the person involved/other person or a company or legal person in which the person involved /other person previously bore (joint) policy responsibility;*
 - *proceedings on the part of an organization of fellow professionals in or outside the **Curaçao and Sint Maarten** followed by disciplinary or corrective measures as against the person involved /other person;*
 - *any conflict of the person involved/other person with a current or a previous employer with regard to his incorrect performance / discharge of duties (observance of standards of conduct) followed by sanctions in the field of labour law, and insofar as relevant as far as the nature of supervision is concerned;*
 - other facts or circumstances insofar as reasonably relevant to the Bank.
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