



## CBCS REGULATION CONCERNING THE NUMBER OF PERMITTED (CO-) POLICYMAKING POSITIONS PER PERSON

### 1. Legal basis and purpose

This regulation is supplementary to the CBCS Policy Regulation & Integrity Testing Questionnaire, as well as to the CBCS Corporate Governance Guidance Notes (Oct. 2001) and the Statement of Best Practices (Nov. 2006), as issued in pursuance of the Supervision Act.<sup>1</sup>

The object of this regulation is:

- To prevent conflicting interests as a consequence of the combination of several (co-)policymaking positions in the financial sector, *casu quo*, in the supervised legal persons or institutions.
- In this connection, financial<sup>2</sup> interests and/or co-determination<sup>3</sup> interest in several legal persons or institutions under the supervision of the Central Bank of Curaçao and Sint Maarten (the Bank) play an important role.

The Bank will consider the information obtained within this framework as well as the answer to question no. 20 of the Integrity and Fitness Testing Questionnaire when assessing whether a proposed person can be appointed to a (co-) policymaking position.

### 2. Further investigation

The Bank will further investigate the existence of a combination of the number of permitted (co-)policymaking positions per person within each sector under supervision, and also between the sectors mutually (cross sector) and assess the admissibility of such combination.

### 3. Application

The regulation is applicable to all the sectors in Curaçao and Sint Maarten that are under the Bank's supervision including: the credit institutions sector (banks, credit unions, specialized credit institutions, savings banks, and savings and credit funds); the institutional investors and insurance brokers sector (insurers, professional reinsurers, captives, nonmonetary funeral insurers, company pension funds, and insurance brokers); the investment institutions and administrators sector (investment institutions and administrators); the trust sector (trust offices); and the (local) stock exchanges sector.

### 4. Starting principle

The regulation is based on the principle that:

---

<sup>1</sup> **Supervision Act** : This concerns the collective ordinances/implementation decrees, or the separate National Ordinance on Banking and Credit Institutions 1994 (*LTBK 1994*), the National Ordinance on the Supervision of the Insurance Industry 1990 (*LTV 1990*), and its implementation decrees, the National Ordinance on the Supervision of Company Pension Funds 1985 (*LOP 1985*), the National Ordinance on the Insurance Brokerage Sector 2003 (*LAB 2003*), the National Ordinance on the Supervision of Stock Exchanges 1998 (*LTE 1998*), the National Ordinance on the Supervision of Investment Institutions and Administrators 2002 (*LTBA 2002*), and the National Ordinance on the Supervision of the Trust Sector 2003 (*LTT 2003*), including other and future supervision regulations.

<sup>2</sup> **Financial interest**: a direct or indirect participation (shareholder being an Ultimate Beneficial Owner) of 10% or more of the nominal capital of a (none)-listed company or institution.

<sup>3</sup> **Controlling interest**: being able to exercise directly or indirectly 10% or more of the voting rights or a comparable control in a (none)-listed company or institution, as well as the owner of the insurance brokerage in the form of a one-man business.



- a) In the case of local supervised institutions, a combination of positions such as Director simultaneously coupled with the position of member of a Supervisory Board or member of the Supervisory Committee is in principle not permitted.
- b) Within the same sector and cross sector only *a combination with one directorship* is permitted: either a combination of a member of the Supervisory Board or a member of the Supervisory Committee with a directorship at a *local* supervised institution, or a combination of a member of the Supervisory Board or a member of the Supervisory Committee with a directorship at an *international* supervised institution.

## 5. Exceptions

The following exceptions are applicable to the starting principle referred to under item 4:

- a. The prohibition indicated in item 4a does not apply to a combination within the same group (provided it is not within the *same* institution within the group).
- b. In the case of an independent<sup>4</sup> chairmanship of pension funds, the Bank will assess, based on the nature of the activities in a pension fund, case by case, whether a person is able, in this context, to carry out responsibly an additional appointment as Chairman or as (executive) Board member.
- c. Additional appointments as Director of a captive are at the Bank's discretion.
- d. The prohibition indicated in item 4a does not apply if, in the opinion of the Bank, there is a local representative of a small branch office of an insurance company.
- e. The Bank can judge that the prohibition indicated in item 4b does not apply in the event of a non-conflicting independent chairmanship of pension funds (in the opinion of the Bank) in combination with a supervisory directorship at an Insurer.<sup>5</sup>
- f. Pursuant to article 18 of Book 2 of the Civil Code, the management tasks may be divided in accordance with the articles of incorporation in the manner determined in that article, among a General Board and an Executive Board (the so-called one-tier board model). Although in such a case the General Board supervises the Executive Board, both Boards must count as Managing Directors (see paragraphs 8 and 9). What the present CBCS regulation stipulates regarding other (co-) policymaking positions of "Directors" is in principle also applicable to both a member of the General Board and the Executive Board. If requested, the Bank will assess in each specific case presented to it whether any reason exists to deviate from this principle.
- g. For the investment institutions and administrators sector and the trust sector (providers of management services), an additional specific regulation is applicable by way of exception with respect to the designating of several directorships as well as various supervisory directorships in these institutions and operating companies/subsidiary companies as one position (whether group-related or not). The specified permitted combination(s) of positions in the other sectors (cross-sectoral effect) referred to in item 4b, *casu quo*, item 7b and 7c is also applicable to this (cross-sectoral effect).<sup>6</sup>
- h. For all exceptions, the combination with other permitted international and/or local supervisory positions may not exceed 5 (co-)policymaking positions.

## 6. Financial or controlling interest within a group

Any combination of (co-)policymaking positions with a financial interest<sup>7</sup> or a controlling interest<sup>8</sup> in the mutual business relationship is permitted only if it occurs within the same group.

## 7. It is permitted (*see Diagram*):

- a. For the management to be conducted by the same person at local supervised insurance companies and credit institutions *as a group*, which is considered to be one directorship (*Footnote IV*).

<sup>4</sup> **Independent** is in the sense that the Chairman of a pension fund is appointed and not elected.

<sup>5</sup> **Non-conflicting independent chairmanship** of the pension fund exists when an Insurer does not sell products that the pension fund needs for the pension plan of its participants.

<sup>6</sup> See *Annex* Supplementary Special Regulation for Exceptions for Investment Institutions and Administrators Sector and the Trust Sector (cross-sectoral effect).

<sup>7</sup> See footnote 2.

<sup>8</sup> See footnote 3.



- b. For the directorship to be conducted at a *local* supervised institution in combination with a maximum of two supervisory positions (a member of the Supervisory Board or a member of the Supervisory Committee) at an *international* supervised institution. In conformity with the above-mentioned items 5a and 5d, combinations with local positions within the same group are *an exception to this*, or if in the Bank's opinion, there is a local representative of small branch offices of insurance companies or non-conflicting independent chairmanship of the pension funds in combination with a supervisory directorship at an Insurer.. With respect to the exceptions to this rule for the investment institutions sector and administrators (investment institutions and administrators), reference is made to the *annexed supplementary specific regulation* as concerns the classification of several directorships as well as several supervisory directorships at these institutions and affiliated operating companies/subsidiary companies as one position (whether group-related or not). These (co-)policymaking positions may not exceed a total of five (*Footnote I*).
- c. For the directorship at an *international* supervised institution to be held in combination with a maximum of one supervisory position (a member of the Supervisory Board or a member of the Supervisory Committee) at a *local* supervised institution and/or a maximum of two supervisory positions (Supervisory Director or a member of the Supervisory Committee) at an *international* supervised institution. An exception to this is combinations with an independent chairmanship of pension funds and with a directorship of so-called captives. In accordance with the exceptions referred to under 5b and 5c, additional appointments such as independent Director of a pension fund and Director of a captive are at the discretion of the Bank. With respect to the exceptions to this rule for the investment institutions sector and administrators (investment institutions and administrators), reference is made to the *annexed supplementary specific regulation*, as concerns the classification of several directorships as well as several supervisory directorships at these institutions and affiliated operating companies/subsidiary companies as one position (whether group-related or not). This combination with other permitted (inter)national supervisory positions may not exceed a total of five (co-)policymaking positions (*Footnotes II and III*).

#### 8. **Conflicting co-determination interest and/or co-determination interest with other non-supervised legal person(s)/institution(s) and functioning local PEPs**

The Bank can decide at its own discretion and opinion whether to approve persons who, in addition to the intended performance of a (co-)policymaking position at an institution supervised by the Bank, are also involved in one or more non-supervised legal person(s) or institution(s), including additional positions at related parties.

- a. A case in point is where parties do business or conduct transactions with the institution where the (co-)policymaker is also personally active as such. A basic principle here is the CBCS Corporate Governance Guidelines for good governance. In the event of conflicting co-determination interest in this/these legal person(s) or institution(s), the Bank can withhold its approval for the appointment in the (co-)policymaking position.
- b. This conflicting (co-)determination interest also applies in the case of *functioning local PEPs*. Generally, local PEPs are understood to be persons who (a) hold or have held a prominent public function, and (b) the close relatives or (c) immediate associates of these persons. In the event of an integrity testing of any application of a local PEP for holding a (co-)policymaking position at a supervised institution, the following distinction shall apply : (a) functioning local PEPs (person holding a public function); and (b) nonfunctioning local PEPs (persons that have held a public function. Normally, in this case of a functioning local PEP there may be a conflicting interest and for that reason alone, the person in question will not qualify for holding a (co-)policymaking position.<sup>9</sup>

<sup>9</sup> In particular cases where circumstances permit, the Bank retains the authority to make an exception in the case of a functioning local PEP who wants to hold a (co-)policymaking position:

- a) Cases that do not concern functioning politicians, and where the persons involved, due to their baggage, have valuable significance for a state organ, such as the Court of Audit or the Advisory Council under the condition that it must be possible to have independent functioning within such state organs (submission of bylaws to this end).
- b) Cases that concern local official PEPs, permanently employed by the Government, or members of administrative, managerial, or supervision organs of local public enterprises, as the case may be. Such PEPs must submit an official letter from the Government confirming that the Government has no objections against said position in the financial sector.



**9. Other combinations of only supervisory functions with a maximum of five**

All other combinations of only supervisory positions (with no Director) may not exceed the total of five (co-) policymaking positions.

**10. Transition period in the event that the limit is exceeded**

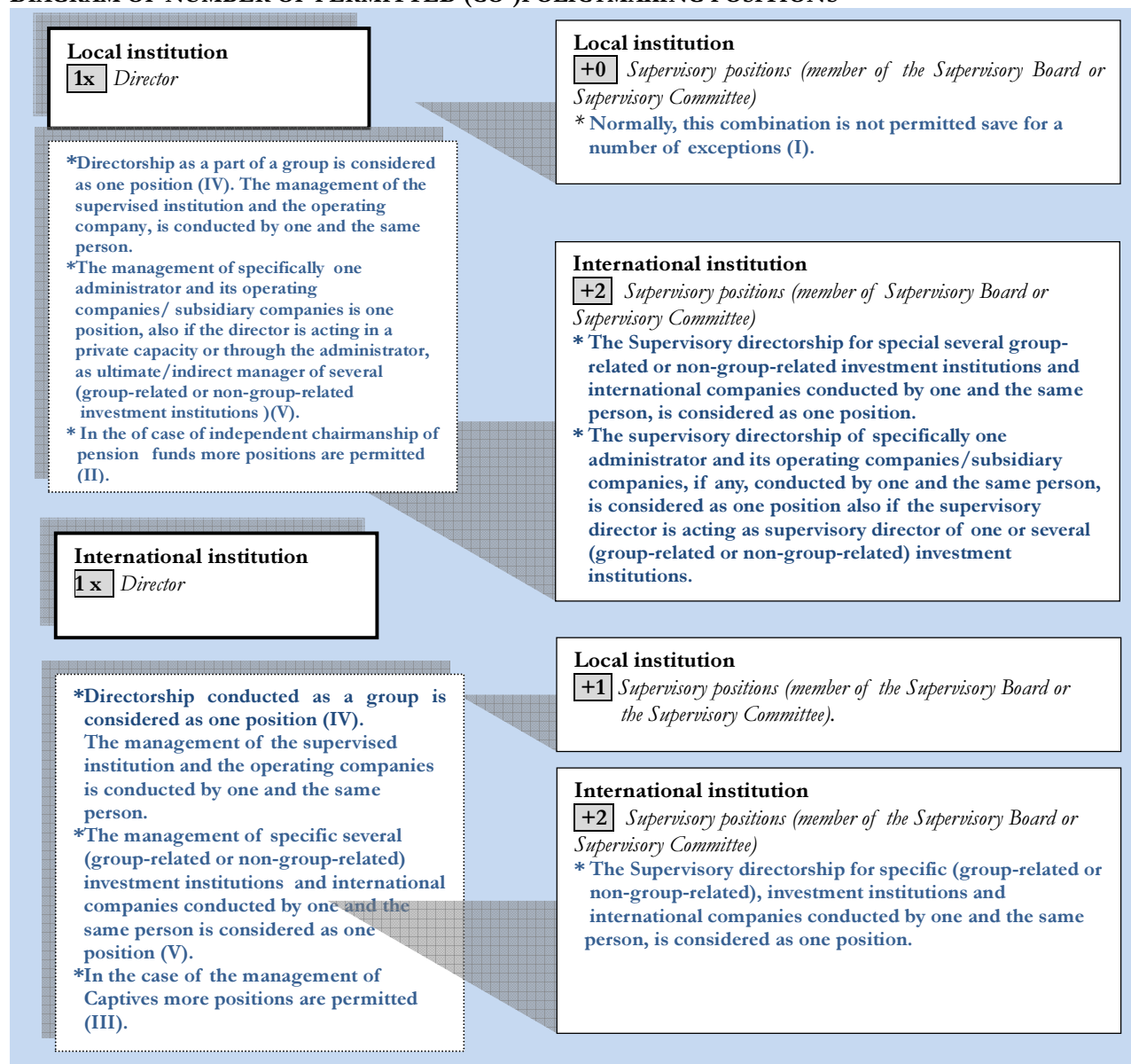
A (prospective) (co-)policymaker who exceeds the above-mentioned limit, must opt for a combination of positions that is acceptable to the Bank, without conflicting interests. For cases that qualify as such, there is a transition period of six months in conformity with the official reporting of the Bank.

**11. Possibility to deviate in particular cases**

The Bank always retains the right in particular cases to deviate from this regulation, at its own discretion and in its own opinion and supported by reason.. In those cases, certain criteria are taken into account, such as age and experience of the candidate, structure and complexity of the institution, composition of the Board and/or the Council and, if applicable, possibly the rating assigned by the Bank to the institution.



## DIAGRAM OF NUMBER OF PERMITTED (CO-)POLICYMAKING POSITIONS



- (I) The Bank can permit certain exceptions for a combination at local supervised institutions, namely: if there is a combination of local positions within the same group or if there is a combination with a local representative of (in the Bank's opinion) small branch offices of insurance companies or in the case of 1x non-conflicting independent chairmanship of pension funds in combination with 1x supervisory directorship at an insurance company. The combination with other permitted (inter)national supervising positions may not exceed the number of 5.
- (II) Depending on the activities of a pension fund, the Bank will assess, case by case, whether the Chairman of that fund can carry out an additional appointment as Chairman in a responsible manner. The combination with other permitted (inter)national supervisory positions may not exceed the total of five in this case.
- (III) Additional appointments such as Director of a captive are at the discretion of the Bank, in which case combinations with other permitted (inter)national supervisory positions may not exceed the total of 5 (co-)policymaking positions.



- (IV) In the case of supervised local insurance companies and credit institutions operating as a group, the management of the supervised institution and its operating companies is considered one directorship.
- (V) In conformity with the annexed Supplementary Specific Regulation for investment institutions and administrators and providers of management services, several directorships as well as several supervisory directorships at these institutions and ancillary operating companies/subsidiary companies (group-related or non-group-related), are considered as one position.

\*\*\*\*\*



## ANNEX

### **SUPPLEMENTARY SPECIFIC REGULATION REGARDING THE NUMBER OF PERMITTED (CO-) POLICYMAKING POSITIONS PER PERSON FOR INVESTMENT INSTITUTIONS AND ADMINISTRATORS AND PROVIDERS OF MANAGEMENT SERVICES WITH CROSS-SECTORAL EFFECT (GROUP-RELATED OR NON-GROUP-RELATED)**

#### **I. Investment institutions and Administrators**

- *The role played by a director at an investment institution is considerably different from the role performed at other types of financial institutions specifically because elementary components of operations of an investment institution are sourced out. Outsourcing is most frequently done with regard to administrative duties, depositary activities, and implementation of the investment policy. The duties carried out by a director of an investment company are not such that he/she must be involved on a daily basis with the operations of the company. As a result, a natural person frequently acts as director of several (group-related or non-group-related) investment institutions.*
- *The foregoing is also applicable when an administrator (being a legal person) acts as director of investment institutions. In that case, the corporate directors (being natural persons) of the administrator act indirectly as ultimate (co-)policymakers of the (group-related or non-group-related) investment institutions.*
- *The supervisory role performed by members of the supervisory board at investment institutions is equally such that supervisory directors of investment institutions are able to hold supervisory directorship positions at several (group-related or non-group-related) investment institutions.*

On the basis of the above and with a view toward adequate performance of the management and supervisory organs within the investment institutions and administrators sectors, the following rules are applicable with respect to the number of permitted (co-)policymaking positions within these sectors with a particular cross-sectoral impact:

1. The management of several (group-related or non-group-related) investment institutions by one and the same person is considered as one directorship. The possible combinations with other (co-) policy-making positions, which in conformity with subsection 7c of the CBCS regulation are applicable in the case of a directorship at a supervised international institution, are maintained within that framework.
2. The acting as supervisory director of one or several (group-related or non-group-related) investment institutions by one and the same person is considered as one supervisory position. The possible combinations with other (co-)policymaking positions, which pursuant to subsections 7b and 7c of the CBCS regulation are applicable in case of a supervisory position at supervised international institutions, are in force within that framework. It must be observed within that context that if a supervisory director is also acting as director of one or several (group-related or non-group-related) investment institutions, then the management of the investment institution(s), as indicated under point 1, are also considered as one directorship.
3. The conduct of the management of one administrator (being a legal person) and its operating companies/ subsidiary companies, if any, is considered as one directorship. If a director of (an) administrator(s) in a private capacity or through the administrator, is also acting as (ultimate/indirect) director of several (group-related or non-group-related) investment institutions, then the management, supplementary to the provisions under point 1 above, will be considered jointly as one directorship. The possible combinations with other (co-)policymaking positions, which in conformity with subsection 7b of the CBCS regulation apply in the case of a directorship at a supervised local institution, must hereby be observed.
4. The acting as supervisory director of one administrator (being a legal person) and its operating companies/ subsidiary companies, if any, is considered as one supervisory position. In case a supervisory director of an administrator is also acting as supervisory director of several (group-related or non-group-related) investment institutions, the supervisory directorship, supplementary to the provisions laid down in item 2 above, will be considered jointly as one supervisory position. The possible combinations with other (co-)policymaking positions, which pursuant to subsection 7c of the CBCS regulation are applicable in the case of a supervisory



position at supervised local investment institutions, are maintained within that framework. It must be observed within that context that if a supervisory director is also acting as director of several (group-related or non-group-related) investment institutions, then the management of the investment institution (s) as indicated under point 1 is also considered as one directorship.

\* **With respect to items 2 and 3 mentioned above, the Bank reserves the right, when facts and circumstances so require, to limit the number of directorships and supervisory directorships at investment institutions per individual case, with a view to an adequate operation of the financial markets and the position of the investors on those markets.**

## II. Providers of management services

- *One of the core tasks of a provider of management services (being a natural or legal person) is to act as local director or local representative of international companies. As a consequence, providers of management services often conduct the management of a large number of international companies.*

With a view to adequate functioning of management and supervisory organs within the supervisory providers of management services, the rules mentioned below are applicable with respect to the number of permitted (co-) policymaking positions within the trust sector with specific cross-sectoral effect.

1. The management of several (group-related or non-group-related) international companies by one and the same person is considered as one directorship. *The possible combinations with other (co-)policymaking positions, which in conformity with subsection 7c of the CBCS regulation, are applicable in the case of the directorship at a supervised international institution, are maintained within this framework.*
  2. The acting as supervisory director of several (group-related or non-group-related) international companies by one and the same person is considered as one supervisory position. *The possible combinations with other (co-)policymaking positions, which in pursuance of subsections 7b and 7c of the CBCS regulation are applicable in the case of a supervisory position at supervised international institutions, are in force within this framework.* It must be observed within that context that if such a supervisory director is also acting as director of several (group-related or non-group-related) international companies, then the management of the international company/companies, as indicated under point 1, is also considered as one directorship.
  3. The management of a provider of management services, being a legal person, and its operating companies/subsidiary companies, if any, is considered as one directorship. If a director of a provider of management services is acting in a private capacity, or through the provider of management services is also acting as (ultimate/indirect) director of several (group-related or non-group-related) offshore companies, then the managements, supplementary to the provisions laid down under point 1 above, will be considered jointly as one directorship. *The possible combinations with other (co-)policymaking positions, which in conformity with subsection 7b of the CBCS regulation are applicable in the case of directorship at a supervised local institution, must hereby be observed.*
  4. The acting as supervisory director of one provider of management services, being a legal person and its operating companies/subsidiary companies by one and the same person, is considered as one supervisory position. If a supervisory director of a provider of management services is also acting as supervisory director for several (group-related or non-group-related) international companies, then the supervisory directorships, supplementary to the provisions contained under point 2 above, will be considered jointly as one supervisory position. The possible combinations with other (co-)policymaking position, which pursuant to subsection 7c of the CBCS regulation are applicable in the case of a supervisory position at supervised local institutions, will be maintained within that framework. It must be observed within that context that if a supervisory director is also acting as director of one or several (group-related or non-group-related) international companies, then such management of the international company/companies, as indicated under point 2, is also considered as one directorship.
- \* **It must be observed, in conformity with the Policy Rule on Exemption for Providers of Management Services, that persons with an exemption who are therefore not providing professional or commercial management services, may not manage/represent more than 10 international companies.**





- \*\*** The rule applicable for a person who holds a management or supervisory position at one or several investment institutions that are classed as international companies is that with respect to this special regulation, his/her directorship and/or supervisory directorship at the investment institution (s) concerned, are considered, jointly with his/her directorship and/or supervisory directorship at other international companies, as one directorship *casu quo*, supervisory position.
  
- \*\*\*** For a person who holds a management or supervisory position at a captive or an international bank, which is "de facto" considered as international companies, the provisions laid down in the CBCS regulation with regard to the number of permitted (co-)policymaking positions per person for the respective sectors are applicable.

\*\*\*\*\*