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**ASSESSMENT OF THE SUPERVISION AND REGULATION OF THE
FINANCIAL SECTOR**



**Volume II: Detailed Assessment of Observance of
Standards and Codes**

**Kingdom of the Netherlands—Netherlands
Antilles**

FEBRUARY 2004

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GLOSSARY

AML	Anti-money laundering
ARAS	Annual Report Automated Statements
BCP	Basel Core Principle
BIS	Bank for International Settlements
BNA	Bank of the Netherlands Antilles
CFATF	Caribbean Financial Action Task Force
CFT	Combating Financing of Terrorism
COA	Chart of Account
CP	Core Principle
CSP	Company Service Providers
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FT	Financing of terrorism
GAAP	General Accepted Accounting Principles
IAD	Internal Audit Department
IAIS	International Association of Insurance Supervisors
IAS	International Accounting Standards
IASB	International Accounting Standards Board
IFS	Integrity Financial Sector
IRR	Interest Rate Risk
MoU	Memorandum of understanding
ML	Money laundering
MT	Money Transmitter
NA f.	Netherlands Antillean Guilders, or Florin
P&C	Property and casualty
SR	Supervisory Regulation
UTR	Unusual Transaction Report
UTRC	Unusual Transactions Reporting Center

I. ASSESSMENT OF IMPLEMENTATION OF THE BASEL CORE PRINCIPLES FOR EFFECTIVE BANKING SUPERVISION

A. Basel Core Principles Assessment—Main Findings

1. **With the concurrence of the Bank of the Netherlands Antilles (BNA), the mission assessed compliance with the Basel Core Principles for Banking Supervision using the essential and additional criteria of the Core Principles Methodology.** The assessment was based on the BNA’s self assessment of compliance with the Core Principles (CP), a review of the relevant laws and regulations, interviews with the staff of the BNA, and discussions with onshore and offshore banks. The Netherlands Antilles are compliant or largely compliant with all, but two of the Basel Core Principles (BCP).

Table 1. Summary Compliance of the Basel Core Principles

Assessment Grade	Principles Grouped by Assessment Grade	
	Count	List
Compliant	19	1.1; 1.2; 1.3; 1.4; 1.5; 2; 3; 4; 5; 6; 7; 9; 10; 15; 20; 22; 23; 24; 25.
Largely compliant	9	1.6; 11; 12; 13; 14; 17; 18; 19; 21.
Materially noncompliant	2	8; 16
Noncompliant	0	
Not applicable	0	

Objections, autonomy, powers, and resources (CP 1)

2. **The elements of CP 1 were found to be compliant.** Although Netherlands Antilles law does not contain specific provisions protecting supervisors from lawsuits, administrative law precludes that individual civil servants can be sued for damages ensuing from actions or omissions committed in the good faith exercise of their functions. Actions and omissions by BNA staff in the exercise of their duties are considered actions of the BNA, which can be sued if the actions are wrongful. There is no explicit mention in the law of protection of the supervisory staff nor is there mention of covering the costs incurred in defending their actions while discharging their duties. Nevertheless, the BNA is going to study the possibility of including explicit legal protection for individual staff members as part of the Banking Supervision Ordinance. After introduction of the Harmonization Law currently being prepared, remaining restrictions in the confidentiality regime against the appropriate exchange of customer names will be removed.

Licensing and structure (CPs 2–5)

3. **These criteria were found to be compliant.** Licensing criteria are sufficiently broad. The BNA received 11 applications for bank licenses from 1999 through 2001; 9 were granted and 2 applications were withdrawn. Five of the nine licenses granted were to local banks for the establishment of new international subsidiaries within the Netherlands Antilles. No applications have been denied in the past two years. The law adequately defines “significant ownership” and “controlling interest” and there are legal requirements to obtain supervisory approval for proposed changes in ownership and control. The BNA has established adequate criteria for reviewing major acquisitions or investments by credit institutions.

Prudential regulations and requirements (CPs 6–15)

4. **Prudential regulations are generally adequate in scope.** CP 6, CP 7, CP 9, and CP 10 were found to be compliant and CP 11 and CP 14 were found to be largely compliant. CP 8, loan evaluation and loan loss provisioning, was found to be materially noncompliant. The BNA’s directives on risk management are sufficiently broad, but the BNA needs to enhance the effectiveness of both off-site surveillance and on-site examinations to ensure that its regulations are properly implemented, especially with regard to credit risk management. The BNA’s oversight of credit institutions’ loan evaluation and loan loss provisioning guidelines would benefit from requiring more frequent reviews by credit institutions of their performing and nonperforming loan portfolios and improved reporting of specific provisioning for loan losses. The BNA does not require credit institutions to assess and manage their interest rate risk and it does not oversee the risk for the banking system. The mission recommended that they require the credit institutions to address this risk and that they provide supervisory oversight of it. The BNA’s oversight of internal control and internal audit was found to be largely compliant. The BNA imposes fines for late submission of the COAs. CP 15 is fully compliant as no significant deficiencies were found (see separate template on anti-money laundering (AML) and combating the financing of terrorism (CFT)).

Methods of ongoing supervision (CP 16–20)

5. **There are weaknesses in BNA’s off-site surveillance and on-site supervision and CP 16 was found to be materially noncompliant.** CPs 17–19 were found to be largely compliant and CP 20 was found to be compliant. The oversight of credit risk management needs improvement, especially with regard to the frequency of loan portfolio reviews and loan loss provisioning and the required reporting of problem loans. The BNA needs to be more proactive in monitoring trends and assessing the condition of the banking sector as a whole. In addition, it needs to develop an action plan to assess the increased risk in credit institutions’ operations and the impact on earnings and capital in light of continuing weak economic conditions. In addition, the BNA should implement a program of credit-risk-targeted on-site examinations to allow for more frequent reviews of credit institutions’ loan portfolios. The BNA should include assessments of country risk and interest rate risk in its on-going supervision. It should complete its survey on market risk and decide the extent to which market risk needs to be monitored and managed.

Information requirements (CP 21)

6. **CP 21 was found to be largely compliant.** The BNA requires banks to submit annually audited financial statements, which are generally prepared in accordance with U.S. General Accepted Accounting Standards (GAAP), Dutch GAAP or International Accounting Standards (IAS). External auditors have the legal duty to report matters of material significance to the supervisor.

Formal powers of supervisors (CP 22)

7. **CP 22 was found to be compliant.** The BNA has adequate formal powers and the authority to take corrective measures if it determines that a bank is not complying with its directives regarding solvency, liquidity, or risk management. It has the authority to restrict a bank's operations and to revoke its license. The BNA would benefit from having the ability to impose fines or penalties on senior management and/or directors and to remove management without having to threaten to revoke a credit institution's license.

Cross border banking (CP 23–25)

8. **CP 23 was found to be compliant and CP 24 and CP 25 were found to be largely compliant.** The BNA has adequate cross-border banking arrangements which allow for reasonably effective supervision of off shore credit institutions. The risks posed by overseas operations of local institutions is limited. There is only one branch and one subsidiary of local banks, both in Aruba. The BNA has memoranda of understanding (MoUs) with Aruba, the Netherlands, and Venezuela and there is regular communication with the supervisors, both formally and informally. There are no formal arrangements with other countries and given the number of foreign bank operations, the mission recommended the BNA to continue to arrange appropriate MoU with foreign supervisory authorities whose credit institutions maintain operations in the Netherlands Antilles. The BNA should advise all home country supervisors of any material remedial action it takes regarding the operations of their offshore credit institutions.

B. Detailed Assessment of Compliance of the Basel Core Principles

Table 2. Detailed Assessment of Compliance of the Basel Core Principles

<p>Principle 1.</p>	<p>Objectives, Autonomy, Powers, and Resources An effective system of banking supervision will have clear responsibilities and objectives for each agency involved in the supervision of banks. Each such agency should possess operational independence and adequate resources. A suitable legal framework for banking supervision is also necessary, including provisions relating to the authorization of banking establishments and their ongoing supervision; powers to address compliance with laws, as well as safety and soundness concerns; and legal protection for supervisors. Arrangements for sharing information between supervisors and protecting the confidentiality of such information should be in place.</p>
<p>Principle 1(1)</p>	<p>An effective system of banking supervision will have clear responsibilities and objectives for each agency involved in the supervision of banks.</p>

Description	<p>1. Laws are in place for banking, and for (each of) the agency (agencies) involved in banking supervision. The responsibilities and objectives of each of the agencies are clearly defined.</p> <p>Article 11 of the BNA Statute 1985 (official gazette 1985 No. 183) states that the BNA is entrusted with the supervision of the banking and credit system in accordance with the Banking Supervision Ordinance 1994 (official gazette 1994 No. 4). The Law has authorized no other organization or agency with this responsibility.</p> <p>The objective of the BNA, as described in Article 10, Article 11, and Article 18 of the Ordinance, are the maintenance of the Antillean guilder and the liquidity and solvency of credit institutions through supervision and the development of a sound banking and credit system. Other objectives include protection of depositors and maintenance of the reputation of the Netherlands Antilles as a reputable international financial center.</p> <p>2. The laws and/or supporting regulations provide a framework of minimum prudential standards that banks must meet.</p> <p>Based on Article 21 of the Banking Supervision Ordinance 1994, regulations were issued by the BNA for the credit institutions to provide the minimum standards for prudential supervision:</p> <ul style="list-style-type: none">a. COA manual for financial institutions.b. COA manual for international credit institutions.c. Manual for credit unions.d. Manual for savings and loans funds.e. Supervisory Regulation (SR) I: "Extension of credit to executive officers, supervisory directors, principal shareholders and their related interests and to employees of a credit institution."f. SR II: "Restrictions on transactions with affiliates and loans to affiliates."g. SR III: "Limitations of extensions of credit to any one borrower or group of connected borrowers."h. SR IV: "Country risk policy."i. SR V: "Regulation concerning general and specific provisions of credit institutions."j. Policy memorandum on the sale or transfer of shares in a supervised credit institution.k. Policy memorandum on the management of computer risks.l. Policy memorandum on the periodic filing of a management report.m. Policy memorandum on the change of external auditor. <p>3. There is a defined mechanism for coordinating actions between agencies responsible for banking supervision, and evidence that it is used in practice.</p> <p>The BNA is the sole supervisory authority of credit institutions.</p> <p>4. The supervisor participates in deciding when and how to affect the orderly resolution of a problem bank situation (which could include closure, or assisting in restructuring, or merger with a stronger institution).</p> <p>The BNA is the only institution that can decide when and how to affect the orderly resolution of a problem situation. To that effect the BNA has several legal tools.</p>
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	<ol style="list-style-type: none"> 1. The BNA can appoint a silent trustee in a problem bank when, according to the assessment of the BNA, there are developments which endanger the liquidity and solvency position of the bank. The management and Board of the institution then require the prior approval of this trustee for the execution of their tasks and powers (Article 22, paragraph 2 Banking Supervision Ordinance 1994). 2. The BNA can also request the court to apply emergency rules to a problem bank. The BNA will then be empowered to transfer deposits to another institution or liquidate or partly liquidate the institution. In this way, the BNA can play an important role in the merger with a stronger institution or a restructuring of a bank. When a bank is in a negative capital position, the BNA can petition for the institution's bankruptcy (Article 28 and Article 37 of the Banking Supervision Ordinance). 3. Credit institutions need the prior approval of the BNA for the restructuring of their financial business or corporate structure (Article 23 of the Banking Supervision Ordinance). 4. In case of a voluntary liquidation, a supervised credit institution is required to follow the steps outlined in the guideline issued by the BNA on the voluntary liquidation of supervised credit institutions. 5. The Court of First Instance must give the BNA the opportunity to give its opinion on a petition for bankruptcy of a credit institution by third parties. The BNA will intervene the institution if it disagree with the petition. <p>5. Banking laws are updated as necessary to ensure that they remain effective and relevant to changing industry and regulatory practices.</p> <p>The Banking Supervision Ordinance 1994 came into effect in 1994. It contains adequate tools to exercise supervision. The law itself does not need to be amended frequently to remain effective and relevant to changing industry conditions. The law is constructed so that most necessary policy changes can be effected in pursuance of the ordinance through regulations and national decrees.</p> <p>Additional:</p> <ol style="list-style-type: none"> 1. The supervisory agency sets out objectives, and is subject to regular review of its performance against its responsibilities and objectives through a transparent reporting and assessment process. <p>The supervisory authority formulates the objectives for the supervision department annually. At the end of each year, it reviews the performance of the supervision department against the set objectives.</p> <ol style="list-style-type: none"> 2. The supervisory agency ensures that information on the financial strength and performance of the industry under its jurisdiction is publicly available. <p>The BNA publishes information on the financial strength and performance of the industry in its annual report and quarterly bulletins.</p>
Assessment	Compliant
Comments	
Principle 1(2)	Each such agency should possess operational independence and adequate resources.

<p>Description</p>	<p>1. There is, in practice, no significant evidence of government or industry interference in the operational independence of the supervisory agency, and/or in its ability to obtain and deploy the resources needed to carry out its mandate.</p> <p>The BNA is an independent supervisory authority and there is no hierarchical relationship between the BNA and the government and parliament. The supervisory authority is not responsible or accountable to any authority with respect to the supervision of banking institutions. The government does not give any operational direction and/or guidance to the BNA. There is no interference in the operational independence of the BNA by the industry. Input from the sector into supervisory policy is obtained through legally required consultations with banking associations for the introduction of some prudential regulations.</p> <p>2. The supervisory agency and its staff have credibility based on their professionalism and integrity.</p> <p>The BNA and its staff have credibility based on their professionalism and integrity. The staff is carefully selected based on their training, expertise, and integrity. Measures taken against credit institutions or prospective institutions or their managers and Board (or prospective directors) are generally accepted.</p> <p>3. Each agency is financed in a manner that does not unduly undermine its autonomy or independence and permits it to conduct effective supervision and oversight. This includes, inter alia:</p> <ul style="list-style-type: none"> • salary scales that allow it to attract and retain qualified staff; • the ability to hire outside experts to deal with special situations; • a training budget and program that provides regular training opportunities for staff; • a budget for computers and other equipment sufficient to equip its staff with tools needed to review the banking industry; and • a travel budget that allows appropriate on-site work. <p>The supervisory activities of the BNA are partially funded through fees charged to the supervised sector. The fees are monthly fixed fees that vary based on the rating, capital adequacy, and size of the supervised credit institution. The balance of the required funding is from the BNA, which has its own budget funded through profit. There are sufficient resources to hire qualified personnel. Money is annually budgeted for training and equipment of the banking supervision department. Each professional staff member receives two weeks of external training annually, usually courses offered by the U.S. regulators—the Fed, the Federal Deposit Insurance Corporation, and the Federal Financial Institutions Examination Council. There are sufficient resources for computers and adequate funds for travel to allow for on-site examinations.</p> <p>Additional:</p> <p>1. The head of each agency is appointed for a minimum term and can be removed from office during such term only for reasons specified in law.</p> <p>The head of the supervisory authority (the president of the BNA) is appointed, suspended,</p>
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	<p>and removed, in accordance with Article 18 of the BNA Statute of 1985, by the Governor of the Netherlands Antilles on recommendation of the Board of Supervisory Directors of the BNA. The BNA Statute does not provide for a fixed term of office of the head of the supervisory agency.</p> <p>2. Where the head of an agency is removed from office, the reasons must be publicly disclosed.</p> <p>It is not a prerequisite of the BNA Statute that the reasons for removal are published. However, the public can (in accordance with the Public Policy Disclosure Law) obtain the decree in which the reasons are explained for the removal of the director.</p>
Assessment	Compliant
Comments	
Principle 1(3)	A suitable legal framework for banking supervision is also necessary, including provisions relating to authorization of banking establishments and their ongoing supervision.
Description	<p>1. The law identifies the authority (or authorities) responsible for granting and withdrawing banking licenses.</p> <p>Pursuant to Article 2, paragraph 1, and Article 9, paragraph 1 of the Banking Supervision Ordinance 1994, the BNA has the authority to grant and withdraw banking licenses.</p> <p>2. The law empowers the supervisor to set prudential rules administratively (without changing laws).</p> <p>The BNA can set and amend prudential rules without changing the laws. With the exception of the regulations on the administrative organization, including the financial administration and internal controls, the BNA seeks the views of the representative organizations of the various categories of credit institutions (e.g., the banking associations) first before introducing the new regulations.</p> <p>However, the supervisor can introduce the regulations it deems necessary even if the sector representatives object to these during the consultations.</p> <p>3. The law empowers the supervisor to require information from the banks in the form and frequency it deems necessary.</p> <p>Article 14 of the Banking Supervision Ordinance 1994, empowers the supervisor to obtain information in the form and frequency that it desires.</p>
Assessment	Compliant
Comments	
Principle 1(4)	A suitable legal framework for banking supervision is also necessary, including powers to address compliance with laws, as well as safety and soundness concerns.
Description	<p>1. The law enables the supervisor to address compliance with laws and the safety and soundness of the banks under its supervision.</p> <p>The law empowers the supervisor to require a bank to take prompt remedial actions and/or impose a range of sanctions (including the revocation of the banking license, in order to ensure the safety and soundness of the banks under its supervision. In addition, the BNA can impose fines—Article 46 (fine for late reporting), Article 50 (fine up to NA f. 500.000—or imprisonment up to four years for the violation of all provisions of the executive regulations and rules of the Banking Supervision Ordinance 1994). Article 9 grants the BNA the right to withdraw license of a credit institution for noncompliance.</p>

	<p>2. The law permits the supervisor to apply qualitative judgment in forming this opinion.</p> <p>The law permits the supervisor to apply qualitative judgment in forming this opinion.</p> <p>3. The supervisor has unfettered access to banks' files in order to review compliance with internal rules and limits as well as external law and regulations.</p> <p>Article 16, paragraph 2, of the Banking Supervision Ordinance 1994 authorizes the BNA to conduct on-site inspections. The credit institutions are obliged to provide the supervisor with all requested information.</p> <p>4. When, in a supervisor's judgment, a bank is not complying with laws and regulations, or it is, or is likely, to be engaged in unsafe or unsound practices, the law empowers the supervisor to:</p> <ul style="list-style-type: none"> • take (and/or require a bank to take) prompt remedial action; and • impose a range of sanctions (including the revocation of the banking license). <p>The Banking Supervision Ordinance provides the supervisor with a range of tools to take remedial action and/or impose sanctions.</p> <p>a. The supervisor can impose fines for late reporting.</p> <p>b. The supervisor can give legally binding instructions to the bank (Article 22, paragraph 1).</p> <p>c. The supervisor can appoint a silent trustee who will have to approve all acts of the managing and supervisory directors.</p> <p>d. The supervisor can request the court to apply the emergency measures to a bank.</p> <p>e. The supervisor can withdraw the license of a bank for noncompliance.</p>
Assessment	Compliant
Comments	
Principle 1(5)	A suitable legal framework for banking supervision is also necessary, including legal protection for supervisors.
Description	<p>1. The law provides legal protection to the supervisory agency and its staff against lawsuits for actions taken while discharging their duties in good faith.</p> <p>While there is no explicit legal provision that provides protection (civil or criminal) for the supervisory agency or its staff, general administrative and civil law precludes lawsuits against individual civil servants on the basis of the good faith exercise of their duties. In case of wrongful action or omission, the BNA could be sued, but not individual staff. Were there to be a court case against the supervisor, where a third party claims to have suffered a loss as a consequence of the decision of the supervisor based on wrong or misleading advice by a staff member, the supervisory authority, i.e., the BNA, would appear in court.</p> <p>2. The supervisory agency and its staff are adequately protected against the costs of defending their actions while discharging their duties.</p> <p>There is no explicit mention in the law of the protection of the supervisory agency and its staff against the costs incurred in defending actions taken while discharging their duties. However, it is understood to be implicit in the law, that the BNA is responsible for the</p>

	actions of the employees in the normal conduct of their job, if the employee is acting in a reasonable manner, and would carry any legal expenses.
Assessment	Compliant
Comments	The BNA is studying the possibility of including explicit legal protection for individual staff members as part of the Banking Supervision Ordinance.
Principle 1(6)	Arrangements for sharing information between supervisors and protecting the confidentiality of such information should be in place.
Description	<p>1. There is a system of cooperation and information sharing between all domestic agencies with responsibility for the soundness of the financial system.</p> <p>As the BNA is the sole supervisory authority for the banking, insurance, and pension systems there is no need for a formal system of cooperation and information sharing.</p> <p>2. There is a system of cooperation and information sharing with foreign agencies that have supervisory responsibilities for banking operations of material interest to the domestic supervisor.</p> <p>Article 41 of the Banking Supervision Ordinance 1994 authorizes the BNA to share information with other supervisory bodies under certain conditions. The BNA retains the right to deny information to foreign supervisors if they are not satisfied with the legal secrecy obligations of the foreign supervisor or the proposed use of the requested information. The BNA may not directly exchange names of customers. Since the enactment of this law, the BNA has concluded MoUs with Aruba, the Netherlands, and Venezuela. The MoUs cover approximately 55 percent of the supervised banking institutions.</p> <p>3. The supervisor:</p> <ul style="list-style-type: none"> • may provide confidential information to another financial sector supervisor; • is required to take reasonable steps to ensure that any confidential information released to another supervisor will be treated as confidential by the receiving party; and • is required to take reasonable steps to ensure that any confidential information released to another supervisor will be used only for supervisory purposes. <p>Section 41 of the Ordinance states that foreign supervisors are not permitted to use the requested information for purposes other than originally requested, without the explicit permission of the BNA. In addition, the information submitted must not contain names of individual deposit-holders excepting specific criminal cases. However, the other supervisory body must inform the BNA of the purpose of the request for information.</p> <p>4. The supervisor is able to deny any demand (other than a court order or mandate from a legislative body) for confidential information in its possession.</p> <p>The supervisory body is able to deny any demand other than with a court order based on Article 41.</p>
Assessment	Largely compliant
Comments	In practice names are exchanged when requested; after introduction of the Harmonization Law, any remaining legal barriers against such an exchange will be removed. Home regulators have unrestricted access to customer data, including names during on-site visits.
Principle 2.	Permissible Activities The permissible activities of institutions that are licensed and subject to supervision as banks

<p>must be clearly defined, and the use of the word “bank” in names should be controlled as far as possible.</p>	
<p>Description</p>	<p>1. The term “bank” is clearly defined in law or regulations.</p> <p>The term “bank” is not defined in law or regulations, but credit institutions and international credit institutions are defined in the Supervision Law Article 1. Pursuant to Article 11 of the Banking Supervision Ordinance the BNA must maintain a register of all licensed institutions by category of institution. Each category has its own admission requirements: local general banks, subsidiaries of foreign banks, and branches of fore; there are foreign banks, specialized credit institutions (e.g., mortgage banks, development banks, and banks for consumer credit), savings banks, consolidated international banks, and nonconsolidated international banks.</p> <p>2. The permissible activities of institutions that are licensed and subject to supervision as banks are clearly defined either by supervisors or in laws or regulations.</p> <p>The scope of activities permitted to credit institutions is set forth in the admission requirements for the different categories of credit institutions. The BNA reviews the articles of incorporation of the credit institution based on the scope of stated activities. Verification of the activities performed by a credit institution is done during on-site visits to the institution.</p> <p>3. The use of the word “bank” and any derivations such as “banking” in a name are limited to licensed and supervised institutions in all circumstances where the general public otherwise might be misled.</p> <p>Article 44 of the Banking Supervision Ordinance prohibits any entrepreneur, corporation, or institution to use the words “bank,” “credit,” or “savings” and other translations or forms thereof in their name or in the context of carrying on their business, unless such is done in such a context that it is clearly evident that the corporation or institution is not a credit institution. Otherwise, only licensed credit institutions are allowed to use these words in their name.</p> <p>4. The taking of proper bank deposits from the public is reserved for institutions that are licensed and subject to supervision.</p> <p>Article 45, paragraph 1 of the Banking Supervision Ordinance forbids approaching the public, directly or indirectly, to raise funds or grant credit, by parties other than credit institutions registered in the Register referred to in Article 11 of the Supervision Ordinance.</p>
<p>Assessment</p>	<p>Compliant</p>
<p>Comments</p>	
<p>Principle 3.</p>	<p>Licensing Criteria</p> <p>The licensing authority must have the right to set criteria and reject applications for establishments that do not meet the standards set. The licensing process, at a minimum, should consist of an assessment of the banking organization’s ownership structure, directors, and senior management, its operating plan and internal controls, and its projected financial condition, including its capital base; where the proposed owner or parent organization is a foreign bank, the prior consent of its home country supervisor should be obtained.</p>
<p>Description</p>	<p>1. The licensing authority has the right to set criteria for licensing banks. These may be based on criteria set in law or regulation.</p> <p>Article 2, sub 2, the Banking Supervision Ordinance provides the BNA with the authority to set criteria, restrictions, and stipulations for licensing credit institutions. The admission</p>

	<p>policy, in principle, permits only those institutions belonging to the world's top 1,000 in terms of total assets to apply for a license. The laws and regulations set further detailed requirements for obtaining a banking license.</p> <p>2. The criteria for issuing licenses are consistent with those applied in ongoing supervision.</p> <p>Article 6 stipulates that a credit institution to which a license has been granted should continue to observe the provisions mentioned in Article 4, sub 1, including the restrictions and stipulations mentioned in the license.</p> <p>3. The licensing authority has the right to reject applications if the criteria are not fulfilled or if the information provided is inadequate.</p> <p>According to Article 3, sub 2, the application for a license will not be considered and will not be dealt with by the BNA if the application does not contain the required data. A license will be refused if the necessary requirements are not met.</p> <p>4. The licensing authority determines that the proposed legal and managerial structures of the bank will not hinder effective supervision.</p> <p>Pursuant to Article 4, sub 3, the BNA may decide not to grant the license in case it has reason to believe that the applicant has applied for the license with the purpose of evading supervisory rules and regulations in another state, or in case the structure of the group to which the credit institution belongs is such that the Bank is not in a position to exercise adequate and effective supervision on the credit institution. Article 4, sub 1, includes provisions on the acceptable legal and managerial structures of the credit institution.</p> <p>The BNA requires information during the licensing process and during the continued operational life of the credit institution on its legal and managerial structure pursuant to Article 3, sub 2, and Article 23 so as to determine that such structures will not hinder effective supervision. Furthermore, information is required to be able to assess the number, identity and antecedents of the prospective managing and supervisory directors, the participating share of each shareholder and the organizational structure of the group to which the (applicant) credit institution belongs, the envisioned administrative organization, financial administrative organization, internal controls, and the articles of incorporation.</p> <p>Pursuant to Article 23, the prior consent of the BNA is required to, amongst others, amend the articles of incorporation, acquire participation, acquire assets and liabilities of other entities, transfer shares of the credit institution, and appoint its directors.</p> <p>5. The licensing authority determines the suitability of major shareholders, transparency of ownership structure, and source of initial capital.</p> <p>Pursuant to Article 3, sub 2 d and f, direct and indirect shareholders should be able to exert undesirable influence on the institution or reflect negatively on its reputation. The audited financial statements of the past three years of the prospective parent institution should reflect an unqualified opinion. Certified financial statements of each individual shareholder being a natural person is required. In addition, integrity checks are conducted by the BNA on all major shareholders, unless they are well known credit institutions.</p> <p>The admission requirements state that all shares must be registered, their sale must be subject to the prior consent of the BNA, and the BNA requires an annual updated copy of the shareholders register.</p>
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	<p>The source of initial capital is determined through personal financial statements, in case the shareholder is a natural person, and through the audited financial statements of the legal entity in case a parent institution is the shareholder.</p> <p>6. A minimum initial capital amount is stipulated for all banks.</p> <p>The BNA has stipulated the minimum initial equity capital for each credit institution (NA f. 5 million). Branches of banks, whose head office is established outside of the Netherlands Antilles, are required to provide the BNA with a head-office guarantee. The guarantee should stipulate that the head office irrevocably guarantees the branch's obligations towards its creditors, and that it would deposit with the branch upon request by the BNA all required funds to enable the branch to meet its obligations towards its creditors.</p> <p>7. The licensing authority evaluates proposed directors and senior management as to expertise and integrity (fit-and-proper test). The fit and proper criteria include: (1) skills and experience in relevant financial operations commensurate with the intended activities of the bank; and (2) no record of criminal activities or adverse regulatory judgments that make a person unfit to uphold important positions in a bank.</p> <p>The BNA evaluates the skills and experience of the proposed persons that determine the day- to-day policy of the corporation or institution during the licensing process and for the credit institution during its ongoing operations. The skill and experience of those persons (candidates) is assessed relevant to proposed/actual business of the corporation/institution/ credit institution. The data provided for the evaluation is obtained through the personal questionnaire and the curriculum vitae of the candidates. The BNA conducts further integrity checks through local and international agencies and/or foreign supervision authorities. In addition, the framework for the assessment of the fit and properness of the directors and senior management by the BNA is outlined in the policy memorandum on the implementation of the fit and proper test.</p> <p>8. The business plan is one of the documents submitted with the application for a license. According to the guidelines set in the application form, the plan should contain strategic and operational information on the bank's operations.</p> <p>The business plan is required to be submitted with the application for a license. The plan should contain strategic and operational information on the bank's operations.</p> <p>The corporate governance principles apply to all banking institutions. In that respect they should submit annually to the BNA a statement of compliance reviewed by the external auditors, together with the audited annual financial statements. This statement includes comment by the Board of supervisory directors on the extent it has followed corporate governance principles.</p> <p>9. The operational structure is required to include, inter alia, adequate operational policies and procedures, internal control procedures, and appropriate oversight of the bank's various activities. The operational structure is required to reflect the scope, and degree of sophistication of the proposed activities of the bank.</p> <p>Pursuant to Article 3, paragraph 2, sub g and h of the Banking Supervision Ordinance, a prospective credit institution must submit to the evaluation of the BNA information on its intended activities including information on its administrative organization, internal control, corporate structure and operational procedures.</p> <p>10. The licensing authority reviews proforma financial statements and projections for the</p>
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	<p>proposed bank. This includes an assessment of the adequacy of the financial strength to support the proposed strategic plan as well as financial information on the principal shareholders of the bank.</p> <p>The proforma financial statements and projections for the proposed bank are included in the business plan. They are required to include projections for capitalization and liquidity sufficient to cope with the nature and volume of the planned activities and obligations. Information is also required as to additional sources of capital should this fall below the minimum thresholds.</p> <p>Personal financial statements of shareholders are required if they are natural persons and audited financial statements are required if the legal entity is a corporation. These are also required to be provided to the BNA on an annual basis.</p> <p>11. If the licensing authority and the supervisory authority are not the same, the supervisor has the legal right to have its views considered on each specific application.</p> <p>The BNA is both the licensing and supervising authority.</p> <p>12. In the case of foreign banks establishing a branch or subsidiary, prior consent (or a statement of “no objection”) of the home country supervisor is obtained.</p> <p>Pursuant to the admission requirements such consent or statement of no objection is required.</p> <p>13. If the licensing or supervisory authority determines that the license was knowingly based on false information, the license can be revoked.</p> <p>Pursuant to Article 9, sub 1a, the license can be revoked if it is found that the data regarding the expertise and/or probity of current directors and/or shareholders was falsely presented in the past and mistakenly considered adequate by the BNA at that time.</p> <p>Additional:</p> <p>1. The assessment of the application includes the ability of the shareholders to supply additional financial support, if needed.</p> <p>The business plan, which is submitted together with the application form, should include information on additional sources of capital in case equity capital fall below the level required by the BNA.</p> <p>2. At least one of the directors must have a sound knowledge of each of the types of financial activities the bank intends to pursue.</p> <p>Pursuant to Article 4, paragraph 1, sub d, of the Banking Supervision Ordinance, the BNA will not extend a license if it is of the opinion that the competence of one or more persons determining the day-to-day policy of the institution is insufficient in connection with the prospective business of the institution. Therefore, it is indicated in the admission requirements for banking institutions that the members of the Board of managing directors and the Board of supervisory directors must possess sufficient expertise in banking and have a thorough knowledge of banking activities.</p> <p>3. The licensing authority has procedures in place to monitor the progress of new entrants in meeting their business and strategic goals, and to determine that</p>
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	<p>supervisory requirements outlined in the license approval are being met.</p> <p>The progress of new entrants is monitored the same way as existing institutions based on regular reporting by the new institution of financial data, and annual reports such as the management report to the BNA. The management report, which is monitored off-site, has as cut-off date June 30, and is due annually by August 15. It includes a comparative analysis between the financial statements to the prior year actuals and current year's budgets. In addition an on-site review and/or examination of new entrants is usually planned and conducted by the BNA within a year after the new entrant started to operate.</p>
Assessment	Compliant
Comments	The supervisor should consider specific, more intrusive monitoring of new licensees, as appropriate.
Principle 4.	Ownership Banking supervisors must have the authority to review and reject any proposals to transfer significant ownership or controlling interests in existing banks to other parties.
Description	<p>1. Law or regulation contains a clear definition of "significant" ownership.</p> <p>The Netherlands Antilles legislation on Banking Supervision defines significant ownership in Article 1, paragraph 1, sub f, of the Banking Supervision Ordinance, as a direct or indirect interest of more than 5 percent of the subscribed share capital of a company or institution exercising the business of a credit institution in the Netherlands Antilles.</p> <p>2. There are requirements to obtain supervisory approval or provide immediate notification of proposed changes that would result in a change in ownership or the exercise of voting rights over a particular threshold or change in controlling interest.</p> <p>Article 23, paragraph 2, sub b, of the Banking Supervision Ordinance prohibits the sale or transfer of any and all shares of a supervised credit institution without the prior permission of the supervisory authority being the BNA (also see BCP 5).</p> <p>3. The supervisor has the authority to reject any proposal for a change in significant ownership or controlling interest, or prevent the exercise of voting rights in respect of such investments, if they do not meet criteria comparable to those used for approving new banks.</p> <p>Pursuant to Article 23, paragraph 2, sub b, of the Banking Supervision Ordinance, the supervisor has the authority to reject any proposal for a change in significant ownership or controlling interest, or prevent the exercise of voting rights in respect of such investments, if they do not meet criteria comparable to those used for approving new banks.</p> <p>The supervisor, in principle, does not allow natural persons to individually hold more than 5 percent of the outstanding stock of a bank and no more than 25 percent in aggregate.</p> <p>Additional:</p> <p>1. Supervisors obtain from banks, either through periodic reporting or on-site examinations, the names and holdings of all significant shareholders, including, if possible, the identities of beneficial owners of shares being held by custodians.</p> <p>Admission requirements for banks stipulate that the supervisor always knows the names and holdings of all significant shareholders of banks, including the identities of the ultimate beneficial owners. The supervisor does not allow, in principle, the shares of banks to be held by custodians. In addition, beginning in 2001, all shareholding institutions must now submit</p>

	their shareholding structure to supervisors and banks are required to ensure that ownership is transparent. Shareholding structures are also now required to be formally audited by external auditors.
Assessment	Compliant
Comments	
Principle 5.	Investment Criteria Banking supervisors must have the authority to establish criteria for reviewing major acquisitions or investments by a bank and ensuring that corporate affiliations or structures do not expose the bank to undue risks or hinder effective supervision.
Description	<p>1. Laws or regulations clearly define what types and amounts (absolute and/or in relation to a bank's capital) of acquisitions and investments need supervisory approval.</p> <p>Per Article 23, sub b through d of the Banking Supervision Ordinance, the Bank's approval is required to:</p> <ul style="list-style-type: none"> • maintain, acquire, or increase participation in another corporation or institution; • take over, in whole or for a substantial part, the assets and liabilities of another corporation or institution; and • enter into a merger with another corporation or institution. <p>Article 1, paragraph 1, sub f, defines participation as: (i) a direct or indirect interest of more than 5 percent of the subscribed share capital of a corporation or institution; (ii) the power to exercise, directly or indirectly, more than 5 percent of the voting rights in a corporation or institution; or (iii) the power to exercise, directly or indirectly, a comparable control in a corporation or institution.</p> <p>2. Laws or regulations provide criteria by which to judge individual proposals.</p> <p>Individual proposals are judged using the same criteria in Section 4 of the Supervision Law and the admission requirements for the different categories of the Register of credit institutions.</p> <p>3. Consistent with the licensing requirements, among the objective criteria that the supervisor uses is that any new acquisitions and investments do not expose the bank to undue risks or hinder effective supervision. The supervisor determines that the bank has, from the outset, adequate financial and organizational resources to handle the acquisition/investment.</p> <p>One of the criteria in Article 4, paragraph 3 of Banking Supervision Ordinance, for rejecting a license, or in this case, not approving an acquisition or investment, is that the group-structure must not hinder the exercise of adequate and effective supervision. Paragraph 4 also states as criteria that if the BNA is of the opinion that the proposed acquisition or investment by a credit institution is to the detriment of its creditors the BNA will not approve those acquisitions or investments.</p> <p>As is the case when evaluating a prospective credit institution for licensing, the BNA determines whether a credit institution is adequately capitalized and has the organizational resources to handle the acquisition or investment.</p> <p>4. Laws or regulations clearly define for which cases notification after the acquisition or investment is sufficient. Such cases should primarily refer to activities closely related to</p>

	<p>banking and the investment being small relative to the bank’s capital.</p> <p>Laws or regulations do not require any notification in cases where the acquisition or investment is less than 5 percent. However, if the BNA considers the investment excessively risky, it can take remedial action, based on Article 21 of the Banking Supervision Ordinance 1994, the BNA has the authority to give directives related to the prohibition, restriction, or the stipulation of conditions for risky activities or risky commitments for on- and off-balance sheet activities, including divestiture.</p>
Assessment	Compliant
Comments	
Principle 6.	<p>Capital Adequacy Banking supervisors must set minimum capital adequacy requirements for banks that reflect the risks that the bank undertakes, and must define the components of capital, bearing in mind its ability to absorb losses. For internationally active banks, these requirements must not be less than those established in the Basel Capital Accord.</p>
Description	<ol style="list-style-type: none"> <li data-bbox="427 720 1466 1010"> <p>1. For domestic, as well as internationally active banks, the definition of capital is broadly consistent with the Basel Capital Accord.</p> <p>The definition of capital as given in the COA Manual, the components of capital and the risk weights, are consistent with the Basel Capital Accord. In general, a minimum capital ratio of 8 percent is required for offshore institutions and a minimum capital ratio of 10.5 percent is required for onshore institutions. The higher risk for onshore institutions is due to higher perceived risk, due in part, to the lack of economic diversification in the markets in which they operate.</p> <li data-bbox="427 1010 1466 1381"> <p>2. The supervisor clearly sets out the actions to be taken if capital falls below the minimum standards.</p> <p>The Banking Supervision Ordinance of 1994 provides for initial minimum capital requirements and capital ratios. Minimum capital ratios are set forth in the Admission Requirements for licensing. Section 21 of the Ordinance empowers the BNA to issue solvency and liquidity directives to banks, on both a solo and consolidated basis. If capital falls below the minimum standards, the concerned credit institution is immediately requested to remedy the situation by providing additional capital within a specified time period to restore capital to at least the minimum level. Not complying with this instruction can ultimately lead to the intervention of the credit institution by the BNA.</p> <li data-bbox="427 1381 1466 1654"> <p>3. The supervisor determines that banks have an internal process for assessing their overall capital adequacy in relation to their risk profile.</p> <p>During the on-site reviews conducted by the BNA, the risk management process of the credit institution is verified. Where it is determined that given an institution’s risk profile, the internal process for assessing the overall capital adequacy is not adequate, the BNA requires improvements to be made. If there is a capital shortfall at this point, more capital will be demanded.</p> <li data-bbox="427 1654 1466 1875"> <p>4. Capital adequacy requirements take into account the conditions under which the banking system operates. Consequently, minimum requirements may be higher than the Basel Accord.</p> <p>Pursuant to Article 21 of the Banking Supervision Ordinance, the BNA can adjust the minimum requirements for credit institutions if circumstances so dictate. A minimum capital ratio of 8 percent is required for offshore institutions and a minimum capital ratio of</p>

	<p>10.5 percent is required for onshore institutions. The higher risk for onshore institutions is due to higher perceived risk, due in part, to the lack of economic diversification in the markets in which they operate.</p> <p>5. Capital adequacy ratios are calculated on both a consolidated and a solo basis for the banking entities within a banking group.</p> <p>Capital is calculated only on a consolidated basis. The BNA has the authority to request the calculation of capital on a solo basis, but does not require this on a routine basis.</p> <p>6. Laws or regulations stipulate a minimum absolute amount of capital for banks.</p> <p>Banks are required to maintain a statutory minimum capital of NA f. 5 million or its equivalent, at all times.</p>
Assessment	Compliant
Comments	<p>The BNA requires capital be calculated only on a consolidated basis although it has the authority to require calculation on a solo basis, if necessary. The BNA considers that banks in a consolidated group are generally facing the same risks and therefore have similar risk profiles, so there is not a compelling reason for calculation of capital on a solo basis. In addition, the capital for each entity of a consolidated group is considered readily available.</p>
Principle 7.	<p>Credit Policies</p> <p>An essential part of any supervisory system is the independent evaluation of a bank's policies, practices, and procedures related to the granting of loans and making of investments and the ongoing management of the loan and investment portfolios.</p>
Description	<p>1. The supervisor requires, and periodically verifies, that prudent credit-granting and investment criteria, policies, practices, and procedures are approved, implemented, and periodically reviewed by bank management and Boards of directors.</p> <p>The BNA verifies the adequacy of credit policies, practices, and procedures during its regular on-site examinations of the credit institutions. It verifies whether appropriate limits are set for all involved with the authorization of credits or investments.</p> <p>Credit institutions are required to annually submit to the BNA a Statement of Compliance in which their Board of Directors confirms the adoption and implementation of policies and procedures covering the major areas of operation of the institutions. The institution is required to explain why a standard or guideline has not been followed. The statement is reviewed by the external auditors then submitted to the BNA, who then evaluates whether there is a need to direct the institution to take measures to improve implementation of standards.</p> <p>Per the August 1996, BNA Guidance Notes on Corporate Governance, Boards of Directors are required to adopt adequate policies and procedures for the operations of their institutions and to review them annually to ensure that they remain adequate, consistent, and realistic. The Board can delegate the development of policies and procedures to management, but has to review and approve them and continues to be responsible for them. When circumstances so dictate, policies and procedures should be revised to reflect changes in operating environment of the institutions. As per October 2001, these guidance notes have been updated and reissued.</p> <p>2. The supervisor requires, and periodically verifies, that such policies, practices and procedures include the establishment of an appropriate and properly controlled credit risk environment, including:</p>

	<ul style="list-style-type: none">• a sound and well-documented credit granting and investment process;• the maintenance of an appropriate credit administration, measurement, and ongoing monitoring/reporting process (including asset grading/classification); and• ensuring adequate controls over credit risk. <p>The review of a credit institution's policies and procedures for measuring, monitoring, and controlling credit risks is subject to regular on-site examinations conducted by the BNA.</p> <p>3. The supervisor requires, and periodically verifies, that banks make credit decisions free of conflicting interests, on an arm's length basis, and free from inappropriate pressure from outside parties.</p> <p>During on-site examinations an institution's credit process is reviewed against the adequacy of the policies, practices, and procedures. Credit decisions must be on an arm's length basis and free from pressure from outside parties and free of conflicting interests. The review of policies and procedures for measuring, monitoring, and controlling credit risks is subject of the regular on-site examinations conducted by the BNA.</p> <p>4. The supervisor requires that a bank's credit assessment and granting standards are communicated to, at a minimum, all personnel involved in credit granting activities.</p> <p>The Guidance Note on Corporate Governance, page 7, states that all policies should be communicated clearly through all levels, preferably in writing, in order to promote consistency of interpretation throughout the organization as a whole. Therefore credit assessment and granting standards should be communicated to all personnel involved in credit granting.</p> <p>5. The supervisor has full access to information in the credit and investment portfolios and to the lending officers of the bank.</p> <p>Article 12 of the Supervision Law entitles the BNA to request all information from a credit institution, which the BNA deems to be necessary for the proper exercise of its supervisory task.</p> <p>Additional:</p> <p>1. The supervisor requires that the credit policy prescribes that major credits or investments, exceeding a certain amount or percentage of the bank's capital, are to be decided at a high managerial level of the bank. The same applies to credits or investments that are especially risky or otherwise not in line with the mainstream of the bank's activities.</p> <p>The BNA verifies the adequacy of the credit policy, practices, and procedures, during on-site examinations. The BNA verifies whether appropriate limits are set for all involved with the authorization of credits or investments. The limits must be in accordance with the hierarchical responsibility level of each of those involved.</p> <p>Large credits and investments should bear the approval of the Board. The same applies for highly risky credits or investments and for credits or investments, which are not in line with the mainstream of the bank's activities.</p>
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Assessment	Compliant
Comments	
Principle 8.	<p>Loan Evaluation and Loan-Loss Provisioning Banking supervisors must be satisfied that banks establish and adhere to adequate policies, practices, and procedures for evaluating the quality of assets and the adequacy of loan-loss provisions and reserves.</p>
Description	<p>1. Either laws or regulations, or the supervisor, sets rules for the periodic review by banks of their individual credits, asset classification and provisioning, or the law/regulations establish a general framework and require banks to formulate specific policies for dealing with problem credits.</p> <p>SR V concerning general and specific provisions of credit institutions, sets out guidelines aimed at effective provisioning, both general and specific for lending activities. General provisions are meant to cover the overall risks in a given loan portfolio, whereas specific provisions are aimed towards the setting up of appropriate cushions for potential, but already identified, losses in specific loans.</p> <p>SR V that was issued pursuant to Article 21, paragraph 2, sub c, of the Banking Supervision Ordinance 1994, gives the BNA the legal basis to issue directives to credit institutions—on a consolidated basis—for the conduct of business in the interest of the solvency or the liquidity of the institutions. Per paragraph 2, sub c, the BNA, through directives, can prohibit, restrict, or stipulate conditions for risky activities or risky commitments whether on- or off-balance sheet.</p> <p>Banks are permitted to have their own classification guidelines, but are required to review the adequacy of general and specific provisions at least once a year, based on SR V. During on-site examinations, asset quality reviews are performed against BNA’s definitions and guidelines. During their on-site examinations, bank examiners review whether annual reviews of asset quality are in fact conducted by banks and if not, discuss the reasons with management. The external auditors will review a sample of the loan portfolio annually in</p>

	<p>preparation of the annual statement, but this does not take the place of banks' own reviews of their portfolios.</p> <p>Regulation V.4.2 states that branches of foreign banks for which the Bank has received a guarantee for all liabilities may be exempted from the general and specific loan loss provisioning guidelines.</p> <p>2. The classification and provisioning policies of a bank and their implementation are regularly reviewed by the supervisor or external auditors.</p> <p>During on-site examinations the adequacy of the policies, practices, and procedures for evaluating the asset quality and the adequacy of loan loss provisioning is reviewed. The examiners review loans during their on-site examinations. For some institutions these can be every other year, which is insufficient.</p> <p>3. The system for classification and provisioning includes off-balance sheet exposures.</p> <p>There is no formal system for classification and provisioning of off-balance sheet exposures. However, the COA requires a 2.5 percent general provision for off-balance sheet items at all times. Off-balance sheet exposures of banks are reviewed during on-site examinations. Provisions will be made as required as a result of on-site examination findings.</p> <p>4. The supervisor determines that banks have appropriate policies and procedures to ensure that loan loss provisions and write-offs reflect realistic repayment expectations.</p> <p>SR V sets clear standards for evaluating loans and for the setting up of specific provisions as well as general reserves to cover eventual losses in the loan portfolio. It calls for specific percentages of provision for individual loans identified as substandard (0–25 percent), doubtful (50 percent), or loss (100 percent). In addition, the regulation calls for the setting up of a general reserve for loan losses amounting from 1.5 percent to 2 percent of net loans.</p> <p>However, under certain circumstances for a particular institution, a higher general provision for loan loss percentage may be required by the BNA, e.g., when one or more sectors of the economy in which the institution operates are experiencing difficulty or considering the risk of the total portfolio of the institution.</p> <p>5. The supervisor determines that banks have appropriate procedures and organizational resources for the ongoing oversight of problem credits and for collecting past due loans.</p> <p>As part of their asset quality reviews, examiners determine whether the procedures and organizational resources to monitor problem credits and to collect past due loans are adequate. The BNA expects banks to review their problem loans at least every six months. During on-site examinations, the BNA may direct banks to do more frequent reviews depending on the level of perceived risk. Asset quality information is reported for off-site surveillance quarterly but may be required monthly for specific problem loans.</p> <p>6. The supervisor has the authority to require a bank to strengthen its lending practices, credit-granting standards, level of provisions and reserves, and overall financial strength if it deems the level of problem assets to be of concern.</p> <p>The BNA is authorized, pursuant to Article 21 of the Banking Supervision Ordinance 1994, to issue binding instructions to credit institutions. Paragraph 2, sub c of this article, indicates</p>
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	<p>that the BNA through directives can prohibit, restrict, or stipulate conditions for risky activities or risky commitments whether on- or off-balance sheet.</p> <p>7. The supervisor is informed on a periodic basis, and in relevant detail, concerning the classification of credits and assets and of provisioning.</p> <p>Banks must report on a quarterly basis both on the development of the General Provision for Loan Losses as on the Specific Provision for Loans and Leases. However, the BNA generally only expects banks to review their problem loans at least every six months. During on-site examinations, the BNA may direct banks to perform more frequent reviews depending on the level of perceived risk. In general asset quality, including problem loan information, is reported quarterly for off-site surveillance, but may be required monthly for specific problem loans.</p> <p>The details reported on the supporting schedule for Specific Provision for Losses on Loans and Leases are:</p> <ul style="list-style-type: none">• name of the borrower;• total outstanding balances;• the loan classification as required by Supporting Schedule V; and• the amount of specific provision. <p>The supporting schedule does not address key components of Regulation V, para. 5, e.g., consideration of economic circumstances and market conditions and the overall condition of the loan portfolio.</p> <p>8. The supervisor requires banks to have mechanisms in place for continually assessing the strength of guarantees and appraising the worth of collateral.</p> <p>The assessment of the strength of guarantees and the appraisal of the worth of collateral are part of the periodic credit review required by SR V issued by the BNA. Real estate collateral is required to be reappraised at least every two years. Other collateral assets are secured by blanket liens and are generally reviewed annually, including through on-site visits by bank account</p> <p>9. Loans are required to be classified as impaired when there is reason to believe that principal and/or interest will not be paid according to the original loan agreement.</p> <p>SR V clearly describes that only loans that are performing according to the loan agreement and are well protected by the current sound worth and paying capacity of the borrower or by the collateral pledged are to be considered satisfactory. Loans are required to be classified as impaired when there is reason to believe that principal and/or interest will not be paid according to the original loan agreement.</p> <p>10. The valuation of collateral is required to reflect the net realizable value.</p> <p>Both the BNA and the banks define collateral value as net realizable value.</p> <p>Additional:</p> <p>1. Loans are required to be classified as nonperforming when payments are contractually a minimum number of days in arrears (e.g., 30 days, 60 days, and 90 days).</p>
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	<p>Refinancing of loans that would otherwise fall into arrears does not lead to improved classifications for such loans.</p> <p>The COA Manual requires the institutions to classify as nonperforming and to report on a quarterly and consolidated basis, the total outstanding amount of loans and leases on which any payment of interest or principal is delinquent for 60 days or more.</p> <p>Refinancing of loans does not lead to improved classifications since the current sound worth and paying capacity of the borrower or the collateral pledged are still considered to be inadequate. For commercial loans, refinanced loans will continue to be monitored for one year and for consumer loans for six months. SR V is in the process of being amended to require separate monitoring of refinanced/restructured loans.</p> <p>2. The supervisor requires that valuation, classification, and provisioning for large credits are conducted on an individual item basis.</p> <p>The BNA requires institutions to value, classify, and provision for large loans on an individual item basis.</p>
Assessment	Materially noncompliant
Comments	<p>In general, a higher level of compliance with this principle can be achieved by a more hands on review by the supervisors of the adequacy of loan loss provisions by banks, with less reliance on the work of the banks themselves and of the external auditor. On-site examinations are too infrequent to establish whether banks are conducting regular asset quality review. Given the current examination schedule it is possible that some banks are examined on-site only every other year. For problem credits regular reviews should be at least quarterly. With less frequent reviews, problem loans could deteriorate without the supervisors being aware of it and, hence, not prescribe possible remedial action to mitigate the extent of potential loss. More frequent asset quality reviews would enhance banks' credit risk management capacities. At present, bank examiners only discuss with bank management the reasons for lack of annual credit review, which examiners would only discover during on-site examinations. Banking supervision has the authority to enforce provisioning requirements on the basis of SR V.</p> <p>There remains a need to develop a formal system for the classification and provisioning of off-balance sheet items. The system should parallel that which is in place for on balance sheet items. The BNA is studying this. Although a capital charge of 2.5 percent is required at all times, specific provisions are not routinely applied. The credit risk in the credit-equivalent off-balance sheet commitments of the banks (e.g., guarantees) can be material. Failure to capture this risk results in risks in particular banks and in the banking sector in general being underreported and not proactively managed. Omission of provisioning for off-balance sheet items can result in an overstatement of earnings and capital adequacy.</p> <p>There is a need for better reporting of problem loans by banks to the supervisory authority on the supporting schedule for Specific Provision for Losses on Loans and Leases. The information that is now required to be reported is a static status report with no qualitative or quantitative analysis. For example, there is a need to report changes in conditions since the prior report, reasons for changes, prospects for repayment or further deterioration, etc. Problem loans need to be proactively managed and the reporting to the BNA need to reflect what banks are doing to collect or work out their problem loans.</p> <p>The assessors are of the view that under conditions of a prolonged economic downturn, evidence of increased loan restructuring, increasing government arrears to the enterprises, decreased return on assets, a more pro-active supervisor—driven loan review process is called for. The system as</p>

	<p>laid down in the regulations is probably adequate under normal conditions, but when the banks are increasingly stressed, more intrusive review seems warranted.</p> <p>Notwithstanding a good knowledge of conditions in the banks, the supervisor seems to rely too heavily on the rules on loan classification and provisioning to prevent problems in the loan portfolio. There is a real risk of a serious build-up of credit risk for individual banks, especially for smaller domestic operations.</p> <p>A rapid implementation program of credit-risk-focused, relatively small scale on-site inspections, and thorough discussions with the banks on individual risky or deteriorating credits and off-balance sheet exposures is therefore to be recommended. It is also recommended to include off-balance sheet items in the rules on loan classification and provisioning.</p>
<p>Principle 9.</p>	<p>Large Exposure Limits Banking supervisors must be satisfied that banks have management information systems that enable management to identify concentrations within the portfolio, and supervisors must set prudential limits to restrict bank exposures to single borrowers or groups of related borrowers.</p>
<p>Description</p>	<p>1. A "closely related group" is explicitly defined to reflect actual risk exposure. The supervisor has discretion, which may be prescribed by law, in interpreting this definition on a case-by-case basis.</p> <p>SR III defines a closely related group as a "group of connected clients" with "two or more persons, whether natural or legal, holding exposures from the same credit institution and any of its subsidiaries, whether on a joint or separate basis, but who are mutually associated through the control of one of them by the other. The interconnection between the persons results in a cumulated exposure that represents a single risk to the credit institution, with the likelihood that if one of them experiences financial problems the other or all of them are likely to encounter repayment difficulties."</p> <p>Control as defined in SR I and II means that a person directly or indirectly, or acting through or in concert with others:</p> <ul style="list-style-type: none"> • owns or has the power to vote 20 percent or more of any class of voting securities of the company or credit institution; • controls in any manner the election of the majority of the directors of the company or bank; and • has the power to exercise a controlling influence over the management or policies of the company or bank. <p>Furthermore, in the determination of the interconnection between borrowers a credit institution should take at least the following criteria into considerations:</p> <ul style="list-style-type: none"> • common ownership by clients; • common directors of clients; • cross guarantees provided by one client for the other; and • direct commercial interdependency, which cannot be substituted in the short term. <p>The use of "at least" in the previous paragraph denotes discretion. This means that if necessary the BNA will establish on a case-by-case basis whether a "Group of connected clients" exists.</p> <p>2. Laws or regulations, or the supervisor, set prudent limits on large exposures to a</p>

	<p>single borrower or closely related group of borrowers. “Exposure” includes all claims and transactions, on-balance sheet, as well as off-balance sheet.</p> <p>Through SR III prudent limits on large exposures to a single borrower or closely related group of borrowers are set.</p> <p>“Exposure” as defined in SR III is the totality of facilities granted, whether drawn or undrawn, by a credit institution to a client or group of connected clients, on- or off-balance sheet, and includes those commitments and contingent items deemed to be relevant by the BNA when assessing the identifiable risks of the credit institutions. Exposure elements include, but are not limited to:</p> <ul style="list-style-type: none">• loans and advances, including overdrafts;• leases;• bills and promissory notes received;• guarantees and similar contingent liabilities as acceptances, documentary credits issued and confirmed, irrevocable standby letters of credit; and• commitments such as repurchase agreements, irrevocable revolving lines of credit, underwriting (including note issuance facilities and revolving underwriting facilities), irrevocable undrawn overdraft facilities, lending commitments. <p>The aggregate exposure limit for all large borrowers is 600 percent of equity. All banks are required to report the top 25 of their large borrowers in their monthly returns to the BNA.</p> <p>3. The supervisor verifies that banks have management information systems that enable management to identify on a timely basis concentrations (including large individual exposures) within the portfolio on a solo and consolidated basis.</p> <p>The BNA requires, through the Guidance Notes for the Board of Directors, that credit institutions identify and measure all material risk exposures (including concentration of assets). Through on-site examinations the BNA verifies whether management information systems identify and monitor concentrations.</p> <p>4. The supervisor verifies that bank management monitors these limits and that they are not exceeded on a solo and consolidated basis.</p> <p>The BNA verifies during on-site examinations whether management monitors these limits and that they are not exceeded.</p> <p>5. The supervisor regularly obtains information that enables concentrations within a bank’s credit portfolio, including sectoral and geographic exposures, to be reviewed.</p> <p>Geographical exposures will be obtained regularly once SR IV (Country Risk Policy) becomes operational. However, limited sector information will be collected (banks, government, and private sector). This information will be reviewed both on-site and off-site.</p>
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	<p>Additional:</p> <p>1. Banks are required to adhere to the following definitions:</p> <ul style="list-style-type: none"> • 10 percent or more of a bank’s capital is defined as a large exposure; • 25 percent of a bank’s capital is the limit for an individual large exposure to a private sector nonbank borrower or a closely related group of borrowers. <p>Minor deviations from these limits may be acceptable, especially if explicitly temporary or related to very small or specialized banks.</p> <p>“Large exposure” is defined in SR III as 15 percent or more of equity (Tier I capital as defined in the COA).</p> <p>In this same supervisory regulation, exposure to any one borrower or group of connected borrowers is limited to 25 percent of equity. In exceptional cases the bank may allow individual exposure to one client or group of connected clients to exceed 25 percent of equity, with an absolute ceiling of 35 percent. In such case, solid additional collateral, the value of which is not likely to deteriorate during the term of the commitment, would be required.</p>
Assessment	Compliant
Comments	
Principle 10.	<p>Connected Lending</p> <p>In order to prevent abuses arising from connected lending, banking supervisors must have in place requirements that banks lend to related companies and individuals on an arm’s-length basis, that such extensions of credit are effectively monitored, and that other appropriate steps are taken to control or mitigate the risks.</p>
Description	<p>1. A comprehensive definition of “connected or related parties” exists in law and/or regulation. The supervisor has discretion, which may be prescribed in law, to make judgments about the existence of connections between the bank and other parties.</p> <p>SR I defines “connected or related parties” and includes executive officers, supervisory directors, principal shareholders and their respective related interests affiliated companies, Board members, senior management, key staff, as well as close family members, corresponding persons in affiliated companies, and companies controlled by insiders and shareholders.</p> <p>2. Laws and regulations exist that exposures to connected or related parties may not be extended on more favorable terms (i.e., for credit assessment, tenor, interest rates, amortization schedules, and requirement for collateral) than corresponding loans to nonrelated counterparties.</p> <p>Section I.7 of SR I states the following:</p> <p>No credit institution may extend credit to any of its directors, principal shareholders or their related interests and the related interest of executive officers unless the extension of credit is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the credit institution with other persons that are not covered parties and who are not employed with the institution. The extension of credit should furthermore not involve more than the moral risk of repayment or present other unfavorable features for the institution.</p>

	<p>With regard to the lending terms, credit institutions may adopt in the context of the specified lending limits only for their employees and executive officers. The Board of Directors must approve these preferential rates for employees and executive officers.</p> <p>3. The supervisor requires that transactions with connected or related parties exceeding specified amounts or otherwise posing special risks are subject to approval by the bank's Board of Directors.</p> <p>Extensions of credit by a credit institution to executive officers, directors, principal shareholders and their related interests are limited to 50 percent of executive director's salaries, reasonable (as determined by Supervisory Directors) current account overdraft facility in line with established internal policy, and to no more than 2.5 percent of equity for principal shareholders.</p> <p>An additional 2.5 percent of equity may be extended to these parties if fully secured by adequate collateral. In addition, a credit institution may extend credit, in reasonable amounts, to any executive officer to finance his children's' education and to finance the purchase, construction, or improvement of a residence. With regard to the latter, the residence has to be adequately appraised and has to be owned by the executive officer.</p> <p>However, in no event may a credit institution extend credit to any one of the covered parties, in an amount that, when aggregated with all other extensions of credit to the interested party and its related interests, exceed NA f. 100,000, except with the prior Board of Directors' approval excluding the vote of the interested party.</p> <p>Extension of credit to employees of a credit institution is maximized in total to 10 percent of equity of which 5 percent may be unsecured. Proper lending policies for employees must be in place. The regulation does not apply to branches of foreign banks.</p> <p>4. The supervisor requires that banks have procedures in place to prevent persons benefiting from the loan being part of the preparation of the loan assessment or of the decision itself.</p> <p>Pursuant to Section I.8 of SR I, participation in the discussion by an interested party or any attempt to influence the voting by the Board of Directors regarding an extension of credit constitutes indirect participation in the voting on an extension of credit. Consequently, the credit institution would be considered in noncompliance and the credit extended would have to be repaid immediately.</p> <p>5. Laws or regulations set, or the supervisor has the mandate to set on a general or case-by-case basis, limits for loans to connected and related parties, to deduct such lending from capital when assessing capital adequacy or to require collateralization of such loans.</p> <p>Limits for loans to connected and related parties are set under Sections I.5 and I.6 of SR I. The BNA has the power to deduct credits to connected and related parties from capital or to require collateralization.</p> <p>6. The supervisor requires banks to have information systems to identify individual loans to connected and related parties, as well as the total amount of such loans, and to monitor them through an independent credit administration process.</p> <p>Section I.9 of SR I requires each credit institution to maintain the necessary records for compliance with this regulation. These records should identify all executive officers,</p>
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directors, principal, shareholders, and their related interests, and specify the amount and terms of each extension of credit by the credit institution to these covered parties.

Each credit institution shall require at least annually that each executive officer, director, or principal shareholder identify, by means of a written statement, their related interests with a loan from the credit institution. These records are readily available for the BNA's inspection at any time.

Furthermore, each executive officer who has a loan with a credit institution and who becomes a debtor of any other credit institution in an aggregate amount in excess of NA f. 50,000, including credit card debt, shall, within 10 days of the date the indebtedness reaches such level, make a written report to the Board of Directors of the officer's credit institution. The report shall state the lender's name, the date and amount of each extension of credit, any security for it, and the purposes for which the proceeds have been or are to be used. Subject reports are an integral part of the documentation mentioned above.

7. The supervisor obtains and reviews information on aggregating lending to connected and related parties.

The BNA obtains on a quarterly basis Part G of the COA for international credit institutions, SR I, and the Reporting Schedule. Commercial banks have to file Supporting Schedule 7 on a monthly basis. These reports summarize advances made to shareholders, directors, employees, and their related interests. This information is reviewed off-site as well as on-site.

Additional:

1. The definition of "connected or related parties" established in law and/or regulation is broad and, generally, includes affiliated companies, significant shareholders, Board members, senior management, key staff as well as close family members, corresponding persons in affiliated companies, and companies controlled by insiders and shareholders.

SR I provides a comprehensive definition of "connected or related parties." First, this regulation defines "covered parties" as the parties being subject to regulation. These are executive officers, supervisory directors, principal shareholders, family members, and their respective related interests. The regulation further defines the following terms:

- Interested parties
- Control
- Director
- Executive officer
- Immediate family
- Principal shareholder
- Persons
- Related interests
- Subsidiary
- Extension of credit
- Employees
- Credit institution

2. There are limits on aggregate exposures to connected and related parties that are at least as strict as those for single borrowers, groups, or related borrowers.

	Only an aggregate limit for exposures to employees is mentioned in SR I (10 percent of equity). Therefore, the limits of SR III applies in case of the other covered parties.
Assessment	Compliant
Comments	
Principle 11.	Country Risk Banking supervisors must be satisfied that banks have adequate policies and procedures for identifying, monitoring, and controlling country risk and transfer risk in their international lending and investment activities, and for maintaining appropriate reserves against such risks.
Description	<p>1. The supervisor determines that a bank’s policies and procedures give due regard to the identification, monitoring, and control of country risk and transfer risk. Exposures are identified and monitored on an individual country basis (in addition to the end-borrower/end-counterparty basis). Banks are required to monitor and evaluate developments in country risk and in transfer risk and apply appropriate countermeasures.</p> <p>The corporate governance guidelines of the BNA require that the Board of a credit institution has the responsibility to define the acceptable level and types of risks, and to adopt policies and procedures that will guide management.</p> <p>Each institution is responsible for assessing the risks involved in lending to customers in a particular country and to determine adequate collateral to cover their exposures. SR V requires that when assessing the adequacy of provisions due consideration should be given to the country and currency of funding for the operations.</p> <p>During on-site examinations the presence of relevant and adequate policies and procedures with regard to country risk and transfer risk of credit institutions is determined, with special focus on the institutions with significant international exposures. During the review of the loan file, the examiners determine the currency of the loan, the borrower and its country of residence. Collateral is also reviewed. Based on knowledge of, for example, the economy and political situation of the borrower's country of residence and the collateral, the adequacy of the provisions are reviewed, with due consideration to the level of risks involved.</p> <p>2. The supervisor verifies that banks have information systems, risk management systems, and internal control systems to comply with those policies.</p> <p>The on-site exam team reviews not only the existence of administrative organization aspects and how well they function. The BNA also performs an EDP review in order to determine the structure and function of automated systems. Compliance with the institution’s own organizational and internal control systems is an examination priority.</p> <p>3. There is supervisory oversight of the setting of appropriate provisions against country risk and transfer risk. There are different international practices, which are all acceptable as long as they lead to reasonable, risk-related, results. These include, inter alia:</p> <ul style="list-style-type: none"> • The supervisor (or some other official authority) decides on appropriate minimum provisioning by setting fixed percentage for exposures to each country. • The supervisor (or some other official authority) sets percentage intervals for each country and the banks may decide, within these intervals, which provisioning to apply for the individual exposures.

	<ul style="list-style-type: none"> • The bank itself (or some other body such as the national bankers' association) sets percentage or guidelines or even decides for each individual loan on the appropriate provisioning. The provisioning will then be judged by the external auditor and/or by the supervisor. <p>At this moment, a committee consisting of members of the BNA and the International Bankers Association is discussing a document on the country risk exposure in order to make SR IV effective within the coming year.</p> <p>Based on this regulation, all banks conducting international banking business should file a country risk exposure and provision schedule together with their COA as per each year-end. The COA will reflect the required country risk provisions in line with the list containing provision percentages, which the BNA will circulate.</p> <p>4. The supervisor obtains and reviews sufficient information on a timely basis on the country risk/transfer risk of individual banks.</p> <p>Although SR IV is not yet effective, the BNA reviews the adequacy of country risk/transfer risk management during on-site examinations. Once SR IV becomes effective, it will have the ability to collect and review country risk exposure information on a quarterly basis.</p>
Assessment	Largely compliant
Comments	Although the BNA does not yet have formal regulation in place to monitor country risk, there is an analysis of country risk and banks' policies and practices to manage country risk during on-site examinations. The BNA should implement its plan to put in place a formal system for periodic reporting of and provisioning for country risk exposures.
Principle 12.	<p>Market Risks</p> <p>Banking supervisors must be satisfied that banks have in place systems that accurately measure, monitor, and adequately control market risks; supervisors should have powers to impose specific limits and/or a specific capital charge on market risk exposure, if warranted.</p>
Description	<p>1. The supervisor determines that a bank has suitable policies and procedures related to the identification, measuring, monitoring, and control of market risk.</p> <p>During the on-sight examination planning activities, sensitive or risk areas of a credit institution are selected to be examined. In the Netherlands Antilles, market risk is not considered a main risk area for credit institutions. On-site examination include a review of market risk analyses reports, trading and operational policies and procedures, and internal control and information systems regarding this risk. The examiner in charge will express an opinion on the level of risk involved and will indicate the necessary actions to be taken by management in order to reduce these risks.</p> <p>2. The supervisor determines that the bank has set appropriate limits for various market risks, including their foreign exchange business.</p> <p>As appropriate, one of the examination activities is to review written policies and procedures aimed at controlling market risk. The policy should at least include trading limits for, e.g., countries, foreign exchange, securities, and derivative exposures.</p> <p>To determine adherence, a sample is taken on some transaction and matched against the policy. In addition, market risk is also examined from an internal control, audit and accounting point of view.</p> <p>3. The supervisor has the power to impose a specific capital charge and/or specific limits on market risk exposures, including their foreign exchange business.</p>

	<p>Article 21, paragraph 2, sub a of the Banking Supervision Ordinance 1994, allows the BNA to give directives to credit institutions—whether or not on a consolidated basis—relative to their market risk exposure. In case an examination reveals significant risks resulting in potential financial losses or insufficient coverage, the BNA will impose specific directives or capital charges.</p> <p>4. The supervisor verifies that banks have information systems, risk management systems, and internal control systems to comply with those policies, and verifies that any limits (either internal or imposed by the supervisor) are adhered to.</p> <p>One important activity during the examination process is to verify the adequacy of the internal control, information, and accounting system of an institution. The purpose of reviewing the internal control system is to determine the presence of sufficient measures implemented by management to adhere to established laws, regulations, policies, and procedures and specifically to prevent operational risks. The objective of the information system review is to determine whether management is being adequately informed with regular periodicity about the performance of the institution against its established goals and targets. Examinations include reviews of accounting and administrative systems the review of policies and procedures, their implementation by management, and to ensure that they are in line with the BNA’s regulation COA and GAAP.</p> <p>5. The supervisor satisfies itself that there are systems and controls in place to ensure that all transactions are captured on a timely basis, and that the banks’ positions are revalued frequently, using reliable and prudent market data.</p> <p>During on-site examinations, the adequacy of internal control procedures are evaluated. These procedures are:</p> <ul style="list-style-type: none">• sufficient segregation of duties;• written delegated authorities for trading activities;• accounting procedures for records updating, valuation, and reconciliation activities;• dual control during trading activities;• independent confirmation of settlement to third parties;• dual protection of assets;• audit trail and an adequate record keeping system;• periodic review on the asset portfolio for performance evaluation and managerial purposes; and• the present of rate sensitive analyses reports using prudent market and reliable accounting data. <p>6. The supervisor determines that banks perform scenario analysis, stress testing and contingency planning, as appropriate and periodic validation or testing of the systems used to measure market risk.</p>
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	<p>For the Netherlands Antilles, domestic banks are engaged in market risk activities to a limited degree. Based on BNA's on-site examination the number of international banks having a significant traded securities portfolio is very limited. For the most part, market risks are concentrated in the credit and market risk activities performed at parent or affiliated level instead of at the local institution. Hence, currently the reviews of market risks at these banks have not been extensive. However, important information on the market risk activities of these banks is gathered through the review of the external auditor's report and management letters. The BNA is noticing slow changes and it is in the process of assessing the importance of market risk for the Antillean banking system.</p> <p>7. The supervisor has the expertise needed to monitor the actual level of complexity in the market activities of banks.</p> <p>Despite market risk not being prevalent in the Netherlands Antilles, the BNA has been sending its examiners to several seminar and courses on this theme, e.g., Basel in September last year, Barbados (February 2000), and FED (August 2000). In the future, specific guidelines will be developed to cover this area.</p> <p>Additional:</p> <p>1. Either through on-site work, or through independent external experts, the supervisor determines that senior management understands the market risks inherent in the business lines/products traded and that it regularly reviews and understands the implications (and limitations) of the risk management information that they receive.</p> <p>After each on-site examination, potential risks or significant weaknesses are discussed with senior management. Management's response to, and plan of actions to, reduce these risks is discussed by the examiner in charge in order to understand management's ability to control these risks. In the event management does not take appropriate action or the examiner remains unsatisfied, the BNA will impose specific instructions to the institution. Reliance is placed on the work of external auditors during the annual audit to provide information as to market risk to the BNA.</p> <p>2. The supervisor reviews the quality of management information and forms an opinion on whether the management information is sufficient to reflect properly the banks position and exposure to market risk. In particular, the supervisor reviews the assumptions management has used in their stress testing scenarios, and the banks contingency plans for dealing with such conditions.</p> <p>Examining the accounting and information system of an institution is essential for the BNA's examiners to understand the adequacy of these systems for managerial purposes. During the examination, accounting and administrative policies and procedures are extensively reviewed to determine accurateness and completeness of the banks' financial records.</p> <p>Furthermore, to test the adequacy of the information system, appropriate analyses and performance reports are requested and examined. However, no review of stress testing scenario's and contingency plans, etc., is performed. In the Netherlands Antilles these are not used, considering the relatively low level of market risk.</p> <p>3. The supervisor who does not have access to the adequate skills and capacity does not allow banks to determine their regulatory capital requirements based on sophisticated models, such as value at risk.</p>
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	<p>The BNA’s capital and liquidity requirements for regulated credit institutions are laid down in its COA. The institution’s required capital and liquidity for risk assets and off-balance sheets items are determined and reported according the rules and procedures within the COA.</p>
Assessment	Largely compliant
Comments	<p>The BNA’s oversight of market risk is appropriate given the present low level of this risk in the Antillean banking system. However, the BNA is proactive in reassessing the level of market risk in the system. It is conducting a survey among credit institutions to identify and quantify their market risk levels. Based on the results of the survey, the BNA will decide whether to make changes to reporting requirements for this risk. Reliance on external auditors cannot be considered sufficient over time.</p>
Principle 13.	<p>Other Risks Banking supervisors must be satisfied that banks have in place a comprehensive risk management process (including appropriate Board and senior management oversight) to identify, measure, monitor, and control all other material risks and, where appropriate, to hold capital against these risks.</p>
Description	<p>1. The supervisor requires individual banks to have in place comprehensive risk management processes to identify, measure, monitor, and control material risks. These processes are adequate for the size and nature of the activities of the bank and are periodically adjusted in light of the changing risk profile of the bank and external market developments. These processes include appropriate Board and senior management oversight.</p> <p>The BNA’s 1996 guidance note on corporate governance provides operational risk management guidelines. Potential losses arise from operational risk management weaknesses in addresses information systems, operations, internal controls, fraud, or unforeseen catastrophes. Boards of supervisory directors should establish risk management committees and/or an asset liability committees to ensure that adequate risk control techniques and procedures are applied and/or adequate investment policies are implemented including, but not limited to, credit, market, liquidity, operational, legal, and reputation risk.</p> <p>The BNA obtains a copy of the external auditors’ management letter, which details weaknesses and concerns in an institution’s administrative organization and internal control.</p> <p>2. The supervisor determines that the risk management processes address liquidity risk, interest rate risk, and operational risk as well as all other risks, including those risks covered in other principles (e.g., credit and market risk). These would include:</p> <ul style="list-style-type: none"> • Liquidity: good management information systems, central liquidity control, analysis of net funding requirements under alternative scenarios, diversification of funding sources, stress testing, and contingency planning. Liquidity management should separately address domestic and foreign currencies. <p>During the on-site examinations, the bank examiners of the BNA calculate the liquidity position of the bank after making the necessary adjustments. Furthermore, all banks submit a liquidity schedule as part of the monthly reporting requirement of the BNA. The liquidity schedule acts as a liquidity risk management tool to the extent that it requires specific percentages of liquidity to be held against certain balance sheet categories, based on maturity. These liquidity requirements result in minimum levels of liquidity being held by credit institutions in line with their potential liquidity needs. Stress testing under alternative scenarios is not mandatory.</p>

	<ul style="list-style-type: none">• Interest rate risk: good management information systems and stress testing. Based on the nature of the banking industry in the Netherlands Antilles, the BNA is assessing whether it is necessary to require stress testing with regard to interest rate risk. A number of banks perform their own GAP analyses, but the BNA has not reviewed banks' interest rate risk management policies and procedures.• Operational risk: internal audit, procedures to counter fraud, sound business resumption plans, procedures covering major system modifications, and preparation for significant changes in the business environment. During on-site examinations, management and organization reviews are conducted to test the set up, the implementation, and the functioning of the administrative and internal controls. The examiners review the business plan, management information systems and relevant policies and procedures. Interviews are held with management and the Supervisory Board, if necessary. Adherence to procedures is reviewed through interviews with key personnel that perform the relevant tasks. Information technology is reviewed to determine whether policies and procedures are in place and whether the relevant internal controls are adequate. Human resource management is reviewed as is settlement risk and liquidity information systems. <p>3. The supervisor issues standards related to such topics as liquidity risk, interest rate risk, foreign exchange risk, and operational risk.</p> <p>Operational risk guidelines are set forth in the 1996 Corporate Governance Note and operational risk management is reviewed during on-site examinations. Although there are reporting requirements, there are no guidelines for liquidity risk, interest rate risk, and foreign exchange risk management.</p> <p>There are no set limits on open foreign currency positions. Banks must report their exposures in foreign currencies as well as maturities of assets and liabilities in foreign currencies. For local banks, open positions must be calculated and reported in the monthly balance sheet; there is a 2.5 percent charge against capital for open positions. There are no reporting requirements on open foreign currency positions for international banks.</p> <p>Banks are required to submit monthly liquidity reports. There are liquidity requirements against each liability category (including contingent liabilities), according to maturity. The sum of each category's liquidity requirements results in a total liquidity requirement for each institution.</p> <p>There are no explicit interest rate risk management guidelines and interest rate risk is not examined during off-site surveillance or on-site examination. However, banks are required to submit periodic maturity reports as well as interest rate repricing schedules for assets and liabilities in monthly, quarterly, and annual time buckets.</p> <p>4. The supervisor sets liquidity Guidelines for Banks, which include allowing only truly liquid assets to be treated as such, and takes into consideration undrawn commitments and other off-balance sheet liabilities, as well as existing on-balance sheet liabilities.</p> <p>The liquidity guidelines of the BNA include all the above-mentioned items. The liquidity is calculated and reported monthly, based on Supporting Schedule 2 "liquidity report."</p>
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	<p>5. The supervisor determines that limits and procedures are communicated to the appropriate personnel and primary responsibility for adhering to limits and procedures is placed with the relevant business units.</p> <p>The banks under the supervision of the BNA are relatively small. Consequently, all units have adequate knowledge of limits and procedures.</p> <p>6. The supervisor periodically verifies that these risk management processes, capital requirements, liquidity guidelines, and qualitative standards are being adhered to in practice.</p> <p>The BNA verifies that risk management processes, capital requirements, liquidity guidelines and qualitative standards are being adhered to in practice through its off-site surveillance, on-site examinations and the report of the external auditors.</p> <p>Additional:</p> <p>1. The supervisor has the authority to require a bank to hold capital against risks in addition to credit and market risk.</p> <p>The BNA has the authority to require the bank to hold capital against risks in addition to credit and market risk based on the Banking Supervision Ordinance 1994, Article 21, paragraph 2, sub a.</p> <p>2. The supervisor encourages banks to include a statement on their risk management policies and procedures in their publicly available accounts.</p> <p>It is not mandatory to publish bank performance information.</p> <p>3. Supervisors obtain sufficient information to enable them to identify those institutions carrying out significant foreign currency liquidity transformation.</p> <p>The BNA has foreign exchange licensing procedures in place. The local commercial banks report their foreign currency transactions to the BNA.</p> <p>4. The supervisor determines that, where a bank conducts its business in multiple currencies, management understands and addresses the particular issues this involves. Foreign currency liquidity strategy is separately stress-tested and the results of such tests are a factor in determining the appropriateness of mismatches.</p> <p>This is not considered necessary, in view of the limited number of banks using multiple currencies. The funding and credit activities of the international banks are primarily done in U.S. dollars, while some Venezuelan banks conduct funding and credit extension mainly in Venezuelan Bolivares.</p>
Assessment	Largely compliant
Comments	<p>The BNA needs to be more proactive in its oversight of interest rate risk. According to the BNA, there is little interest rate risk in the local banking sector due to very stable interest rates and wide interest rate margins. However, margins are narrowing given the impact of the weakened economy on borrowers.</p> <p>The BNA already receives maturity reports and interest rate repricing schedules. Several banks already perform gap analysis to manage their interest rate risk. BNA needs to finalize its survey of market risk. Therefore the BNA should take the next step of bringing all the information</p>

	<p>together and oversee and supervise the management of Interest Rate Risk (IRR) in the Antillean banking sector. The BNA should require banks to assess and manage their interest rate risk, and BNA should include assessments of IRR in their supervisory off-site surveillance and on-site examinations. Banks should be required to manage IRR in order to make informed choices on pricing and maturities in order to minimize the risk to their earnings and, hence, capital posed by movements in interest rates and maturity mismatches. Supervisory oversight is needed to ensure that banks have the appropriate risk management knowledge and tools in place.</p>
<p>Principle 14.</p>	<p>Internal Control and Audit Banking supervisors must determine that banks have in place internal controls that are adequate for the nature and scale of their business. These should include clear arrangements for delegating authority and responsibility; separation of the functions that involve committing the bank, paying away its funds, and accounting for its assets and liabilities; reconciliation of these processes; safeguarding its assets; and appropriate independent internal or external audit and compliance functions to test adherence to these controls, as well as applicable laws and regulations.</p>
<p>Description</p>	<ol style="list-style-type: none"> 1. Corporate or Banking Laws identify the responsibilities of the Board of Directors with respect to corporate governance principles to ensure that there is effective control over every aspect of risk management. The responsibilities of the Board of Directors with respect to the corporate governance principles are identified in the “Guidance Notes for the Board of Directors of Supervised Financial Institutions,” issued by the BNA in August 1996. These notes describe the responsibilities of the Board of Supervisory Directors as a whole and of the individual directors. 2. The supervisor determines that banks have in place internal controls that are adequate for the nature and scale of their business. These controls are the responsibility of the Board of Directors and deal with organizational structure, accounting procedures, checks and balances, and the safeguarding of assets and investments. More specifically, these address: <ul style="list-style-type: none"> • Organizational structure: definitions of duties and responsibilities including clear delegation of authority (e.g., clear loan approval limits), decision-making procedures, separation of critical functions (e.g., business origination, payments, reconciliation, risk management, accounting, audit, and compliance). • Accounting procedures: reconciliation of accounts, control lists, information for management. • Checks and balances (or “four eyes principles”): segregation of duties, cross-checking, dual control of assets, double signatures. • Safeguarding assets and investments, including physical control. <p>Pursuant to Article 3, paragraph 1, sub h, of the Banking Supervision Ordinance 1994, an institution applying for a license to conduct the business of a credit institution, is obliged to file with the BNA its documentation relevant to its administrative organization and internal control structure.</p> <p>The institution is obliged to set up, maintain, and execute an adequate structure of administrative organization and internal control.</p>

According to Article 9, paragraph 1, sub h, of the Banking Supervision Ordinance 1994, an unqualified opinion from the external auditors is a primary requirement for an institution with a license. In addition to this opinion, the external auditors should issue annually a management letter in which they discuss the weaknesses of the institution's administrative organization and internal control. The management letter is routinely received by BNA. During on-site examinations, bank examiners review and determine whether policies and procedures are in place and are functioning adequately, whether management has adopted and maintains an adequate internal control structure and whether adopted policies and procedures to safeguard assets and records function are adequately implemented. Bank examiners review the institution's management and organization in conformity with the CAMEL-acronym. Furthermore, the examiners always perform compliance and accounting review with respect to the COA.

3. **To achieve a strong control environment, the supervisor requires that the Board of Directors and senior management of a bank understand the underlying risks in their business and are both committed to, and legally responsible for, the control environment. Consequently, the supervisor evaluates the composition of the Board of Directors and senior management to determine that they have the necessary skills for the size and nature of the activities of the bank and can address the changing risk profile of the bank and external market developments. The supervisor has the legal authority to require changes in the composition of the Board and management in order to satisfy these criteria.**

Pursuant to Article 3, paragraph 2, sub b, and c and Article 4, paragraph 1, sub a, b, d, and other provisions in Article 9 and Article 23 of the Banking Supervision Ordinance 1994, the BNA reviews the number, identity, competence, and antecedents of the managing and supervisory directors. Pursuant to Article 23, paragraph 2, sub a, every institution is obliged to receive prior permission from the BNA to appoint a director. The BNA assesses the competence of a managing or supervisory director through the conduct of a fit and proper test. The fit and proper test is described in the "Policy Memorandum on the implementation of the Fit and Proper test" issued by the BNA in July 1998.

In addition, it conducts background checks on prospective managing and supervisory directors. Based on the results of its review, it then grants permission (or not) to the institution to appoint that person as the institution's managing or supervisory director.

In its evaluations, the BNA considers the sufficiency of accounting and administrative skills, knowledge, experience, and soundness of judgment to discharge duties and responsibilities. Supervisory Boards must have an uneven number of members to prevent a deadlock on issues. The BNA requires a minimum of two Board members in its admission requirements. In general however, the Boards consist of between five to nine members, depending on the size of the bank. Experience in previous functions is an important element in considering someone skilled enough for a management function.

If a director is deemed to be not fit and proper at some point after his appointment, the BNA can, at any time, withdraw the approval it previously granted and request the institution to nominate another candidate. In addition, pursuant to Section 22 (1) of the Banking Supervision Ordinance, if the BNA discerns that the competence of the Board and/or management of a credit institution are insufficient and could jeopardize the liquidity or solvency of the credit institution, the BNA has the authority to request that the credit institution take measures or pursue a particular policy to address the situation. The measures can include a change in the composition of the Board and or management by requiring that other candidates with the required competency be proposed to the BNA for approval. Failure

	<p>to comply with the BNA's request can result in withdrawal of the institution's license. Managers are subjected to an integrity test by BNA.</p> <p>4. The supervisor determines that there is an appropriate balance in the skills and resources of the back office and control functions relative to the front office/business origination.</p> <p>As part of the BNA's preexamination planning procedures, the bank examiners request the institutions to provide the BNA with an organizational structure including the names of all key personnel of the organization. As part of the management and organization review, interviews are held separately with each member responsible for a section of the organization during the on-site examination. The examiners determine in this stage the knowledge of the persons relative to their work and whether sufficient skilled personnel cover the areas. If the knowledge or quality of the staff members proves to be inadequate, the BNA so reports.</p> <p>5. The supervisor determines that banks have an appropriate audit function charged with (a) ensuring that policies and procedures are complied with; and (b) reviewing whether the existing policies, practices, and controls remain sufficient and appropriate for the bank's business. The supervisor determines that the audit function:</p> <ul style="list-style-type: none">• has unfettered access to all the bank's business lines and support departments;• has appropriate independence, including reporting lines to the Board of Directors and status within the bank to ensure that senior management reacts to and acts upon its recommendations;• has sufficient resources, and staff that are suitably trained and have relevant experience to understand and evaluate the business they are auditing; and• employs a methodology that identifies the key risks run by the bank and allocates its resources accordingly. <p>The existence and positioning of an internal audit department within an organization is one of the explicit areas within the management and organization review during the on-site examinations. Besides these, the knowledge, skills, and experience of the department staff and head are reviewed and commented on. Furthermore, the bank examiners of the BNA review the existence of audit working plans, programs, and procedures and how (often) these are executed.</p> <p>6. The supervisor has access to the reports of the audit function.</p> <p>The bank examiners of the BNA review the internal audit reports and discuss with the internal auditors the cooperation and independence they experience (separately). Furthermore, follow-up on matters identified by the Internal Audit Department (IAD) is discussed with the IAD Head and subsequently with management during all examinations. Pursuant to Article 12 of the Banking Supervision Ordinance 1994, the BNA has the power to request information from everyone in the service of the institution (including the internal auditor) or its former directors and managers in order to perform its duty. Pursuant to Article 15 of the Banking Supervision Ordinance 1994, the BNA can also request information from the external auditors.</p>
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	<p>Additional:</p> <ol style="list-style-type: none"> In those countries with a unicameral Board structure (as opposed to a bicameral structure with a supervisory Board and a management Board), the supervisor requires the Board of Directors to include a number of experienced nonexecutive directors. In the Netherlands Antilles a bicameral structure is applicable. By regulation, unicameral Board structures are not allowed in the Netherlands Antilles for supervised institutions. The supervisor requires the internal audit function to report to an audit committee. Pursuant to the guidelines of the corporate governance, the institutions are required to have an audit committee in place, taking into consideration the size of the institution. Internal audit functions report to audit committees of the supervisory Boards. In those countries with a unicameral Board structure, the supervisor requires the Audit Committee to include experienced nonexecutive directors. Not applicable.
Assessment	Largely compliant
Comments	<p>The BNA must require the banks to have sufficiently trained staff to perform an internal audit function with regard to the COA. During its on-site examinations, the bank supervisors spend a large part of the examination reviewing and correcting banks' COA to ensure that they correctly reflect banks' financial position. The BNA recognizes this weakness on the part of banks and is planning training to improve bankers' skills in this area. The BNA should have the capacity to impose fines and penalties for noncompliance by banks with the requirement to prepare and submit accurate COA. Banks should be provided with a disincentive to not comply with this reporting requirement; they are already subject to fines for late submission of required reports.</p>
Principle 15.	<p>Money Laundering Banking supervisors must determine that banks have adequate policies, practices, and procedures in place, including strict "know-your-customer" rules that promote high ethical and professional standards in the financial sector and prevent the bank being used, intentionally or unintentionally, by criminal elements.</p>
Description	<ol style="list-style-type: none"> The supervisor determines that banks have in place adequate policies, practices and procedures that promote high ethical and professional standards and prevent the bank from being used, intentionally or unintentionally, by criminal elements. This includes the prevention and detection of criminal activity or fraud, and reporting of such suspected activities to the appropriate authorities. During the on-site examinations, BNA's bank examiners establish whether the banks have proper policies and procedures in place to identify customers and to detect the intentional or unintentional use of the bank by criminals when the banks render them financial services. In addition, the examiners verify whether there is an adequate administrative organization and segregation of critical duties among the staff. The examiners also observe whether the financial institutions follow mentioned procedures and guidelines in practice and whether these institutions have detected criminal activities and/or fraud and have reported those to the appropriate authorities. Furthermore, the internal reporting structure is evaluated and a number of key employees are interviewed inside the bank to test their knowledge regarding the rules and regulations and their responsibilities in this area. In addition, BNA's examiners verify through a review of a sample of transactions if these include activities that should have also been qualified as suspicious and should have been actually reported to the appropriate authorities. If this is the

	<p>case, the BNA gives the institution concerned a directive to report these transactions to the Reporting Centre.</p> <p>In conducting the on-site examinations the bank examiners also verify whether the institutions comply with the reporting procedures that are issued.</p> <p>2. The supervisor determines that banks have documented and enforced policies for identification of customers and those acting on their behalf as part of their AML program. There are clear rules on what records must be kept on customer identification and individual transactions and the retention period.</p> <p>When conducting on-site examination BNA's examiners review if the banks have a written anti-money-laundering manual, which covers all important aspects especially the prevention and detection of money laundering (ML) and the identification and record keeping of customers, and if the procedures of the money-laundering program are duly exercised. The examiners also determine if the personnel of the banks are sufficiently and regularly trained on ML detection and prevention.</p> <p>Based on the National Ordinance on Identification when Rendering Financial Services of 1996, banks are bound to establish the identity of their customers, including those acting on their behalf, before rendering any financial service to such customers. The ways, through which the identity should be established, are stipulated in detail in the above-mentioned Ordinance, including the records that must be kept on customer identification and individual transactions. Pursuant to Article 42 of the Banking Supervision Ordinance 1994, a bank is obliged to keep all letters, documents, data carriers relevant to its business, including transaction records relating to all accounts maintained by the institution in its own name or for third parties for a period of at least ten years.</p> <p>3. The supervisor determines that banks have formal procedures to recognize potentially suspicious transactions. These might include additional authorization for large cash (or similar) deposits or withdrawals and special procedures for unusual transactions.</p> <p>Based on the National Ordinance Reporting of Unusual Transactions, a list of subjective and objective indicators has been laid down, based on whether a transaction should be classified and reported as unusual.</p> <p>During the on-site examination the examiners thoroughly review if the procedures are in place to effectively detect suspicious transactions. In addition, the BNA's "guidelines on the detection and deterrence of Money-Laundering" instruct the institutions to utilize the Source of Funds Declaration form. Customers should complete this when large transactions are deposited or transferred.</p> <p>The National Ordinance Reporting of Unusual Transactions provides in Article 6 that the Reporting Centre is bound to disclose data, so called suspicious transactions, to the authorities and officials in charge of the detection and prosecution of criminal offenses. The National Prosecutor, in a proper way, may exchange this suspicious transactions information with other prosecutors abroad. In the (near) future, the Reporting Centre may directly share unusual transactions information on an international level with other reporting centers within the Kingdom of the Netherlands and with other similar financial intelligence units outside the Kingdom based on a MoU or treaty. This information exchange will take place on an intelligence-level through the so-called "Egmont Group," hence on a confidential and conditional basis. In case of further dissemination by the receiving authority with a view to</p>
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	<p>investigation and/or prosecution of serious crimes or for evidentiary use, this exchange of information is subject to prior consent of the Reporting Centre.</p> <p>4. The supervisor determines that banks appoint a senior officer with explicit responsibility for ensuring that the bank’s policies and procedures are, at a minimum, in accordance with local statutory and regulatory AML requirements.</p> <p>The BNA requires financial institutions to appoint a compliance officer who ensures that the bank’s policies and procedures are in accordance with local statutory and regulatory AML requirements. Furthermore, this officer is responsible for analyzing independently suspicious transactions and reporting these. This officer should also provide training for staff.</p> <p>According to the June 2003 “Guidelines on the Detection and Deterrence of Money-Laundering” of the BNA, the bank should appoint a designated officer or officers responsible for ML prevention procedures. A complete overview on the minimal responsibilities regarding this function is set out in these guidelines.</p> <p>5. The supervisor determines that banks have clear procedures, communicated to all personnel, for staff to report suspicious transactions to the dedicated senior officer responsible for AML compliance.</p> <p>During the on-site interview the bank examiners verify whether such procedures are in place and inquire whether the staff understands and follows them. Interviews are held with key employees (e.g., verification officers, reconciliation officers, cashiers) to test their knowledge and comprehension. The examiners further determine if the personnel understands its part of the job and its responsibilities as laid in the laws and regulations, including the National Ordinance Penalization of Money-Laundering.</p> <p>By means of interviews with several personnel members, the examiners get an insight of the functioning of the system and the knowledge of the personnel. The question as to whom unusual transactions should be reported internally, is part of the standard procedure in order to establish the clarity of the internal and external reporting procedures. If any shortcoming is noted, recommendations and in some cases directives are set forth in the examination report. If the situation is critical, a follow-up examination will be planned shortly.</p> <p>According to the “Guidelines on the Detection and Deterrence of Money-Laundering” paragraph II.1.2, sub c, the bank should establish internal as well as external reporting procedures. In this paragraph, the individual responsibilities towards reporting are set out. Furthermore, paragraph II.4 of the above-mentioned guidelines includes instructions for banks to establish appropriate training plans and programs for personnel on a regular basis. In addition, paragraph II.3 includes the advice for banks to allow the internal or external audit department to conduct a review on the policies and procedures at least annually.</p> <p>6. The supervisor determines that banks have established lines of communication both to management and to an internal security (guardian) function for reporting problems.</p> <p>During the examination, by means of interviews, the bank examiners request for the relevant reports from staff to management and on the possibility of reporting problems. They further examine the frequency by which the reports are compiled. If necessary, they will inform the personnel of the possibility to report unusual transactions directly to the Reporting Centre in case the management of the bank does not grant internal support. It is also possible to</p>
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	<p>contact the BNA when complications arise and directives could be enforced. Fortunately, this situation has not occurred as yet.</p> <p>7. In addition to reporting to the appropriate criminal authorities, banks report to the supervisor suspicious activities and incidents of fraud material to the safety, soundness, or reputation of the bank.</p> <p>The financial institutions are bound to report any suspicious activity that classifies as an unusual transaction to the Reporting Centre according to Article 11, paragraph 1 of the National Ordinance Reporting of Unusual Transactions. The Reporting Centre inputs the received data in its database and analyses these. If necessary, it requests clarification or additional information from the financial institutions. The Centre will file a suspicious transaction report to the Public Prosecutors Office and to the police authorities in those cases that they find a transaction suspicious. Because the financial institutions are not required to report unusual transactions directly to the BNA, but to the Reporting Centre, during our on-site examinations by means of a sample testing and transaction review, the BNA verifies explicitly if they had reported to the Centre.</p> <p>8. Laws, regulations, and/or banks' policies ensure that a member of staff who reports suspicious transactions in good faith to the dedicated senior officer, internal security function, or directly to the relevant authority cannot be held liable.</p> <p>Pursuant to Article 15, paragraph 2 of the National Ordinance Reporting of Unusual Transactions, the person who reported an unusual transaction to the Reporting Centre shall not be liable in respect of any damage suffered by a customer or a third party as a result, unless such damage proceeds from willful actions or gross negligence by that person.</p> <p>9. The supervisor periodically checks that banks' ML controls and their systems for preventing, identifying, and reporting fraud are sufficient. The supervisor has adequate enforcement powers (regulatory and/or criminal prosecution) to take action against a bank that does not comply with its AML obligations.</p> <p>As stated before, during the BNA's on-site examination the examiners hold interviews with the staff and senior officers who are in charge of ML issues. Furthermore, as indicated above, a thorough file and transaction review is performed through sample testing. During those interviews the examiners review whether the current policies and procedures promote ML controls and are adequate. Any possible shortcoming or violation of the laws and regulations is included in the report and directives are set out. If during an examination evidence of fraud is detected, the examiners will instruct the institution to engage a specialist, such as a forensic accountant, to examine the fraud. The BNA can also engage the specialist directly to conduct above-mentioned examination.</p> <p>The BNA considers ML as an activity that can significantly harm the reputation of an institution. Consequently, ML will always continue to be a priority at examinations, if necessary action will be taken to ensure compliance with the guidelines and/or the law enforced.</p> <p>Aside from judicial remedies, if an institution does not comply with its obligations the BNA can issue binding instructions pursuant to Article 21 and Article 22 of the Banking Supervision Ordinance 1994 to counteract possible reputational risk or the solvency or liquidity of the institution.</p>
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10. The supervisor is able, directly or indirectly, to share with domestic and foreign financial sector supervisory authorities information related to suspected or actual criminal activities.

Based on Article 41 of the Banking Supervision Ordinance 1994, the BNA can share information obtained in the execution of its duty under this Ordinance with foreign supervisory authorities engaged with the supervision of institutions, which conduct business activities on the financial markets.

11. The supervisor determines that banks have a policy statement on ethics and professional behavior that is clearly communicated to all staff.

Part of BNA's ML review also includes verification of documented policy statement on ethics and professional behavior, which must be clearly communicated to the staff. An analysis is done at the Personnel Department, where examiners review procedures towards acceptance of gifts and other means of influencing the integrity of the personnel. The examiners also make sure that these procedures are dully signed and that the staff is well aware of the contents.

Within the context of good governance the scrutiny of the identity of the shareholders and directors of credit institutions is required through the "Fit and Proper Test," next to the mandatory disclosure of a "Statement of Compliance" with the "Best Practice Guidelines" on corporate governance. Additionally, the BNA has established a separate unit "Integrity Financial Sector" (IFS) specifically for integrity supervision. The IFS unit will assist to further maintain and enhance professional and ethical behavior through its advisory, training, and co-coordination function, based on expertise and both local and international intelligence. A special Integrity Test for managers and Board members, including fit and proper criteria has been introduced by the BNA in March 2003.

Additional:

1. The laws and/or regulations embody international sound practices, such as compliance with the relevant forty Financial Action Task Force (FATF) Recommendations issued in 1990 (revised 1996).

The National Ordinance Penalization of Money Laundering of 1993; the National Ordinance Identification when Rendering Financial Services; and the National Ordinance Reporting of Unusual Transactions of 1996 embody recommendations from the 40 FATF Recommendations of May 1990.

In addition, the Netherlands Antilles is not only a member, but also the founder of the Caribbean Financial Action Task Force (CFATF), which introduced 20 additional recommendations. In January 1999 the Netherlands Antilles underwent a mutual CFATF assessment and received an overall positive assessment.

2. The supervisor determines that bank staff is adequately trained on ML detection and prevention.

Paragraph II.4 of the "Guidelines on the Detection and Deterrence of Money Laundering" contains specific instruction towards the training plans and programs for personnel. The bank examiners themselves receive extensive training on this issue periodically. Therefore, they expect banks to maintain a high level and high frequency of training.

	<p>3. The supervisor has the legal obligation to inform the relevant criminal authorities of any suspicious transactions.</p> <p>Pursuant to the National Ordinance Reporting of Unusual Transactions, unusual transactions have to be reported to the Reporting Centre. The Reporting Centre on its turn decides, based on analyses of the data, whether the transaction must be furnished to the criminal authorities and officials in charge of the detection and prosecution of criminal offenses.</p> <p>The BNA will instruct an institution to report an unusual transaction discovered by it to the Reporting Center, if the institution has not done this yet. The BNA will take appropriate measures against the institution if the instruction is not followed.</p> <p>Based on Article 40 of the Banking Supervision Ordinance 1994, the BNA has the authority to report suspected criminal activity. When the BNA is summoned to appear and act as witness or expert, it may share confidential information provided that it concerns a criminal case.</p> <p>4. The supervisor is able, directly or indirectly, to share with relevant judicial authorities information related to suspected or actual criminal activities.</p> <p>See above under additional criterion number 3.</p> <p>5. If not performed by another agency, the supervisor has in-house resources with specialist expertise on financial fraud and AML obligations.</p> <p>The bank examiners of the BNA regularly receive extensive training at the highest level on this issue. In fact, the BNA was deeply involved in establishing the Reporting Centre and the introduction of the laws and regulations in this regard. Several departments within the BNA included staff members who have ample knowledge on this issue and are regularly invited to give lectures at conferences and seminars.</p> <p>Pursuant to Article 3 of the National Ordinance Reporting of Unusual Transactions, the Reporting Centre is the repository of specialist expertise on AML and receives unusual transaction reports. In addition, the Financial Investigations Bureau (Bureau Financiële Onderzoeken), which reports to the ministry of justice, also has specialized expertise, including on financial fraud.</p>
Assessment	Compliant
Comments	Higher frequency of inspections to monitor AML/CFT compliance would be beneficial.
Principle 16.	<p>On-Site and Off-Site Supervision An effective banking supervisory system should consist of some form of both on-site and off-site supervision.</p>
Description	<p>1. Banking supervision requires an in-depth understanding, periodic analysis, and evaluation of individual banks, focusing on safety and soundness, based on meetings with management and a combination of both on-site and off-site supervision. The supervisor has a framework that uses on-site work (conducted either by own staff or through the work of external auditors) as a primary tool to:</p> <ul style="list-style-type: none"> • provide independent verification that adequate corporate governance (including risk management and internal control systems) exists at individual banks; • determine that information provided by banks is reliable; and • obtain additional information needed to assess the condition of the bank.

	<p>The BNA's own staff conduct on-site examinations are based on the CAMEL rating system. At the end of an examination, a rating on a scale of 1 through 5 (1 highest–5 lowest) is assigned to each CAMEL element. (CAMEL represents capital adequacy, asset quality, management and organization, earnings, and liquidity.)</p> <p>The definitions under the rating scale are as follows:</p> <p>Rating “1” indicates strong performance, significantly higher than average.</p> <p>Rating “2” reflects satisfactory performance, performance that is average or above; this includes performance that adequately provides for the safe operation of the bank.</p> <p>Rating “3” represents performance that is flawed to some degree and as such is considered fair. It is neither satisfactory nor unsatisfactory but is characterized by performance that is below average quality.</p> <p>Rating “4” refers to marginal performance, significantly below average. If left unchecked, such performance might evolve into weaknesses or conditions that could threaten the viability of the institution.</p> <p>Rating “5” is considered unsatisfactory; performance that is critically deficient and in need of immediate remedial action. Such performance, by itself or in combination with other weaknesses, threatens the viability of the institution.</p> <p>During on-site examinations the bank examiners review whether adequate risk management and internal control systems are in place for the main areas of the individual bank's operations. Given the small size and simplicity of the Netherlands Antillean economy, the local commercial banks are mainly engaged in traditional banking activities, such as lending (66 percent of total assets of the domestic banking sector), investments, and deposit taking activities (demand, time, and savings deposits). Off-balance activities consist mainly of guarantees, letter of credit, loan, and lease commitments.</p> <p>Examiners verify the reliability of data and information provided by the banks primarily by verifying the accuracy of the entries in the COA. During some examinations, this can be extremely time consuming due to the high level of inaccuracy on the part of the institutions in preparing the accounts; it can use 1–2 examiners for a week or 2 out of approximately 4 examiners for a 3 week examination. The BNA is aware of this problem and is going to begin to impose penalties on banks who submit inaccurate COAs.</p> <p>During on-site examinations of credit risk, the examiners will review a sample of individual loans. The sample will typically consist of loans that were adversely classified during the previous examination, are adversely classified or watch listed by the bank, large loans, loans to employees, shareholders and related parties and any other loans selected in the sample. Based on their review, the adequacy of loan loss provisions is assessed and adjusted as required. However, there is no requirement for periodic review of asset quality by the banks. Although banks must maintain a 2.5 percent general provision against off-balance sheet items at all times, there is no requirement to set aside specific provisions for off-balance sheet items. On-site examinations may, in some cases, be too infrequent to determine whether banks conduct regular asset quality reviews or to evaluate specific provisions for off-balance sheet items.</p> <p>Examiners also review the external auditors' management letter, issued at the end of each annual audit. If there are no issues, they need to state this explicitly. The management letters</p>
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	<p>must be filed by the institution together with their annual audited financial statements. There is no on-site or off-site examination of interest rate risk management.</p> <p>2. And uses off-site work as a primary tool to:</p> <ul style="list-style-type: none">• review and analyze the financial condition of individual banks using prudential reports, statistical returns, and other appropriate information, including publicly available information; and• monitor trends and developments for the banking sector as a whole. <p>The objective of the off-site work is to monitor the financial condition of the individual bank and determine whether the institution continues to meet at least the minimum required standards. Trends are observed through compilation of data and statistical analysis. Compliance with rules and regulations is observed through review and analysis of submitted prudential reports including review of correspondence, publicly available information, and other information. The prudential reports reviewed include the audited and unaudited. COAs and Supporting Schedules (solvency and liquidity report and the schedules on advances to related parties, large loans listings and specific and general provisions), the annual audited financial statements, the management letter, the Statement of Compliance reviewed by the external auditors and the management report. Much of the focus of off-site work is compliance oriented. There is a need to do more analysis of the information submitted by banks and to document the analysis for the record (see CP 18).</p> <p>3. The supervisor checks for compliance with prudential regulations and other legal requirements through on-site and off-site work.</p> <p>Both off-site and on-site bank supervisors review compliance with the prudential regulations and other legal requirements, such as ML laws and regulations.</p> <p>4. The appropriate mix of on-site and off-site supervision is determined by the particular conditions and circumstances of the country. In any event, the framework integrates the two functions so as to maximize the synergy and avoid supervisory gaps.</p> <p>The BNA relies on both on-site examinations and off-site surveillance. Both departments support each other and supplement each other. There is annual examination planning during which the examination schedule for the coming year is set. The frequency and scope of on-site examinations are based on the risk profile and financial condition of a credit institution, the off-site assessment, findings from previous examinations, as well as other sources of information. However, on-site examinations may only be biannual and in addition a significant portion of on-site examinations is devoted to ensuring the accuracy of the COAs. The BNA also does follow up examinations of limited scope, if the need to do so is indicated during the regular examination of the institution. In addition, the BNA relies on the work of the external auditors and/or other specialist, on an as needed basis.</p> <p>Additional:</p> <p>1. The supervisor has procedures in place to assess the effectiveness of on-site and off-site functions, and to address any weaknesses that are identified.</p> <p>There are no specific procedures in place to assess the effectiveness of on-site and off-site supervision. The BNA relies on the coordinated work of both on-site examinations and off-</p>
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	<p>site surveillance. In addition, the performance of each bank supervisor is evaluated each year.</p> <p>2. The supervisor has the right to access copies of reports submitted to the Board by both internal and external auditors.</p> <p>Pursuant to Article 15 and Article 17 of the Ordinance 1994, the BNA has the power to obtain the required information. Hence, reports by the auditors are part of the prudential supervisory mix used by the BNA.</p> <p>3. The supervisor has a methodology for determining and assessing the nature, importance and scope of the risks to which individual banks are exposed, including the business focus, the risk profile and the internal control environment. Off-site and on-site work is prioritized based on the results of that assessment.</p> <p>The supervisor’s methodology is part of the annual examination planning cycle where the bank’s risk profile and past performance and are taken into account in determining the frequency and scope of the upcoming examination cycle. Based on the assessment of individual institutions and knowledge of previous examinations, along with information from other sources (auditors, media, clients, etc.) the institutions are assessed.</p> <p>4. The supervisor is legally required to treat as confidential information received as part of the supervisory process. However, the supervisor is given powers under the law to disclose information in certain defined circumstances. The law prevents disclosure of confidential information unless the supervisor is satisfied that it will be held confidential by the recipient, or unless disclosure is otherwise required by law.</p> <p>According to Article 40 paragraphs 1 and 2 of the Ordinance 1994, data and information provided is treated as confidential. However, based on Article 40 of the above mentioned Ordinance, the BNA has the authority, for the purpose of maintaining a sound banking and credit system, to report a suspicion of a punishable act. In those cases or cases where the BNA is summoned to appear and act as witness or expert in a criminal case, it has the authority, within the context of the investigation, the inquest or hearing of the case, to provide information.</p> <p>The BNA may share information obtained in the execution of its duty under this Ordinance, with foreign supervisory authorities engaged with the supervision of institutions which conduct business activities on the financial markets.</p> <p>5. The supervisor is able to reasonably place reliance on internal audit work that has been competently and independently performed.</p> <p>If the BNA is satisfied with the positioning, independence, and functioning of internal audit in a given institution, it will rely partially on their work. During on-site examinations the BNA will review the position of the IAD within the organization and determines its independence and the knowledge, skills, and experience of the internal audit department head and staff are reviewed and assessed. The bank examiners review the IAD’s working plans, programs, and procedures; the execution of the work plan and the findings; as well as the quality of the management reports. IADs’ work programs should cover the high risk areas of the institution in depth. The scope and adequacy of internal audit is discussed with the external auditors.</p>
Assessment	Materially noncompliant
Comments	See Comments for CP 8. Issues relating to loan classification and provisioning are among the

	<p>most crucial elements of good supervision. The materially noncompliant assessment takes into consideration weaknesses in the implementation of loan loss classification and provisioning, together with some identified weakness in on-site and off-site supervision (see CP 18).</p> <p>The supervisors spend too much scarce supervisory time and resources, especially during on-site examinations, checking the accuracy of and reconciling the COAs of banks. The BNA's role should not include having to reconcile the audited COAs to the audited financial statements and to the unaudited COA. The BNA needs to assure that banks' have the appropriate staff to prepare COAs. The BNA is moving in this direction by planning to impose fines on banks that do not provide accurate COAs. In addition, the BNA needs to assure that the external auditors together with the banks are able to reconcile audited financial information to the unaudited COAs. This should be spelled out in the scope of the external auditors' work.</p> <p>The BNA should develop procedures to assess the effectiveness of on-site and off-site functions, and to address any weaknesses that are identified.</p> <p>The BNA needs to develop a methodology to examine for interest rate risk at individual banks. It is one of the major risks banks face and it needs to be measured, monitored, and managed. The BNA needs to ensure that banks do not take undue interest rate risk and that they have the appropriate management tools. The BNA will look into this and develop an interest rate monitoring mechanism.</p> <p>The BNA should use off-site surveillance to monitor trends and developments for the banking sector as a whole.</p>
<p>Principle 17.</p>	<p>Bank Management Contact Banking supervisors must have regular contact with bank management and a thorough understanding of the institution's operations.</p>
<p>Description</p>	<ol style="list-style-type: none"> <li data-bbox="427 1094 1464 1503"> <p>1. Based on the risk profile of individual banks, the supervisor has a program of regular meetings with senior and middle management (including the Board, nonexecutive directors, and heads of individual units) to discuss operational matters such as strategy, group structure, corporate governance, performance, capital adequacy, liquidity, asset quality, risk management systems, etc.</p> <p>The BNA is embarking on a program of yearly meetings with bank management and external auditors. Currently, based on the analyses of each bank performed by the supervision department and the results of examinations, meetings are held on an as needed basis or upon request of the institution. For international banks it is common that each year the management of the parent bank or head-office will visit the BNA to discuss relevant issues such as the bank's strategy including that of its parent/head-office, its performance in the current and/or past year capital adequacy, liquidity, and future banking products.</p> <li data-bbox="427 1514 1464 1871"> <p>2. The supervisor has a thorough understanding of the activities of its banks. This is accomplished through a combination of off-site surveillance, on-site reviews, and regular meetings.</p> <p>The BNA uses a mix of on- and off-site supervision and external auditor's work to fulfill its supervisory responsibility. It is through this process that it builds its knowledge of banks' activities as well as through (i) regular contacts by telephone with staff of the institution lawyers and notaries; (ii) review of submitted reports (COA, annual audited financial statements and management report), and (iii) correspondence and through contact with on-site examiners as a result of examinations. In addition, the on-site examination process adds to the understanding of banks' activities through the observance of the actual business,</p>

	<p>through the assessment of compliance with rules and regulations, through the preparation of examination reports and the handling of required follow-up.</p> <p>3. The supervisor requires banks to notify it of any substantive changes in their activities or any material adverse developments, including breach of legal and prudential requirements.</p> <p>According to the COA general guideline 15 (local banks) and general guideline 13 (for international banks), a change greater than 10 percent in a single account of the balance sheet as compared to the previous balance sheet needs to be explained in writing. In addition, the Banking Supervision Ordinance 1994 stipulates the specific actions. Actions taken with the required BNA's prior approval may be required to be reversed.</p> <p>No official notification to the BNA is required from banks in case of a breach of legal and prudential requirements. The willful or unintentional violations of regulations laid down in the Banking Supervision Ordinance 1994 are regarded as felony or misdemeanor and can be punished by imprisonment and/or a fine.</p> <p>4. As part of the licensing process, and on an on-going basis during routine supervision, the supervisor considers the quality of management.</p> <p>Licensing is dependent on the BNA's assessment of the fitness and probity of the officers determining the daily affairs of a supervised credit institution. The fitness and probity are established through the information received through personal questionnaires, background checks, review of financial information, etc.</p> <p>The criteria applied by the BNA to ascertain the fitness of officers includes sufficiency of skills, knowledge, experience, and soundness of judgment to undertake and properly fulfill duties and responsibilities at the institution in particular and of banking issues in general. Only officers of professional, social, and moral integrity will be regarded as suitable for the management and supervision of a financial institution. Accordingly, the BNA will consider whether the officer has a criminal record and or whether he has contravened any provision of banking, insurance, investment, or other legislation designed to protect the general interest financial losses due to dishonesty, incompetence, or malpractice. Furthermore, the BNA considers whether the officer has been involved in business practices, which are improper or reflect questionable business methods.</p> <p>The quality of management is assessed on an on-going basis through off-site assessment of the institutions' business operations. Factors considered in the assessment include the presence of minimum required administrative organization, internal controls, and the adherence to laws and regulations and other procedures.</p>
Assessment	Largely compliant
Comments	There is a need for more regular contact with bank management and the BNA is moving in this direction. There is a need for a requirement for official notification to the BNA by banks in case of a breach of legal and prudential requirements. A "compliant" assessment would require implementation of the yearly meetings with management and reporting of mandatory breaches of legal and prudential requirements.
Principle 18.	<p>Off-Site Supervision</p> <p>Banking supervisors must have a means of collecting, reviewing, and analyzing prudential reports and statistical returns from banks on a solo and consolidated basis.</p>
Description	<p>1. The supervisor has the legal authority to require banking organizations to submit information, on both a solo and consolidated basis, on their financial condition and performance, at regular intervals. These reports provide data on matters such as on-</p>

and off-balance sheet assets and liabilities, profit and loss, capital adequacy, liquidity, large exposures, loan loss provisioning, market risk, and deposit sources.

Pursuant to Article 14 of the Ordinance each supervised credit institution is obliged to submit a number of reports on its business operations to the BNA. Paragraph 2 stipulates that the BNA decides on the form, reporting period, and submission frequency of those reports, after consultation with the representative organizations of credit institutions. These decisions are laid down in the reporting manual for each type of credit institution. The COA reporting manuals, for both local and international banks, stipulate the basis of reporting and frequency that solo and consolidated reports are to be submitted. These reports provide balance sheet, profit and loss, capital adequacy, liquidity, large exposures, and loan loss provisioning information, as well as on deposit sources.

In addition, pursuant to Article 15, each supervised credit institution must submit an audited annual report to the BNA. This report should contain, at a minimum, a balance sheet, profit and loss account, and notes to those statements. The BNA has not stipulated a compulsory format. However, different accounting principles are allowed such as the US GAAP, IAS, and the Dutch GAAP.

2. **Laws and regulations establish, or the supervisor has the authority to establish, the principles and norms regarding the consolidation of accounts as well as the accounting techniques to be used.**

Reports that are submitted pursuant to Article 14 of the Ordinance and are drafted based on the principles, norms, and accounting techniques set forth in the COA manuals for each type of credit institution.

3. **The supervisor has a means of enforcing compliance with the requirements that the information be submitted on a timely and accurate basis. The supervisor determines that the appropriate level of senior management is responsible for the accuracy of supervisory returns, can impose penalties for deliberate misreporting and persistent errors, and can require that inaccurate information be amended.**

Article 12, paragraph 3 of the Ordinance stipulates that the reporting to the BNA must be provided in a timely and accurate manner. Article 46 provides the BNA with the authority to impose a fine in case the institution does not comply with reporting deadlines. At this point in time a fine of NA f. 1,000 a day is imposed on noncompliant institutions.

4. **The information that is required to be submitted includes standardized prudential and statistical reports, and detailed balance sheets and income statements, as well as supporting schedules that provide details concerning on- and off-balance sheet activities and on reserves included in capital. Inclusion of data on loan classification and provisioning is also required.**

The submitted information contains the standardized, prudential, and statistical reports including a detailed balance sheet, profit and loss accounts, and the supporting schedules, as well as classification and provisioning information. Off-balance sheet information is not evaluated for classification and provisioning purposes during off-site analysis. It is assessed for provisioning purposes only during on-site examinations.

Class 3 "Capital accounts" on the balance sheet provides details on the reserves included in capital. The supporting schedule for specific provision for losses on loans and leases was developed to determine the classification of the total outstanding loans and to establish the

	<p>specific provision amount. The schedule for general loan loss provision includes the beginning balance, the additions, subtractions, and the ending balances.</p> <p>5. The supervisor has the authority to request and receive any relevant information from banks, as well as any of their related companies, irrespective of their activities, where the supervisor believes that it is material to the financial situation of the bank or the assessment of the risks of the bank.</p> <p>Article 12, paragraph 1 of the Ordinance stipulates that every credit institution is under the obligation, if asked to do so, to provide the BNA with all information that the BNA may deem necessary for the proper exercise of supervision. Per Article 17, the BNA is authorized to request all information from every corporation or institution in which a credit institution is participating or from every corporation or institution that is participating in a credit institution, which it deems necessary for the exercise of supervision on a consolidated basis.</p> <p>6. The supervisor has an analytical framework that uses the statistical and prudential information for the ongoing monitoring of the condition and performance of individual banks. The results are also used as a component of on-site supervision planning. This requires that the supervisor has an adequate information system.</p> <p>Off-site surveillance consists of the review of reports submitted by the banks. Compliance with requirements (i.e., solvency, liquidity) is the main focus of off-site surveillance. The Banking Supervision Department provides the management of the BNA a monthly exception report containing the exceptions noted during off-site surveillance activities. The planning for on-site examination takes into account the findings of off-site surveillance. Off-site surveillance is also charged with monitoring banks' follow up on items that were noted in on-site examination reports as requiring attention. The Off-Site Department monitors the execution of the items. If the issues are deemed important by the supervisors, dates for compliance are set in the report and management will be invited to the BNA to discuss the issues and what and when needs to be done to remedy matters. Agreements for follow up actions are also monitored by the Off-Site Department. Bank examiners will verify whether the bank has complied and has resolved the noted shortcomings in the next on-site examination.</p> <p>7. In order to make meaningful comparisons between banking organizations, the supervisor collects data from all banks and all other relevant entities within a banking organization on a comparable basis and related to the same dates (stock data) and periods (flow data).</p> <p>The data that is submitted by domestic banks and international banks is in a predefined format as set forth in the COA to enable comparison within each sector. However, there is no regular comparative analysis done between banking organizations.</p> <p>8. The supervisor collects data from banks at a frequency (e.g., monthly, quarterly, and annually) commensurate with the nature of the information requested and the size, activities, and risk profile of the individual bank.</p> <p>The data from all banks is collected on a monthly, quarterly, and annually basis, based on the nature, size, activities, and risk profile of the credit institutions sector. There are pre-determined periods for each class of institution and type of information. Balance sheet, profit and loss accounts, and supporting schedules one (solvency report) and two (liquidity report) are submitted on a monthly basis. The remaining supporting schedules are submitted on a monthly or quarterly basis. Furthermore, the financial institutions must annually submit</p>
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	<p>a management report, which details the nature of their business and range of activities. Major plans and expectations that would potentially affect the business must also be stipulated in this report.</p>
Assessment	Largely compliant
Comments	<p>Although the general framework is in place for off-site surveillance, the BNA needs to take some proactive steps to enhance its ability to monitor banks off-site.</p> <p>Off-site surveillance needs to be more risk focused in addition to its current compliance orientation. In addition, its findings should be documented beyond the current practice of preparing reports only when exceptions are noted. Brief, written reports noting key performance indicators and trends in performance would be a step in this direction. Currently, compliance with requirements (i.e., solvency, liquidity), is the main focus of off-site surveillance.</p> <p>Off-site surveillance currently monitors actions taken by banks to address noted shortcomings. Bank examiners will only verify whether the bank has complied with the regulations, and has resolved any shortcomings during next on-site examinations. Off-site surveillance needs to be more proactive and timely in this area. There should be documented follow up of banks compliance with requirements to address noted shortcomings. The supervisors should hold the banks accountable to reasonable deadlines for compliance. The delay until the next on-site examination cycle is too long. This time frame could allow weaknesses to impact the safe and sound operation of banks.</p> <p>Off-balance sheet information is not analyzed for classification and provisioning purposes through off-site analysis, only during on-site examinations. Banks should be required to classify and provision off-balance sheet items and report them with the same periodicity as on balance sheet items. The supervisors should analyze the adequacy of classification and provisioning of off-balance sheet items. Failure to do so is a shortcoming of credit risk management on the part of the banks and a shortcoming in the oversight by the BNA.</p> <p>There is a need for regular comparative analysis between banking organizations. This would allow individual banks' performance to be evaluated relative to their peers. In addition, the statistics gathered by the supervisors should be used to assess the condition of the banking sector as a whole. This would enable the supervisors to take proactive measures to address weakening industry trends as well as emerging problems in individual banks.</p> <p>There is a need for better reporting of problem loans by banks on the supporting schedule for Specific Provision for Losses on Loans and Leases. For example, there is a need to report changes in conditions since the prior report, reasons for changes, prospects for repayment or further deterioration, etc. There needs to be a minimum level of analysis with regard to changes in particular problem loans. The information that is now required to be reported is a static status report with no qualitative or quantitative analysis. Problem loans need to be proactively managed and the reporting to the BNA need to reflect what banks are doing to collect or work out their problem loans.</p>
Principle 19.	<p>Validation of Supervisory Information Banking supervisors must have a means of independent validation of supervisory information either through on-site examinations or use of external auditors.</p>
Description	<p>1. The supervisor has in place a coherent process of planning and executing on-site visits, using either in-house examiners, or making use of the work of external auditors, as appropriate. There are policies and procedures in place to ensure that examinations are conducted on a thorough and consistent basis with clear responsibilities, objectives, and outputs. The supervisor holds meetings with banks and their auditors to discuss the results of work by the external auditors and to agree on the responsibilities for corrective work.</p>

	<p>The BNA executes on-site examination to validate the supervisory information it receives. It has the authority to perform on-site examinations or have them performed by external auditors or experts in accordance with Article 16 of the Ordinance. External auditors would be required to report their findings directly and in writing to the BNA but in practice the BNA relies on its own examiners for on-site visits.</p> <p>On-site examinations focus on the CAMEL components and accounting and internal control systems, as well as compliance with rules and regulations. A rating from one to five (one is highest and five is lowest) is assigned for each CAMEL component and each institution is also assigned a composite rating based on its overall condition and performance.</p> <p>Depending on the financial condition of an institution and the analyses of the Off-Site Department, an examination is conducted at each institution annually or biannually and on an as needed basis. Preplanning for on-sites includes an analytical review of the recent off-site financial information obtained from the Off-Site Department, a determination of objectives and scope of the exam, team assignments, a review of pending issues since last examination and, if any, significant current issues to be addressed.</p> <p>At the end of each examination, an exit meeting is arranged between the in-house examiners and the institution's management in which the preliminary findings of the in-house examiners are discussed. The BNA provides the institution's management with a draft of the examination report for comment two weeks after the conclusion of the exam. If there is no management response within two weeks' time, which would prompt further discussion, the examination report is issued in its final form.</p> <p>2. The supervisor has the authority to monitor the quality of work done by external auditors for supervisory purposes. The supervisor has the authority to directly appoint external auditors for conducting supervisory tasks or oppose the appointment of an external auditor that is deemed to have inappropriate expertise and/or independence.</p> <p>Per Article 15, paragraphs 1 and 2 of the Ordinance, every institution is obliged to submit to the BNA its annual audited statements together with the independent auditors' report. Per paragraph 3, sub a, the financial institution must provide the BNA with a copy of the management letter prepared by the external auditors for the reporting year. The external auditors are required to review banks' Statement of Compliance with best practices.</p> <p>The BNA assesses the quality of the work done by the auditors by reviewing it against the applicable rules and regulations. Furthermore, the BNA reconciles the audited COA to the audited financial statements and to the unaudited COA, and evaluates the notes to the audited financial statements.</p> <p>Per Article 16, paragraphs 3 and 4, the BNA may appoint external auditors to conduct supervisory tasks and they must report their findings directly to the BNA. Per Article 24 of the mentioned Ordinance, any change in external auditor can only be effected upon approval by the BNA.</p> <p>3. The supervisor can also make use of external auditors to examine specific aspects of banks' operations, provided there is a well developed, professionally independent auditing and accounting profession with skills to undertake the work required. The respective roles and responsibilities for the supervisor and the auditors in these circumstances are clearly defined by the supervisor.</p>
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	<p>Pursuant to Article 16 of the Ordinance, the BNA may assign external auditors to conduct examination of specific aspects of the bank’s operations. They must inform the BNA directly of their findings and after approval of the BNA are to give a copy of the findings to the supervised institution. For each individual assignment an engagement letter is concluded between the BNA and the auditor. The letter serves as the terms of reference and sets forth the objective, range, and execution modalities of the engagement and the responsibilities of each party. In practice, the BNA has infrequently relied on external auditors for other than annual audit work.</p> <p>4. The supervisor has the legal right of full access to all bank records for the furtherance of supervisory work. The supervisor also has similar access to the Board, senior management, and staff, when required.</p> <p>Article 16, paragraph 2 of the Ordinance, gives the BNA the legal basis to access all bank records and to receive the necessary cooperation from the Board, senior management, and staff for the furtherance of its supervisory work.</p> <p>5. The supervisor has a program for the periodic examination of supervisory returns by examiners or through the work of external auditors. There is a requirement that certain key supervisory returns such as that for capital adequacy be examined at least annually by the auditors and a report submitted to the supervisor.</p> <p>The off-site department reviews the monthly and quarterly required supervisory reports and on-site examinations are conducted at each institution annually or biannually or on an as needed basis.</p> <p>Pursuant to Article 14 of the Ordinance, institutions are required to submit financial reports consisting of a balance sheet, income statement, contingent liabilities, and the supporting schedules. The supporting schedule entitled “Solvency Report” includes a capital adequacy test of the institution, while the supporting schedule entitled “Liquidity report” includes a liquidity adequacy test of the institution. In addition, institutions are required to submit their audited COA and the supporting schedules together with the independent auditors’ report annually.</p> <p>Additional:</p> <p>1. The supervisor meets with management and the Board of Directors each year to discuss the results of the supervisory examination or the external audit. Such visits should allow for the supervisor to meet separately with the independent Board members.</p> <p>If the BNA deems it necessary, it can meet with the external auditors and the supervised institution to discuss any main or pending issues. At the end of each examination, an exit meeting is arranged between the examiners and the institution’s management in which the preliminary findings of the in-house examiners are discussed. The supervisors can meet separately with the independent Board of Directors. The BNA is considering institutionalizing annual meetings with bank management and auditors.</p> <p>2. The supervisor meets periodically with external audit firms to discuss issues of common interest relating to bank operations.</p> <p>If the BNA deems it necessary, it will meet with the external auditors and the supervised institution to discuss main or pending issues. There is no annual meeting requirement.</p>
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	Pursuant to Article 15, paragraph 3, sub c of the Ordinance, the BNA can require the external auditors to provide it with an oral explanation of the audited financial statements.
Assessment	Largely compliant
Comments	The supervisors spent too much scarce supervisory time and resources, especially during on-site examinations, checking the accuracy of and reconciling the COAs of banks, which should be the banks' responsibility. This reconciliation is a poor use of supervisory staff, which should focus on the quality of banks' risk management practices. The BNA needs to assure that banks' have the appropriate staff to prepare COA; the BNA is moving in this direction by planning to impose fines on banks who do not provide accurate COAs. In addition, the BNA needs to assure that the external auditors together with the banks are able to reconcile audited financial information to the unaudited COAs. This should be spelled out in the scope of the external auditors' work. Also, the use of nonuniform reporting makes peer group comparison difficult.
Principle 20.	Consolidated Supervision An essential element of banking supervision is the ability of the supervisors to supervise the banking group on a consolidated basis.
Description	<p>1. The supervisor is aware of the overall structure of banking organizations (i.e., the bank and its subsidiaries) or groups and has an understanding of the activities of all material parts of these groups, including those that are supervised directly by other agencies.</p> <p>The BNA receives information on the structure of banking organizations at the licensing stage and on an ongoing basis. It may decide not to grant a license if it may not be able to exercise adequate and effective supervision over the institution.</p> <p>On an ongoing basis, reporting requirements include an Institution Information Form every two years detailing organizations' structure, annual receipt of audited statements of subsidiaries, and information learned during on-site exams. Through MoUs with Aruba, the Netherlands, and Venezuela it receives information about the operation of affiliates, branches, or subsidiaries of these supervised institutions in other jurisdictions.</p> <p>2. The supervisor has a supervisory framework that evaluates the risks that nonbanking activities conducted by a bank or banking group may pose to the bank or banking group.</p> <p>The BNA regularly receives information from credit institutions regarding their banking and nonbanking activities through periodic off-site reporting requirements as well as through on-site examinations. The BNA can give directives to credit institutions to address risk management issues in their nonbanking activities.</p> <p>3. The supervisor has the legal authority to review the overall activities of a bank, whether the activities are conducted directly (including those conducted at overseas offices), or indirectly, through subsidiaries and affiliates of the bank.</p> <p>Section 17 of the Ordinance stipulates that the BNA has the authority to obtain information from all institutions in which the credit institution participates, for the purpose of consolidated supervision. In addition, banks are required to report on a consolidated basis. MoUs with foreign supervisory authorities allow the BNA to review activities of subsidiaries, branches, and affiliates of credit institutions operating in the country of the foreign supervisor.</p> <p>4. There are no impediments to the direct or indirect supervision of all affiliates and subsidiaries of a banking organization.</p>

	<p>There are no impediments to the supervision of affiliates and subsidiaries. Per Section 17 of the Ordinance, the BNA is authorized to request information which it deems necessary for the exercise of its supervision from every corporation or institution in which a credit institution has a participating interest or institution which is participating in a credit institution. The Banking Supervision Ordinance and the MoUs authorize the BNA to examine subsidiaries, branches, and affiliates without any impediments.</p> <p>5. Laws or regulations establish, or the supervisor has the authority to impose, prudential standards on a consolidated basis for the banking organization. The supervisor uses its authority to establish prudential standards on a consolidated basis to cover such areas as capital adequacy, large exposures, and lending limits.</p> <p>Per Section 21 of the Ordinance, the BNA can issue directives to credit institutions on a consolidated basis for their conduct of business in the interest of the solvency or the liquidity of said institutions. Existing directives include:</p> <ul style="list-style-type: none">• minimum capital relative to credit or market risks;• minimum liquid resources; and• the prohibition, the restriction or the stipulations of conditions for risky activities or risky commitments on- and off-balance sheet. <p>The specific directives include a requirement for international credit institutions to maintain a positive liquidity position and a minimum equity to total risk assets ratio of 8 percent. Local banks are required to maintain a positive solvency position based on a weighted risk system and a liquidity position in line with minimum requirements. SR II and SR III, respectively, set forth requirements for transactions with affiliates, loans to affiliates, and extensions of credit to connected borrowers (also see page 3).</p> <p>6. The supervisor collects consolidated financial information for each banking organization.</p> <p>Consolidated audited financial statements are submitted for each banking organization on a parent (consolidated), parent (solo), and subsidiary only level.</p> <p>7. The supervisor has arrangements with functional regulators of individual business vehicles within the banking organization group, if material, to receive information on the financial condition and adequacy of risk management and controls of such business vehicles.</p> <p>Article 17 of the Ordinance authorizes the BNA to obtain all relevant information from every corporation or institution in which a credit institution is participating or that is participating in a credit institution although in principle the BNA's policy is to only allow bank holding companies in the jurisdiction.</p> <p>8. The supervisor has the authority to limit or circumscribe the range of activities the consolidated banking group may conduct and the overseas locations in which activities can be conducted; the supervisor uses this authority to determine that the activities are properly supervised and that the safety and soundness of the banking organization is not compromised.</p> <p>Section 23, paragraph 1, sub b, c, d, and f of the Ordinance, stipulates that credit institutions</p>
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	<p>require the BNA’s prior permission to maintain, acquire, or to increase their participation in another corporation or institution, to take over another corporation or institution, to merge with another corporation or institution, and to establish affiliates, branches and offices. The BNA’ licensing requirements give it the authority to impose certain conditions or restrictions on the credit institution’s activities.</p> <p>Additional:</p> <p>1. For those countries that allow corporate ownership of banking companies:</p> <ul style="list-style-type: none"> • The supervisor has the authority to review the activities of parent companies and of companies affiliated with the parent companies, and utilizes the authority in practice to determine the safety and soundness of the bank. • The supervisor has the authority to take remedial actions, including ring-fencing, regarding parent companies and nonbank affiliates concerning matters that could impact the safety and soundness of the bank. • The supervisor has the authority to establish and enforce fit and proper standards for owners and senior management of parent companies. <p>Per Article 3, paragraph 2 f of the Ordinance, the BNA reviews the three prior years audited statements of the parent company of the institution for which a banking license is being requested. The BNA may decide not to grant a license if the statements do not reflect an unqualified opinion, if the information provided by its parent company is inaccurate, or if it is of the opinion that the institution will not be able to realize its plans or meet supervisory requirements.</p> <p>Per Section 17, the BNA receives annual audited statements of the parent companies. The COA requires separate balance sheets for unconsolidated subsidiaries.</p> <p>Pursuant to Article 22, paragraph 1 of the Ordinance, the BNA may require a credit institution to take remedial actions if it is not complying with BNA directives, or if the BNA discerns signs of a development that could negatively impact the institution’s liquidity or solvency.</p> <p>Pursuant to Article 3, paragraph 2 b, c, and d of the Ordinance, the BNA requires the information as to the background of the managing directors, the Board of Directors, and shareholders. Furthermore, per Section 23, paragraph 2 of the Ordinance, the prior consent of the BNA is required to appoint persons who are responsible for the management and supervision of the institution and for the transfer of the shares of the credit institution. The BNA’s evaluation process of candidates for a position in the Board of Managing Directors, supervisory directors and principal shareholders includes a “fit and proper test.”</p>
Assessment	Compliant
Comments	
Principle 21.	<p>Accounting Standards Banking supervisors must be satisfied that each bank maintains adequate records drawn up in accordance with consistent accounting policies and practices that enable the supervisor to obtain a true and fair view of the financial condition of the bank and the profitability of its business, and that the bank publishes on a regular basis financial statements that fairly reflect its condition.</p>
Description	<p>1. The supervisor has the authority to hold management responsible for ensuring that financial record keeping systems and the data they produce are reliable, and that</p>

	<p>supervisor-required reports are submitted on a timely and accurate basis.</p> <p>Each supervised institution must annually provide unqualified audited financial statements to the BNA based on GAAP or IAS. In addition, they are required to submit a number of monthly and quarterly reports that are used in off-site supervision.</p> <p>Article 12, paragraph 3 of mentioned Ordinance states that the information and statements supplied to the BNA, must be provided in a timely, complete and accurate manner. Article 10 states that the BNA may send a warning or direction to a credit institution under its supervision if the credit institution does not meet its reporting obligations. Further, the BNA is planning to institute fines for noncompliance with the requirement that provided information should be accurate. This is because, while annual statements are externally audited and therefore accurate, the periodic reporting by credit institutions to the BNA often contains inaccuracies that need to be reviewed and corrected.</p> <p>2. The supervisor has the authority to hold management responsible for ensuring that the management report and financial statements issued annually to the public receive proper external verification and bear an external auditor's opinion.</p> <p>Pursuant to Article 14, paragraphs 1 and 3, sub b, and Article 15 of the Banking Supervision Ordinance 1994, each institution is under the obligation to submit to the BNA its audited COA and Supporting Schedules, its financial statements along with the independent auditors' report, and management letter annually.</p> <p>3. The supervisor ensures that information from bank records is verified periodically through on-site examinations and/or external audits.</p> <p>Pursuant to Article 14 and 15 of the Ordinance, each supervised institution must submit its audited COA and Supporting Schedules annually, along with the independent auditors' report and management letter. The auditors also review the Statement of Compliance, which is prepared by the Board of Supervisory Directors, with their independent report attached.</p> <p>The BNA performs on-site examinations at the supervised institutions in accordance with Article 16, paragraph 1 of the Ordinance, during which the BNA verifies the accuracy of the submitted information.</p> <p>Pursuant to Article 25 of the Ordinance, the BNA has the authority to admit foreign supervisors who are responsible for the consolidated supervision of their credit institutions, to carry out examinations at the credit institutions established in the Netherlands Antilles. At the end of their examinations, these supervisors report their findings to the BNA.</p> <p>4. The supervisor ensures that there are open communication lines with the external auditors.</p> <p>Article 15, paragraph 3, sub b, of the Ordinance grants BNA the legal authority to communicate with the external auditors. The supervisor contacts the external auditors in the event major issues arise during examinations, if the financial figures of the institution are not fairly and accurately stated or other major issues are to be resolved. The BNA plans to hold annual meetings with the Auditors Association to deepen lines of communication with external auditors. Furthermore, the BNA also plans to hold annual meetings with the external auditors of each individual institution.</p> <p>5. The supervisor provides report instructions that clearly establish the accounting standards to be used in preparing supervisory reports. Such standards are based on</p>
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accounting principles and rules that command wide international acceptance and are aimed specifically at banking institutions.

Pursuant to Article 14 of the Banking Supervision Ordinance 1994, each supervised credit institution is obliged to submit statements regarding its business operations to the BNA. Paragraph 2 of mentioned article stipulates that the BNA decides on the form, reporting period, and submission date of those statements for each type of credit institution. The COA are separate reporting manuals for local banks and international banks which detail the cases in which solo and consolidated reports should be submitted. Those reports contain on- and off-balance sheet items and data on capital adequacy, liquidity, and large exposures. General guideline 2 of the COA stipulates that the reporting institutions must comply with applicable laws and regulations as well as generally accepted accounting principles. However, because the COA is fundamentally a supervisory tool it may deviate from generally accepted accounting principles in some respects.

In addition, pursuant to Article 15 of the Ordinance each supervised credit institution must submit an audited report to the BNA annually that must contain at a minimum, a balance sheet, profit and loss account, and notes to the report. As to the form of the audited report, the BNA has not stipulated a compulsory format. However, the allowable accounting principles are U.S. GAAP, IAS, and Dutch GAAP.

6. **The supervisor requires banks to utilize valuation rules that are consistent, realistic, and prudent, taking account of current values where relevant and that profits are net of appropriate provisions.**

The supervised banks must comply consistently with the guidelines as laid down in the COA manuals. In accordance to these guidelines, these institutions should set up and record the necessary general and specific provisions. Assets are reported at their net realizable value. Reported profits are net of provisions.

7. **Laws or regulations set, or the supervisor has the authority, in appropriate circumstances, to establish, the scope and standards to be achieved in external audits of individual banks, and to make public issuance of individual bank financial statements subject to its prior approval.**

Per Article 16 of the Ordinance, the bank can have an external auditor do a targeted investigation at a supervised institution. The BNA can give directives to the auditor as to the scope of the examination and the issues it wants to be investigated. The auditor will report its findings directly to the BNA.

The BNA is currently working on a standard for publication of financial statements of individual institutions. The institutions are, however, free to publish their financial statements without prior approval of the BNA.

8. **The supervisor has the ability to treat as confidential certain types of sensitive information.**

The BNA has a legal obligation to preserve professional secrecy pursuant to Article 40 of the Ordinance, which states that all data and information obtained from the financial institutions are to be kept secret.

9. **The supervisor requires banks to produce annual audited financial statements based on accounting principles and rules that command wide international acceptance and**

	<p>have been audited in accordance with internationally accepted auditing practices and standards.</p> <p>The supervised banks must comply consistently with the guidelines as laid down in the COA manuals. Moreover, the annually audited financial statements of the supervised institutions are prepared in accordance with U.S. GAAP, IAS, or the Dutch GAAP.</p> <p>10. The supervisor has the right to revoke the appointment of a bank's auditors.</p> <p>If the BNA determines that the external auditors have provided unreliable information or have not complied with the requirements as stipulated in Article 15, paragraph 3 of the Ordinance (the auditor's reporting obligations to the BNA), it can direct the supervised institution to contract another auditor.</p> <p>11. Where supervisors rely primarily on the work of external auditors (rather than on their own examination staff), banks are required to appoint auditors who are recognized by the supervisor as having the necessary professional skills and independence to perform the work.</p> <p>The BNA relies primarily on the work of its own examiners.</p> <p>Additional:</p> <p>1. The supervisor promotes periodic public disclosures of information that are timely, accurate, and sufficiently comprehensive to provide a basis for effective market discipline.</p> <p>The BNA does not yet promote periodic public disclosures of information. Currently though, there are two local banks that publish their balance sheets annually, and one bank that publishes both its balance sheet and profit and loss accounts. The BNA follows the BIS principles and will continue to do so in the future. Therefore, more public disclosure will be promoted in due course, to stimulate market discipline.</p> <p>2. The supervisor has guidelines covering the scope and conduct of audit programs that ensure that audits cover such areas as the loan portfolio, loan loss reserves, nonperforming assets, asset valuations, trading and other securities activities, derivatives, asset securitizations, and the adequacy of internal controls over financial reporting.</p> <p>The COA reporting guidelines covers the areas relevant for the Netherlands Antilles. In addition, the Statement of Compliance and the corporate governance detail comprehensive internal controls. The institution's external auditors review the Statement of Compliance before it is submitted to the BNA.</p> <p>3. Auditors have the legal duty to report to the supervisor matters of material significance, for example, failure to maintain the licensing criteria, or breaches of banking or other laws. The law protects auditors from breach of confidentiality when information is communicated in good faith.</p> <p>Pursuant to Article 15, paragraph 3, sub b of the Ordinance, the external auditors have the legal duty to report to the BNA matters of material significance. Moreover, per Article 16, paragraphs 3 and 4 of the Ordinance, when the BNA assigns an external auditor to perform a special investigation, the auditor is required to report his findings directly to the BNA.</p>
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	<p>4. Auditors also have the legal duty to report matters to the supervisor, in situations where they become aware of matters that, in the context of the available information, they believe is likely to be of material significance to the functions of the supervisor.</p> <p>As indicated above under question number 3, pursuant to Article 15, paragraph 3, sub b of the Ordinance, the external auditors have a legal duty to report to the BNA matters of material significance. In addition, when assigned to perform a special investigation, the auditor is required to report his findings directly to the BNA.</p>
Assessment	Largely compliant
Comments	<p>The BNA needs to enforce the accuracy of submitted prudential reports. The COAs submitted by credit institutions often contain inaccuracies that the BNA then spends time and personnel resources to have it corrected by the institution. A significant part of on-site examination time is devoted to reviewing and mapping the information from the institutions accounting system with the figures of the submitted COAs. The BNA recognizes this and is moving toward instituting fines for submission of inaccurate COAs. This should allow for more accurate reporting by credit institutions and more productive deployment of examiners during on-site examinations and in supervisory oversight of risk management in general.</p> <p>The BNA should make public issuance of individual bank financial statements subject to its prior approval in order to ensure that they meet minimum standards.</p>
Principle 22.	<p>Remedial Measures</p> <p>Banking supervisors must have at their disposal adequate supervisory measures to bring about timely corrective action when banks fail to meet prudential requirements (such as minimum capital adequacy ratios), when there are regulatory violations, or where depositors are threatened in any other way. In extreme circumstances, this should include the ability to revoke the banking license or recommend its revocation.</p>
Description	<p>1. The supervisor has the authority, backed by legal sanctions, to take an appropriate range of remedial actions against, and impose penalties upon, banks, depending on the severity of a situation. These remedial actions are used to address such problems as failure to meet prudential requirements and violations of regulations. They range from informal oral or written communication with bank management to actions that involve the revocation of the banking license.</p> <p>In case a bank does not comply with the rules and regulations imposed by the BNA, based on Article 10 of the Banking Supervision Ordinance 1994, the BNA may send a warning or an order to the bank. Within 30 days after receipt of this letter the bank has an obligation to obey the warning and comply with the order. The BNA can extend the 30 day term by no more than 60 days. If the bank does not obey or follow the warning or direction within this term, pursuant to Article 9, paragraph 1, sub e of the Banking Supervision Ordinance 1994, the BNA can withdraw the bank's license.</p> <p>Based on Article 9 of the above-mentioned Ordinance, the BNA can also withdraw its license if a bank:</p> <ul style="list-style-type: none"> • does not carry on the business for which a license has been granted; • violated the restrictions or conditions connected to the license or the provisions of the Banking Supervision Ordinance 1994; and • has an independent auditors' report with other than an unqualified opinion. <p>2. The range of possible actions available is broad, including, in addition to the others mentioned, restricting the current activities of the bank, withholding approval of new</p>

activities or acquisitions, restricting or suspending payments to shareholders or share repurchases, restricting asset transfers, barring individuals from banking, replacing or restricting the powers of managers, directors, or controlling owners, arranging a take-over by or merger with a healthier institution, and imposing conservatorship.

Based on Article 21 of the Banking Supervision Ordinance 1994, the BNA has the authority to give binding instructions to prohibit, restrict, or set conditions against unsafe and unsound activities or on- and off-balance sheet commitments. Per paragraph 2, sub e of the same article the BNA can also give binding instructions on the conduct of the management of the bank as to the institution's administrative accounting, financial accounting, and internal control.

Article 22, paragraph 1 of the Banking Supervision Ordinance 1994, indicates that in case a bank does not comply with Article 21 of the above-mentioned Ordinance, or there are signs of a development that could jeopardize the liquidity or solvency of the bank, the BNA shall request the bank by registered letter, in the form of a directive, to undertake the necessary measures to remedy this situation.

Article 22, paragraph 2 of the Banking Supervision Ordinance 1994, states that if the above-mentioned request has not been adequately complied with within the term specified by the BNA, the BNA can serve a notice to this bank indicating that the BNA has appointed a silent trustee. This notice shall take immediate effect. As of a certain specified date, the actions to be approved by the silent trustee are specified up front.

Article 23, paragraph 4, of the Banking Supervision Ordinance 1994 indicates that when a bank performs an act without the approval of the BNA, then the institution shall be obliged to reverse the action, unless the BNA grants its approval thereafter.

The BNA can petition the court for imposition of "emergency measures" and file for bankruptcy, as regulated in the Article 27 through Article 38 of the above-mentioned Ordinance when a bank has a solvency or a liquidity deficit. Under these measures, the court authorizes the BNA to transfer commitments of the credit institution, as well as to liquidate the institution. This measure is applied by the court when needed in the best interest of the depositors and other creditors of the institution.

In addition, pursuant to Article 46 of the Banking Supervision Ordinance 1994, the BNA can impose a fine upon the banks that have not complied with reporting deadlines. Further, Article 50 of the above-mentioned Ordinance indicates that violation of the regulations of the Banking Supervision Ordinance 1994, in case it has been committed with willful intention, shall be regarded as a felony and shall be punished by imprisonment for a term not exceeding four years.

3. The supervisor ensures that remedial actions are taken in a timely manner.

In its letter to the bank to take the necessary measures, the BNA specifies the time frame in which such measures should take place. If there is no compliance within the term specified by the BNA, it can take further remedial actions such as the appointment of a silent trustee, pursuant to Article 22, paragraph 2, of the Banking Supervision Ordinance 1994.

4. The supervisor applies penalties and sanctions not only to the bank but, when and if necessary, also to management and/or the Board of Directors.

Pursuant to Article 22, paragraph 4, sub e of the Banking Supervision Ordinance 1994, the persons who, as an organ of the institution, perform certain activities which could jeopardize

	<p>the liquidity and solvency of the institution, shall be individually liable towards the bank.</p> <p>In addition, the BNA can remove managers and directors at any time if they are not found to be fit and proper.</p> <p>Additional:</p> <ol style="list-style-type: none"> Laws and/or regulations mitigate against the supervisor unduly delaying appropriate corrective actions. <p>Imposing a corrective action does not delay any other action from being put into effect. The Banking Supervision Ordinance 1994 provides the supervisor with corrective actions that can be acted upon immediately. Emergency measures and bankruptcy annul any other actions taken.</p> <ol style="list-style-type: none"> The supervisor addresses all significant remedial actions in a written document to the Board of directors and requires that progress reports are submitted in writing as well. <p>All requests for remedial action must be in writing pursuant to Article 10 and Article 22 of the above-mentioned Ordinance.</p> <p>Furthermore, all conclusions from the examination report requesting remedial actions and for which an exception report is required must also be directed to the bank in writing.</p>
Assessment	Compliant
Comments	<p>The BNA would benefit from having the ability to impose fines and/or penalties on senior management and/or directors. Experience in other countries has shown that imposition of these penalties, or even the potential of their being imposed, has compelled bank management to take timely remedial action when directed to by the supervisory authority. In addition, the BNA needs to have clear powers to remove credit institutions' management without having to threaten to withdraw their license.</p>
Principle 23.	<p>Globally Consolidated Supervision</p> <p>Banking supervisors must practice global consolidated supervision over their internationally active banking organizations, adequately monitoring and applying appropriate prudential norms to all aspects of the business conducted by these banking organizations worldwide, primarily at their foreign branches, joint ventures, and subsidiaries.</p>
Description	<ol style="list-style-type: none"> The supervisor has the authority to supervise the overseas activities of locally incorporated banks. <p>Pursuant to Article 18 of the Ordinance, the BNA supervises all credit institutions, including the overseas activities of locally incorporated banks under Article 17, the BNA has the authority to request for all information from every corporation or institution in which the supervised institution is participating, or from every corporation or institution that is participating in a credit institution, which it deems necessary for the exercise of supervision on a consolidated basis. Per Article 21, the BNA can give binding instructions to credit institutions—in the interest of good conduct of business, and of their solvency or liquidity.</p> <ol style="list-style-type: none"> The supervisor satisfies itself that management is maintaining proper oversight of the bank's foreign branches, joint ventures, and subsidiaries. It also satisfies itself that the local management of any overseas offices has the necessary expertise to manage those operations in a safe and sound manner. <p>Based on Article 12 of the Ordinance the BNA requires a Management Report that is management's qualitative assessment of the institution's business and performance in the</p>

	<p>markets in which it operates, including its overseas operations. The BNA meets with the institution's management to discuss the information in the Management Reports at least once every 18 months.</p> <p>The BNA receives annually audited consolidated financial statements from supervised institutions along with the audited financial statements of any overseas subsidiaries. The BNA also satisfies itself that the local management of the overseas offices has the necessary expertise to manage those operations in a safe and sound manner.</p> <p>Under the MoUs that are in place, the BNA directors and staff have regular contact with the supervisory authorities of Aruba, the Netherlands, and Venezuela. During these contacts, the status and the expertise of the local management of the relevant foreign banking operations are discussed, which also helps to evaluate the oversight of the bank's management of its foreign operations.</p> <p>3. The supervisor determines that bank management's oversight includes (a) information reporting on its overseas operations that is adequate in scope and frequency and is periodically verified; (b) assessing in an appropriate manner compliance with internal controls; and (c) ensuring effective local oversight of foreign operations.</p> <p>In accordance with the Guideline on Corporate Governance, the BNA requires the Board of Directors to establish adequate information, documentation, and reporting systems to monitor all the operations and performance of an institution. The Board is required to oversee the sound business performance of the institutions operations as a whole.</p> <p>The BNA receives and reviews the audited consolidated financial statements of the financial institution (including that of the parent-only and of the subsidiary-only) and the auditor's management letter. In the event any major issues arise, the BNA will follow up with bank management.</p> <p>4. The home country supervisor has the authority to require closing of overseas offices, or imposing limitations on their activities, if it determines that the supervision of a local operation by the bank and/or by the host country supervisor is not adequate relative to the risks the office presents.</p> <p>Pursuant to Article 22 of the Ordinance, the BNA has the authority to undertake necessary measures (such as closing the foreign office) or pursue a particular policy if it determines that above-mentioned supervision is not adequate or that it could jeopardize the liquidity or solvency of the institution.</p> <p>In addition, pursuant to Article 4, paragraph 5 of the Ordinance, the BNA has the authority to withhold a license if it is of the opinion that the home country supervisor cannot exercise adequate and effective supervision on a consolidated basis.</p> <p>Additional:</p> <p>1. The supervisor has a policy for assessing whether it needs to conduct on-site examinations or require additional reporting, and it has the legal authority and resources to take those steps as and when appropriate.</p> <p>The BNA has the authority to perform on-site examinations at the institution in accordance with Article 16 of the Ordinance. Depending on the financial condition of the institution, the findings of the previous examination and the analyses of the Off-Site Department, an examination is conducted at the institution annually or biannually.</p>
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	<p>2. The supervisor determines that management’s local oversight of foreign operations is particularly close when the foreign activities differ fundamentally from those conducted in the home country, or are conducted at locations that are especially remote from the principal locations at which the bank conducts comparable activities.</p> <p>By means of the regular prudential reports (consolidated and individual) and the audited consolidated and nonconsolidated financial statements of the group, the Management Report, and the Statement of Compliance, the supervisor determines whether the foreign activities differ fundamentally from those in the home country. During the on-site examination the examiners assess the level of oversight by management. In addition, oversight is discussed during meetings between the management of the institution and the BNA.</p> <p>3. The supervisor arranges to visit the offshore locations periodically, the frequency determined by the size and risk profile of the overseas operation. The supervisor meets the local supervisors during these visits.</p> <p>The number of local and international banks with offshore foreign operations is very limited. The BNA has concluded MoUs with the supervising authorities of the countries in which its banks have material foreign operations. The BNA maintains contact with foreign authorities by means of regular visits. The BNA has entered into an MoU with Aruba, the Netherlands, and Venezuela, in order to supervise the institutions adequately on a consolidated basis. The MoU’s allow the BNA to conduct examinations of foreign operations.</p> <p>4. The home country supervisor assesses the quality of supervision conducted in the countries in which its banks have material operations.</p> <p>The BNA assesses the quality of supervision based on its current knowledge of relevant foreign supervisory laws and regulations and through contacts with the supervisors.</p>
Assessment	Compliant
Comments	This is not a significant risk area for the Netherlands Antilles. The overseas operations of local institutions is limited. There is only one branch and one subsidiary of local banks, both in Aruba.
Principle 24.	<p>Host Country Supervision</p> <p>A key component of consolidated supervision is establishing contact and information exchange with the various other supervisors involved, primarily host country supervisory authorities.</p>
Description	<p>1. For significant overseas operations of its banks, the home country supervisor establishes informal or formal arrangements (such as MoUs) with host country supervision for appropriate information sharing on the financial condition and performance of such operations in the host country. Information sharing arrangements with host country supervisors include being advised of adverse assessments of such qualitative aspects of a bank’s operations as the quality of risk management and controls at the offices in the host country.</p> <p>Article 41 of the Banking Supervision Ordinance allows the BNA to provide information and data obtained in the performance of its duty to foreign supervisory authorities responsible for the supervision of institutions and corporations operating on the financial markets.</p> <p>The BNA has entered into agreement with Aruba, the Netherlands, and Venezuela in the form of a MoU. These supervisory authorities were the first to be chosen based on the relatively larger number of credit institutions in their jurisdiction having affiliate institutions operating in the Netherlands Antilles, with Netherlands Antilles’ institutions having</p>

	<p>affiliates in their jurisdiction (specifically Aruba). The MoUs stipulate that, on a best efforts basis, the home and host supervisors shall provide information on credit institutions and their affiliates under their supervision either upon request or when deemed necessary, including matters relating to:</p> <ul style="list-style-type: none"> • whether the operations of a credit institution are conducted in a safe and sound manner and in conformance with applicable prudential standards; • whether there has been evidence of a material violation of law; and • events that could have a material adverse effect on the financial stability of financial institutions in the home or host country. <p>2. The supervisor can prohibit banks or their affiliates from establishing operations in countries with secrecy laws or other regulations prohibiting flows of information deemed necessary for adequate supervision.</p> <p>Pursuant to Article 23, paragraph 1, sub f of the Ordinance, it is prohibited for a credit institution to establish affiliates, branches, and offices without the prior approval of the BNA. Therefore, the BNA can withhold permission to establish affiliates, branches or offices in such a country.</p> <p>3. The home supervisor provides information to host country supervisors concerning the specific offices in the host country, concerning the overall framework of supervision in which the banking group operates and, to the extent appropriate, concerning significant problems arising in the head office or in the group as a whole.</p> <p>Pursuant to Article 41 of the Ordinance, the BNA is able to provide such information to foreign supervisory authorities provided that the information is kept confidential. In addition, the provision of such information is done under the existing MoUs. In addition to the formal arrangements, the BNA also has informal contacts with the supervisory authorities of other jurisdictions. There are plans to establish MoUs with other jurisdictions that have significant operations in the Netherlands Antilles.</p> <p>Additional:</p> <p>1. A supervisor who takes consequential action on the basis of information received from another supervisor, consults with that supervisor, to the extent possible, beforehand.</p> <p>When the BNA has received such information in the past it has consulted the foreign supervisory authorities prior to taking any further action. Furthermore, in the MoU's concluded with the Netherlands and Aruba, there are specific stipulations to this effect.</p> <p>2. Even for less than significant overseas operations of its banks, the home country supervisor exchanges appropriate information with host country supervisors.</p> <p>The BNA has assisted foreign supervisors in their requests. For example, when requested by foreign supervisors, the BNA has provided declarations of no objection for the direct or indirect transfer of shares of a financial institution under the BNA's supervision.</p>
Assessment	Compliant
Comments	Given the number of foreign bank operations in the Netherlands Antilles, the BNA is encouraged to continue to enter into MoUs with foreign supervisory authorities.
Principle 25. Supervision Over Foreign Banks' Establishments	

	<p>Banking supervisors must require the local operations of foreign banks to be conducted with the same high standards as are required of domestic institutions and must have powers to share information needed by the home country supervisors of those banks for the purpose of carrying out consolidated supervision.</p>
<p>Description</p>	<ol style="list-style-type: none"> <li data-bbox="431 390 1464 596"> <p>1. Local branches and subsidiaries of foreign banks are subject to similar prudential, inspection, and regulatory reporting requirements as domestic banks.</p> <p>The prudential supervisory provisions of the Ordinance are applicable to all credit institutions operating in the Netherlands Antilles, both foreign and domestic. Therefore, local branches and subsidiaries of foreign banks are subject to the same prudential, inspection and regulatory reporting requirements as domestic banks.</p> <li data-bbox="431 632 1464 1205"> <p>2. For purposes of the licensing process as well as ongoing supervision, the host country supervisor assesses whether the home country supervisor practices consolidated global supervision.</p> <p>Pursuant to Article 4, paragraph 5 of the Ordinance, the BNA may decide to withhold a license from an institution if it is of the opinion that the supervisory authority in the country of origin of the institution cannot exercise adequate and effective supervision on a consolidated basis.</p> <p>The admission requirements of credit institutions in the Netherlands Antilles differentiate between consolidated international banks and nonconsolidated international banks. Consolidated international banks that operate in the Netherlands Antilles are, through their parent company, subject to adequate consolidated supervision by a foreign supervisory authority. Nonconsolidated international banks are those for which the BNA acts as the primary supervisory authority. The BNA determines whether an international credit institution will classify as consolidated or nonconsolidated international banks. On an ongoing basis the BNA also considers if the classification is still adequate; some international banks were reclassified last year based on the improved consolidated supervision of their respective foreign supervisory authority.</p> <li data-bbox="431 1241 1464 1507"> <p>3. The host supervisor, before issuing a license, determines that approval (or no objection) from the home supervisor has been received.</p> <p>The admission requirements for both foreign and domestic credit institutions under the BNA's supervision stipulate that the BNA has to receive a statement from the supervisory authority of the head office or parent company, stating that there are no legal impediments to the establishment in the Netherlands Antilles and indicating to the BNA how, and to what extent, supervision will be exercised upon the applicant institution, prior to the issuance of a license.</p> <li data-bbox="431 1543 1464 1879"> <p>4. The host country supervisor can share with home country supervisors information about the local operations of foreign banks provided its confidentiality is protected.</p> <p>Article 41, paragraph a, of the Ordinance stipulates that the BNA may provide information to foreign authorities provided that the preservation of secrecy with respect to such information and data is obligatory by law in the foreign country and that, in the BNA's opinion, the preservation of secrecy is real and sufficiently guaranteed.</p> <p>Furthermore, the three MoUs in place stipulate explicitly that the parties shall keep confidential all information received under the MoU and shall not otherwise disclose the information other than as necessary to carry out the supervisory functions.</p>

	<p>5. Home country supervisors are given on-site access to local offices and subsidiaries for safety and soundness purposes.</p> <p>Article 25 of the Banking Supervision Ordinance provides that the Bank has the authority, within the framework of the prudential supervision, to permit foreign supervisory authorities to carry out investigations at credit institutions established in the Netherlands Antilles that are under the consolidated supervision of the foreign authorities. Furthermore, the article specifies that the BNA may stipulate conditions or give directions for the implementation of such supervisory activities. The MoU's also state that branches and subsidiaries established in the country of one of the parties may be inspected on-site by the home supervisor, provided adequate notification procedures and procedures to communicate results of such examinations are established.</p> <p>6. The host country supervisor advises home country supervisors on a timely basis of any material remedial action it takes regarding the operations of a bank from that country.</p> <p>The BNA's rules, regulations, and policies do not indicate that the BNA should advise home country supervisors of any material remedial action taken against such foreign banks. However, the MoU between the BNA and each of the three aforementioned supervisory authorities provides for timely exchange of information between the BNA and the foreign supervisor on material remedial action.</p> <p>Additional:</p> <p>1. The host country supervisor obtains from home country supervisors sufficient information on the banking group to allow it to put into proper perspective the activities conducted within its borders.</p> <p>The BNA requests such information from home country supervisors on an as needed basis or in case of a material change of the shareholders of the institution. Per Article 4, paragraph 3 of the Ordinance, the BNA may decide not to grant a license in case the structure of the group to which the credit institution belongs is such that the BNA is not in a position to adequately supervise it. The MoUs allow for the exchange of information on the relevant banking groups.</p>
Assessment	Compliant
Comments	

Recommended action plan

Table 3. Recommended Action Plan to Improve Compliance of the Basel Core Principles

Reference Principle	Recommended Action	Implementation Date
Legal Protection of Supervisors (CP 1 (5))	The BNA should study the possibility of including explicit legal protection for individual staff members as part of the Banking Supervision Ordinance.	The Antillean legal system implicitly provides protection. However, the BNA will study the possibility of including it explicitly. This will require time consuming amendments of the law.
Information Sharing (CP 1 (6))	The limitation with regard to exchanging names of individual deposit holders should be eliminated to facilitate the exchange of information for AML/CFT investigations, both domestically with the National Reporting Center as well as with foreign supervisory requests for information and/or criminal cases.	As stated in Article 40 of the Banking Supervision Ordinance, in criminal cases this information can be submitted. So no immediate need for action.
Licensing (CP 3)	The supervisor should consider specific, more intrusive monitoring of new licensees, as appropriate.	Ongoing.
Credit Policies (CP 7)	The Guidance Note states that standards should be communicated “preferably” in writing. To ensure consistency of interpretation, standards should be required to be communicated in writing.	Already adapted in guidance notes of October 2001 that are an update of the old ones.
Loan Evaluation and Loan Loss Provisioning (CP 8)	<ul style="list-style-type: none"> • For problem credits regular reviews should be at least quarterly. Banks should be required to review all performing loans at least annually. • There is a need for better reporting of problem loans by banks to the supervisory authority on the supporting schedule for Specific Provision for Losses on Loans and Leases. • There is a need to develop a system for the classification and provisioning of off-balance sheet items. • A rapid implementation program of credit-risk-focused, relatively small scale on-site inspections, and thorough discussions with the banks on individual risky or deteriorating credits and off-balance sheet exposures is therefore to be recommended. • Amend Regulation V 4.2 to eliminate the exemption from loan loss provisioning guidelines for branches of foreign banks for which the bank has received a guarantee for all liabilities. 	<p>Introduced November 2002.</p> <p>Introduced March 2003.</p> <p>Introduced December 2002.</p> <p>Introduced January 2003.</p> <p>Introduced November 2002.</p>

Reference Principle	Recommended Action	Implementation Date
Country Risk (CP 11)	The BNA should implement its plan to put in place a system for periodic reporting of and provisioning for country risk exposures.	Introduced August 2003.
Market Risk (CP 12)	The BNA should complete its survey among credit institutions to identify and quantify their market risk levels and decide whether to make changes to reporting requirements for this risk.	Introduced December 2002.
Other Risks (CP 13)	The BNA should require banks to assess and manage their interest rate risk, and the BNA should include assessments of IRR in its supervisory off-site surveillance and on-site examinations.	Introduced January 2003.
Internal Control and Audit (CP 14)	The BNA should have the capacity to impose fines and penalties for noncompliance by banks with the requirement to prepare and submit accurate COAs.	Introduced June 2003 (it requires a law change).
On-Site and Off-Site Supervision (CP 16)	<ul style="list-style-type: none"> • The BNA needs to enhance the effectiveness of its supervision. (see actions recommendation for CP 8 and CP 18) • The BNA needs to assure that the external auditors, together with the banks, are able to reconcile audited financial information to the unaudited COAs. • The BNA should use off-site surveillance to monitor trends and developments for the banking sector as a whole. 	<p>Introduced January 2003.</p> <p>Introduced January 2003.</p>
Bank Management Contact (CP 17)	<ul style="list-style-type: none"> • There is a need for more regular contact with bank management and the BNA is moving in this direction. • There is a need for a requirement for official notification to the BNA by banks in case of a breach of legal and prudential requirements. 	<p>Introduced October 2003.</p> <p>Introduced October 2003.</p>
Off-Site Supervision (CP 18)	<ul style="list-style-type: none"> • Brief, written reports noting key performance indicators and trends in performance should be incorporated into the off-site surveillance process. • There should be documented follow up of banks compliance with requirements to address noted shortcomings. • There is a need for regular comparative analysis between banking organizations to allow banks' performance to be evaluated relative to their peers. • Statistics gathered by the supervisors should be used to assess the condition of the banking sector as a whole. 	<p>Introduced January 2003.</p> <p>Introduced December 2003.</p> <p>Introduced March 2003.</p> <p>Introduced March 2003.</p>
Accounting Standards (CP 21)	The BNA should make public issuance of individual bank financial statements subject to its prior approval in order to ensure they meet minimum standards.	Introduced October 2002.

Reference Principle	Recommended Action	Implementation Date
Remedial Measures (CP 22)	<ul style="list-style-type: none"> • The BNA would benefit from having the ability to impose fines and/or penalties on senior management and/or directors. • The BNA needs to have clear powers to remove credit institutions' management without having to threaten to withdraw their license. 	<p>Introduced December 2003.</p> <p>Introduced December 2003.</p>
Host Country Supervision (CP 24)	Given the number of foreign bank operations in the Netherlands Antilles, the BNA is encouraged to continue to enter into MoU's with foreign supervisory authorities.	Introduced September 2003.

Authorities' response to the assessment

9. The main comments of the authorities concern the assessment of the interrelated principles 8 and 16, on credit policies and on-site inspections. While recognizing that some work remained to be done with regard to asset quality monitoring and on-site work in this field, the BNA pointed out that work is underway to increase the frequency of targeted inspections. Meanwhile, it considered the suggestion that insufficient frequency of inspections will lead banks to not review their portfolio on a regular basis, and that more intrusive monitoring is necessary as too harsh. It also contests the implication that insufficient frequency of on-site work implies that inspectors are not in a position to monitor banks' portfolios adequately. The BNA also considered that asset quality issues were relevant primarily for domestic institutions and less for international banks in the Netherlands Antilles. The domestic situation is considered to be under control. A more balanced rating than "materially noncompliant" is considered merited.

10. **Also, interest rate risk was not considered a major risk, in light of the stability of interest rates, the breadth of spreads, and repricing possibilities.** However, the BNA will look into this and develop a monitoring mechanism. The BNA considers that more proactive monitoring of how banks deal with problem loans would be more labor intensive than is warranted, given limited staff resources.

II. ASSESSMENT OF OBSERVANCE OF THE INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS INSURANCE CORE PRINCIPLES

A. General

11. **The assessment was conducted in the context of the Module II Offshore Financial Center Assessment performed by a joint MAE¹/LEG mission in January and**

¹ The IMF's Monetary and Exchange Affairs Department (MAE) was renamed Monetary and Financial Systems Department (MFD) as of May 1, 2003.

April 2002 and based on updated information provided by the BNA through September 2003. The legal and regulatory framework, as well as the policies and practices of the BNA, as the supervisory authority for the pensions and insurance sectors, were assessed. The assessment was based on study of the laws and regulations, and discussions with private sector representatives, professional organizations, and BNA management and staff. The assessment was conducted by Mr. Steve Butterworth, Director for Insurance of the Guernsey Financial Services Commission. The assessment was based on the International Association of Insurance Supervisors (IAIS) standards for insurance supervision and the IAIS methodology. The assessor enjoyed full cooperation of the authorities.

Table 4. Summary Observance of IAIS Insurance Core Principles

Assessment Grade	Principles Grouped by Assessment Grade	
	Count	Principles
Observant	5	1, 10, 13, 14, 17
Broadly observant	11	2, 3, 4, 5, 6, 7, 8, 9, 12, 15, 16
Materially nonobservant	1	11
Nonobservant	0	
Not applicable	0	

B. Main Findings and Recommendations

Organization of an insurance supervisor (Principle 1)

12. **The BNA is observant of this principle.** Responsibilities of the BNA are clear and objectively stated, and the BNA is operationally and financially independent from the government, although it is capitalized by the government. It is also independent from the industry. Staff is of high quality and trained on an ongoing basis. Procedures for on-site and off-site supervisory work are in place and are clear and well documented, although some of the newer ones still await completion. It is recommended that the BNA continue to evaluate the resources needed to implement the planned program of on-site examinations, and for the introduction of new rules and regulations and the associated additional supervisory workload. New staff has been hired, including an actuary, and additional staff is being interviewed. The new regulations need to be completed as soon as possible.

Licensing (Principle 2)

13. **The authorities are broadly observant of this principle.**

Part 1: Companies underwriting risks in the domestic market. Legal provisions are in place entrusting the BNA to regulate the insurance sector and designate it as the licensing authority. Appropriately rigorous licensing arrangements are in place. Actual refusal of a formal license application rarely takes place, as in appropriate cases the applicant is usually persuaded to withdraw the application.

Part 2: Assessment of key functionaries and business plan. The requisite legal and regulatory standards are in place. To assist the assessment of compliance with fit and proper criteria, a new Integrity Unit has been created, which is able to exchange information with the public prosecutor's office.

Part 3: Reliance on insurance supervisors in other jurisdictions. Reliance on the information of insurance supervisors in other jurisdictions is an integral part of the licensing process and will be strengthened when more MoU's are concluded with supervisors abroad.

14. **Licensing of captives or professional reinsurers can raise specific issues when it is incorporated abroad.** In such cases, licensing should wait until satisfactory arrangements have been made for cooperation and exchange of information with the foreign supervisor. Licensing of composites should be excluded.

Changes in control (Principle 3)

15. **The authorities are broadly observant of this principle.** The BNA monitors changes in control. These requirements need to be brought explicitly into the legislation. Prior approval for any changes should be required. These aspects are now dealt with in a Licensing Manual, of which, the legal basis is found in Article 17 of the Insurance Ordinance and Article 4 of the Special Insurance License Decree. In one recent case a six month negotiation process preceded the BNA approval of a change in control over one of the largest companies in the Netherlands Antilles. The BNA recently refused a nonlife insurance company permission to acquire shares in a newly incorporated life insurance company.

Corporate governance (Principle 4)

16. **The authorities are broadly observant of this principle.** Assessment of management and ownership takes place as described above. For Board members, the guidelines are laid down in "Guidance Notes," which also need to be given the status of a binding law or regulation, and made applicable to captives and professional reinsurers. Currently, it is not mandatory for captives and professional reinsurers to have a Supervisory Board. In practice, most do and they consequently must adhere to the BNA Guidance Notes.

Internal controls (Principle 5)

17. **The authorities are broadly observant of this principle.** Internal controls are a standard element in the well established program of off-site analysis and on-site inspections. Guidance notes on internal controls—even if abided by—should be given a more binding legal status.

Assets (Principle 6)

18. **The authorities are broadly observant of this principle.** Supervisory control of assets is outlined in supervisory procedures and the new Annual Report Automated Statements (ARAS) system, but not in regulations. These procedures need to be given more

binding status. Supervision over assets held abroad may pose practical difficulties, requiring good cooperation with foreign supervisors.

Liabilities (Principle 7)

19. **The authorities are broadly observant of this principle.** As in many other jurisdictions, financial statements and the valuation of assets takes place according to GAAP or international standards relevant to the Netherlands Antilles. Technical provisions are described extensively in ARAS and examined annually. The BNA should develop its own standards for the valuation of liabilities. A new valuation manual is expected to be issued in December 2003, taking into account IAS.

Capital adequacy and solvency (Principle 8)

20. **The authorities are broadly observant of this principle.** The implementation of supervision in the Netherlands Antilles goes a considerable way towards capital adequacy requirements that reflect the size complexity and risks of the insurer. IAIS have not developed standards in this area. The authorities intend to revise the solvency requirements, to reflect more of the complexity and risks of the different categories of insurers. At present, the solvency requirement for professional reinsurers seems to be on the low side. This needs review. Captives should also be subjected to more risk based capital requirements. After implementation of these rules, a higher level of compliance will be achieved.

Derivatives and “off-balance sheet” items (Principle 9)

21. **The authorities are currently broadly observant of this principle.** However, based on a survey conducted a few years ago it was determined that none of the insurers use these instruments. Thus, no rules are currently in place, although a regulation is in development based on the IAIS guidance paper. In the current draft asset valuation guide developed by the BNA, guidelines relative to the valuation of derivatives have been included in the “invested assets” section under the heading “other investments.” The guidance paper could be given binding status in due course, should activities in derivatives actually develop.

Reinsurance (Principle 10)

22. **The authorities are observant of this principle.** Prior to the hurricane season the BNA reviews all reinsurance agreements. These checks are also performed during desk and field examinations. Training in the area of reinsurance is needed for all the staff members within the department since there is currently only one reinsurance specialist in the BNA. More of the rules on reinsurance should be given binding status.

Market conduct (Principle 11)

23. **The authorities are materially nonobservant of this principle.** The proposed National Ordinance on the Insurance Brokerage Business has not yet been enacted, nor have the market conduct guidelines been published. The proposed Ordinance only deals with

insurance brokers. Consideration could be given to supervising, either directly or indirectly (through principals or employees), all persons providing insurance advice, from within the Netherlands Antilles. The government is setting up an independent alternative dispute resolution body, which will enable complaints to be dealt effectively and affordably. Market conduct guidelines should be given more binding status. The proposed National Ordinance on the Insurance Brokerage Business also covers supervision of offshore insurance brokers. Where licensed insurers deal directly with policyholders and prospective policyholders of the general public in jurisdictions without market conduct rules, they are obliged to apply market conduct guidelines of the Netherlands Antilles. The BNA currently handles customer complaints.

Financial reporting (Principle 12)

24. **The authorities are broadly observant of this Core Principle.** Similar comments apply to this section as contained within Principle 7—liabilities regarding developments in insurance accounting being promulgated by International Accounting Standards Board (IASB). Action should be taken immediately to remedy the current practice of late submission of audited statements. Introduction of the new ARAS reporting system and more aggressive monitoring has led to improved reporting performance by insurance companies.

On-site inspection (Principle 13)

25. **The authorities are observant of this Core Principle.** BNA has a well established program of on-site inspections and has developed a comprehensive procedures manual. The manual has been finalized and it is the intention to update this periodically. The BNA keeps to the standards of the U.S. based Society of Financial Examiners and several of the staff of the bank are Certified Financial Examiners. The BNA should extend its on-site inspections to insurance brokers, paying special attention to AML, and market conduct aspects. The BNA should follow through with more structured meetings with external auditors. The BNA has field examination procedures for captives and professional reinsurers and will resume its inspection program, i.e., its field examinations of captives and professional reinsurers, not only when a captive or reinsurer fails to submit requested financial information.

Sanctions (Principle 14)

26. **The authorities are observant of this principle.** The legislation contains a full menu of enforcement actions, including powers to issue binding directions. The BNA should consider including within the legislation, different, specific types of directions that may be used, as well as keeping an all-encompassing power. In addition, the bank should be able to impose a range of civil money penalties (not criminal fines) against individuals and the insurer/intermediary.

Cross border business operations (Principle 15)

27. **The authorities are broadly observant of this Core Principle.** All insurers operating in the Netherlands Antilles, including subsidiaries and branches of overseas insurers, need to be licensed although incidental cross-border business is permitted on a direct provision of services basis. The legislation enables the minister of finance to prohibit or impose rules on specific inwards cross-border business, if the actions of the insurer are not thought to be in the interests of local policyholders. In addition, the BNA can require brokers by law to submit annual details of all insurers with whom business has been placed. The BNA has become more proactive in consulting with overseas insurance supervisors. The legislation should be changed so that a licensed insurer needs to seek specific approval in order to operate cross-border. Home supervisors of branch offices established in the Netherlands Antilles are required to officially communicate with the BNA when planning an examination of or visit to the branch. Whenever the BNA, as a home supervisor, wants to conduct an examination of a branch office in another jurisdiction, the home supervisor is contacted and a joint examination arranged. Thus far, the BNA has conducted joint examinations with the Aruban and Netherlands authorities.

Coordination and cooperation (Principle 16)

28. **The authorities are broadly observant of this principle.** The BNA should expedite the remaining planned MoU's (taking into account the requirements of the IAIS Core Principle 16) with other relevant jurisdictions and implement legislative changes to ensure that reciprocity is not mandatory when providing information to other authorities.

Confidentiality (Principle 17)

29. **The authorities are observant of this principle.** The insurance legislation requires confidentiality and there is a gateway under which the bank can share information with other insurance supervisors. As already recommended in CP 2 and CP 16, this gateway needs to be much broader in nature and not subject to reciprocity.

Anti-money laundering

30. **The IAIS does not yet have a separate core principle against ML.** Currently Antillean AML legislation and regulation covers ML through life insurance companies or brokers. Training is being provided to the sector. Revised AML/CFT guidelines for all insurance companies were introduced by the BNA in June 2003. The BNA has on-site procedures in place to test whether the recommendations made in the guidelines are adopted and properly implemented by the industry. On-site visitations to verify compliance were started by the BNA in March 2003.

31. **The authorities have drawn up a plan of recommended actions to address the issues raised in the paragraphs above and in the detailed assessment,** as well as concerns of their own in the action plan outlined in Table 7 below.

C. Detailed Assessment of Observance of the IAIS Insurance Core Principles

Table 5. Detailed Assessment of Observance of the IAIS Insurance Core Principles

<p>Principle 1</p>	<p>Organization of an Insurance Supervisor The insurance supervisor of a jurisdiction must be organized so that it is able to accomplish its primary task, i.e., to maintain efficient, fair, safe, and stable insurance markets for the benefit and protection of policyholders. It should, at any time, be able to carry out this task efficiently in accordance with the Insurance Core Principles. In particular, the insurance supervisor should:</p> <ul style="list-style-type: none"> • Be operationally independent and accountable in the exercise of its functions and powers; • Have adequate powers, legal protection, and financial resources to perform its functions and exercise its powers; • Adopt a clear, transparent, and consistent regulatory and supervisory process; • Clearly define the responsibility for decision-making; and • Hire, train, and maintain sufficient staff with high professional standards who follow the appropriate standards of confidentiality
<p>Description</p>	<p>The responsibilities of the insurance supervisor (the BNA) are clear and are objectively stated and the BNA is operationally independent from the government, to which it reports, although it is capitalized by the government and transmits surplus funds to the Government as dividend. The BNA is also independent from the insurance industry, as all directors and staff are not, by law, allowed to have any associations with any insurer, except to take out insurance contracts. The BNA charges insurers annual supervisory fees to defray the costs of regulation. The income of the BNA is sufficient to finance high priority supervisory activities, such as those involving international cooperation and on-site visits. Both of these types of actions were demonstrated to the mission. The bank is able to outsource to third parties supervisory functions. Those third parties are subject to confidentiality provisions and can be held responsible for the way they have exercised their duties. Insurance legislation ensures appropriate standards of confidentiality and staff must obey high professional standards as outlined in the “Professional Guidelines for Supervisors of the Bank,” issued by the bank in 1996. Staff are subject by law to conflict of interest provisions and by integrity codes and guidelines when dealing with licensees.</p> <p>The BNA has well documented, and updated, desk and field supervision procedures. Some of the updates are very new and will take some time to fully implement. There is no one definitive document that summarizes, for the benefit of the insurance sector, the methods and procedures of supervision. Most of these are outlined in the various pieces of legislation and guidance notes and it is recommended that an all-encompassing “Guide to Insurance Supervision” is prepared and published, including on the BNA website.</p> <p>The decision-making lines of the BNA and Article 31 of the insurance legislation, allow action to be taken immediately in cases of emergencies. In January 2003, the BNA prepared a tight schedule on on-site inspections including AML inspections. Per end June 2003, the BNA has conducted 18 inspections of which 4 were general scope inspections. The remainder were targeted inspections, including AML and investment portfolio inspections.</p> <p>The BNA is conducting interviews with candidates for new staff positions and offers were made to an actuary and an auditor. One new staff has already taken up his duties.</p> <p>The staff of the department consists of two actuaries, and other staff members have at least bachelor’s degrees in business administration or accounting. In addition, staff members follow national and international specialized insurance courses. Most staff members have between 10–15 years’ insurance supervision experience.</p>

	The bank will, where applicable, implement the appropriate changes in its field examination process. In addition, the necessary funding will be made available for a proper and continuous training of the staff members.
Assessment	Observant
Comments	<p>The powers of the BNA should be more comprehensively prescribed, as explained under Principle 14 (Sanctions), but in the meantime existing powers and legal protection should enable it to properly perform its functions.</p> <p>The mission had high regard for the aptitude and attitude of the coordinator, the experience of, and the qualifications achieved by, the insurance supervisory staff, and the implemented policy of mandatory training programs for all.</p>
Principle 2	<p>Licensing Companies wishing to underwrite insurance in the domestic insurance market should be licensed. Where the insurance supervisor has authority to grant a license, the insurance supervisor:</p> <ul style="list-style-type: none"> • In granting a license, should assess the suitability of owners, directors, and/or senior management, and the soundness of the business plan, which could include proforma financial statements, a capital plan, and projected solvency margins; and • In permitting access to the domestic market, may choose to rely on the work carried out by an insurance supervisor in another jurisdiction if the prudential rules of the two jurisdictions are broadly equivalent.
Description	<p>Legal provisions are in place entrusting the BNA to regulate the insurance sector. These provisions, and the “Licensing and Registration Procedures Manual” define what is considered insurance business, and the types of company that are insurers, and also stipulate the BNA’s tasks and licensing requirements.</p> <p>Part 2: Assessment of the suitability of key functionaries, and of the business plan. Legal provisions, supported by guidelines on fit and proper and corporate governance aspects, and the prescribed application forms (including comprehensive personal questionnaires) are in place to ensure that the BNA can assess the suitability of the business plan and the key functionaries, which include shareholders, directors, and senior management.</p> <p>The BNA may refuse to issue the license if the interests of future policyholders or beneficiaries are likely to be jeopardized.</p> <p>The BNA, under the National Ordinance, may only, on the basis of general reciprocity and, upon request, provide another insurance supervisor with relevant information.</p> <p>To assist investigations into compliance with fit and proper criteria, the BNA has developed a new Integrity Unit, which is able to exchange information with the Public Prosecutor and the Unusual Transactions Reporting Unit.</p> <p>The applicant is required to submit a comprehensive business plan for assessment by the BNA, but there are no minimum share capital requirements laid down in the insurance legislation, as the BNA considers the requirement for a minimum margin of solvency is sufficient. There is an old requirement of the Central Bureau of Juridical Affairs that stipulates an issued share capital of NA f. 200,000. The applicant is also required to submit product details, documents of incorporation, actuary, and auditor details.</p> <p>Decisions of the BNA are open to appeal before the administrative and judicial bodies.</p> <p>Part 3: Reliance on insurance supervisor in another jurisdiction. The reliance on insurance supervisors in other jurisdictions, by asking for certificates of good standing, is an integral part</p>

	of the application process and will be strengthened when the bank completes its MoU's with other jurisdictions (there are MoU's with the Netherlands and Aruba) and the BNA is becoming more proactive in seeking information from overseas authorities (see recommendation above and in CP 15, CP 16, and CP 17).
Assessment	Broadly observant
Comments	To be assessed "observant," the BNA would need to strengthen its licensing process as described in the recommendations mentioned in the action plan below.
Principle 3	<p>Changes in Control</p> <p>The insurance supervisor should review changes in the control of companies that are licensed in the jurisdiction. The insurance supervisor should establish clear requirements to be met when a change in control occurs. These may be the same as, or similar to, the requirements which apply in granting a license. In particular, the insurance supervisor should:</p> <ul style="list-style-type: none"> • Require the purchaser or the licensed insurance company to provide notification of the change in control and/or seek approval of the proposed change; and • Establish criteria to assess the appropriateness of the change, which could include the assessment of the suitability of the new owners as well as any new directors and senior managers, and the soundness of any new business plan.
Description	<p>The BNA already monitors changes in control. Although a manual prescribes what policies to follow in these areas, the Law itself does not specifically require changes in control to be notified to the BNA, does not define such changes (including the ability to take account of substance over form), nor are there precise powers to reject the proposed changes in control. Most of these aspects are contained in a management requirements and change in control section of the Licensing Procedures Manual. The BNA has indirect powers, however, as Article 17 of the Ordinance states that identity of the policymakers of insurance companies, including shareholders should not give the BNA reason to believe that the interests of policyholders will be jeopardized. Shareholders are considered policymakers of insurance companies. As a result, if there are grounds for the bank to believe that the proposed change will not be in the interest of the policyholders the change will not be accepted, or ultimately, the license withdrawn, on grounds that the institution no longer meets the licensing requirements.</p> <p>The BNA has in fact used its powers in this area. One recent example is the change in control that occurred at one of the largest insurance companies on the island. After a lengthy process of negotiations (six months) about the group and organizational structure and the conditions for the takeover, in April of this year the bank approved the change in control. Another recent example is the case of a nonlife insurance company that wanted to become the shareholders of a newly incorporated life insurance company. The bank disapproved this.</p> <p>Special comments relating to captives and professional reinsurers: Similarly, there are no specific references to changes in control.</p>
Assessment	Broadly observant
Comments	
Principle 4	<p>Corporate Governance</p> <p>It is desirable that standards be established in the jurisdictions, which deal with corporate governance. Where the insurance supervisor has responsibility for setting requirements for corporate governance, the insurance supervisor should set requirements with respect to:</p> <ul style="list-style-type: none"> • The roles and responsibilities of the Board of directors; • Reliance on other supervisors for companies licensed in another jurisdiction; and • The distinction between the standards to be met by companies incorporated in his jurisdiction and branch operations of companies incorporated in another jurisdiction.
Description	While various aspects of corporate governance are covered in the October 2001 "Guidance Notes for the Supervisory Board of Supervised Financial Institutions," there is no specific legal backing for this document. However, in the event a company does not comply with the guidelines, the BNA can, based on Article 31 of the Ordinance, give the company a motivated

	instruction. In the event of noncompliance by the company the instruction can be published. These sanctions on compliance with these guidance notes have not been tested in the courts, however. So far, all institutions have complied with the different guidance notes issued by the BNA. In practice, the majority of the captives have a Supervisory Board. Consequently they have to adhere to the Corporate Guidelines issued by the BNA.
Assessment	Broadly observant
Comments	Relating to captives and professional reinsurers: There are dangers in allowing captives and professional reinsurers to be managed in the Netherlands Antilles by only one natural person.
Principle 5	<p>Internal Controls</p> <p>The insurance supervisor should be able to:</p> <ul style="list-style-type: none"> • Review the internal controls that the Board of directors and management approve and apply, and request strengthening of the controls where necessary; and • Require the Board of directors to provide suitable prudential oversight, such as setting standards for underwriting risks and setting qualitative and quantitative standards for investment and liquidity management.
Description	The BNA has a well-established and comprehensive program of field supervisory examinations (on-site visits) and a separate on-site team of staff, which specialize in this work. An integral part of the visits relate to internal control matters, and deficient matters are followed up by issuance of motivated instructions. Our recommendations mirror those in the previous Core Principle, and are that the opportunity should be taken to associate guidance notes on internal control matters with the legislation and include sanctions in cases of noncompliance.
Assessment	Broadly observant
Comments	
Principle 6	<p>Assets</p> <p>Standards should be established with respect to the assets of companies licensed to operate in the jurisdiction. Where insurance supervisors have the authority to establish the standards, these should apply at least to an amount of assets equal to the total of the technical provisions, and should address:</p> <ul style="list-style-type: none"> • Diversification by type; • Any limits or restrictions on the amount that may be held in financial instruments, property, and receivables; • The basis for valuing assets which are included in the financial reports; • The safekeeping of assets; • Appropriate matching of assets and liabilities; and • Liquidity.
Description	<p>Supervision over asset quality is outlined in the supervisory procedures manuals, and the excellent new (2000) ARAS system, but not in legislation. Also, asset valuation guidelines are being prepared.</p> <p>The existing legislation merely states that adequate technical provisions should be maintained and covered by assets, which currency-match the liabilities (there is the possibility of an exemption to the matching requirement if it is in the interests of policyholders). The BNA has the power to direct the insurer to change the nature and valuation of the assets.</p> <p>There are no legal provisions covering the mixture and diversification by type of asset, or restrictions on the amount that may be held in financial instruments, property, and receivables; the basis for valuing assets; the safekeeping of assets; appropriate matching of assets; and liquidity. Some of the above aspects are covered by guidelines; the field examination manual; supervisory procedures manual; ARAS; and other documents, and some are not.</p>
Assessment	Broadly observant
Comments	

<p>Principle 7</p>	<p>Liabilities Insurance supervisors should establish standards with respect to the liabilities of companies licensed to operate in their jurisdiction. In developing the standards, the insurance supervisor should consider:</p> <ul style="list-style-type: none"> • What is to be included as a liability of the company; for example, claims incurred, but not paid, claims incurred, but not reported, amounts owed to others, amounts owed that are in dispute, premiums received in advance, as well as the provision for policy liabilities or technical provisions that may be set by an actuary; • The standards for establishing policy liabilities or technical provisions; and • The amount of credit allowed to reduce liabilities for amounts recoverable under reinsurance arrangements with a given reinsurer, making provision for the ultimate collectability.
<p>Description</p>	<p>As in many other jurisdictions, financial statements for insurance companies in the Netherlands Antilles are prepared under acceptable GAAP, which lay down the relevant standards for establishing technical provisions.</p> <p>The technical provisions are described in detail in ARAS and are examined annually during desk and field examinations by the banks' actuaries and examiners. The BNA have commenced to look at the valuation of liabilities.</p> <p>With respect to the issue of timely reporting it can be said that the effort to implement the new automated reporting system of the BNA, ARAS, impeded a timely reporting by a large number of companies in the past. Starting this year the bank initiated a program of visiting all institutions, which indicated that they had problems with ARAS; this was done in addition to workshops organized by the bank. The result is that our companies, contrary to previous years have started submitting their annual statements on time.</p>
<p>Assessment</p>	<p>Broadly observant</p>
<p>Comments</p>	
<p>Principle 8</p>	<p>Capital Adequacy and Solvency The requirements regarding the capital to be maintained by companies, which are licensed or seeking a license, in the jurisdiction should be clearly defined and should address the minimum levels of capital or the levels of deposits that should be maintained. Capital adequacy requirements should reflect the size, complexity, and business risks of the company in the jurisdiction.</p>
<p>Description</p>	<p>Capital adequacy requirements differ for life insurance and property/casualty insurance. Decree 52/1992, based on Article 22 and Article 36 of the Ordinance requires a minimum capital margin of NA f. 400,000 (US\$220,000) for life insurance companies, unless the technical reserves, actuarially calculated and augmented by 4 percent of the technical reserves as required by Article 36 of the Ordinance, should be the higher amount. In that case, the company is obliged to maintain a solvency reserve of the higher amount. The capital adequacy requirements therefore are related to the business of the individual company and its risk profile, with an absolute floor of NA f. 400,000. For property and casualty (P&C) companies the floor is NA f. 300.000 (US\$165,000) unless the reserves for unearned premiums, pending claims and expected claims augmented with a 15 percent additional reserve as required by Article 36 of the Ordinance is the higher amount. In that case the higher of the two amounts should be retained for capital adequacy purposes. The BNA inspections assess the adequacy of the reserves held by P&C companies against good international practice, and impose higher reserves as needed, based on the authority provided in Article 31 of the Ordinance. Decree 52 of 1992 specifies the permissible assets that count towards the technical reserves. The IAIS has not developed standard methods or percentages for minimum solvency, so in this area the Netherlands Antilles should draw on their past experiences and also the experiences of other jurisdictions. The IAIS has an insurance laws database, the use of which would assist any research.</p>

	<p>There are currently no statutory minimum capital requirements in the Insurance Ordinance, and the BNA relies on the requirements described above. However, the solvency requirements are under review to assess whether they need to be adjusted to reflect more closely the risks, size, and complexity of the different types of insurers. The Central Legal Bureau of the Netherlands Antilles has in the meantime issued statutory minimum capital requirements for insurance companies of NA f. 200,000 (US\$110,000), pending revision of the Ordinance. A higher level of observance could be achieved once revised solvency requirements are introduced.</p>
Assessment	Broadly observant
Comments	
Principle 9	<p>Derivatives and ‘Off-Balance Sheet’ Items</p> <p>The insurance supervisor should be able to set requirements with respect to the use of financial instruments that may not form a part of the financial report of a company licensed in the jurisdiction. In setting these requirements, the insurance supervisor should address:</p> <ul style="list-style-type: none"> • Restrictions in the use of derivatives and other off-balance sheet items; • Disclosure requirements for derivatives and other off-balance sheet items; and • The establishment of adequate internal controls and monitoring of derivative positions.
Description	<p>The BNA surveyed the insurers and, based on the responses received, it believes that none of the licensed insurers use these instruments. There is currently no legislation on derivatives, although one is in the course of preparation based upon the IAIS guidance paper. Anticipating the possible use of derivatives by the licensed insurers, the asset valuation guide developed by the BNA includes the valuation of these instruments.</p>
Assessment	Broadly observant
Comments	
Principle 10	<p>Reinsurance</p> <p>Insurance companies use reinsurance as a means of risk containment. The insurance supervisor must be able to review reinsurance arrangements, to assess the degree of reliance placed on these arrangements and to determine the appropriateness of such reliance. Insurance companies would be expected to assess the financial positions of their reinsurers in determining an appropriate level of exposure to them.</p> <p>The insurance supervisor should set requirements with respect to reinsurance contracts or reinsurance companies addressing:</p> <ul style="list-style-type: none"> • The amount of the credit taken for reinsurance ceded. The amount of credit taken should reflect an assessment of the ultimate collectability of the reinsurance recoverable and may take into account the supervisory control over the reinsurer; and • The amount of reliance placed on the insurance supervisor of the reinsurance business of a company, which is incorporated in another jurisdiction.
Description	<p>In June, prior to the hurricane season, the bank request copies of all reinsurance agreements, from which the exposures are calculated, and related back to the financial position of each insurer. These checks are also performed during desk and field examinations. Also the ARAS and the asset valuation guide deal with reinsurance cover and the valuation thereof.</p> <p>There is one reinsurance specialist in the bank, and this is an area where more training is being sought for all other staff members of the department.</p>
Assessment	Observant
Comments	

<p>Principle 11</p>	<p>Market Conduct Insurance supervisors should ensure that insurers and intermediaries exercise the necessary knowledge, skills, and integrity in dealing with their customers. Insurers and intermediaries should:</p> <ul style="list-style-type: none"> • At all times act honestly and in a straightforward manner; • Act with due skill, care, and diligence in conducting their business activities; • Conduct their business and organize their affairs with prudence; • Pay due regard to the information needs of their customers and treat them fairly; • Seek from their customers information, which might reasonably be expected before giving advice or concluding a contract; • Avoid conflicts of interest; • Deal with their regulators in an open and cooperative way; • Support a system of complaints handling, where applicable; and • Organize and control their affairs effectively.
<p>Description</p>	<p>The proposed National Ordinance on the Insurance Brokerage Business has been drafted, and is in an advanced state, but has not yet been enacted, nor have the market conduct guidelines been published.</p> <p>The proposed Ordinance only deals with insurance brokers, and it could be considered to expand the scope to cover all persons providing insurance advice from within the Netherlands Antilles. This would level the playing field, e.g., in the qualifications required of agents, subagents, brokers, and insurance company employees that give insurance advice or in the measures against unfair practices by one or more of the above groups of advisors. This could be dealt with within the proposed Ordinance.</p> <p>The government is in the process of setting up an independent alternative dispute resolution body, which will enable complaints to be dealt with in an effective and affordable manner. Currently, when a policyholder or other party files a complaint with the BNA, this is entered in a complaints file. The responsible desk worker will analyze the complaint and request additional information from the parties involved if necessary. If the complaint warrants further action by the BNA toward the insurance company, this will be done by a letter. Failure of the company to comply with this may lead to the issuance of a motivated instruction by the BNA and more serious measures, ultimately including withdrawal of the license. There is no consumer compensation scheme.</p>
<p>Assessment</p>	<p>Materially nonobservant</p>
<p>Comments</p>	

<p>Principle 12</p>	<p>Financial Reporting It is important that insurance supervisors get the information they need to properly form an opinion on the financial strength of the operations of each insurance company in their jurisdiction. The information needed to carry out this review and analysis is obtained from the financial and statistical reports that are filed on a regular basis, supported by information obtained through special information requests, on-site inspections, and communication with actuaries and external auditors. A process should be established for:</p> <ul style="list-style-type: none"> • Setting the scope and frequency of reports requested and received from all companies licensed in the jurisdiction, including financial reports, statistical reports, actuarial reports, and other information; • Setting the accounting requirements for the preparation of financial reports in the jurisdiction; • Ensuring that external audits of insurance companies operating in the jurisdiction are acceptable; and • Setting the standards for the establishment of technical provisions or policy and other liabilities to be included in the financial reports in the jurisdiction. • In so doing, a distinction may be made: <ul style="list-style-type: none"> • Between the standards that apply to reports and calculations prepared for disclosure to policyholders and investors, and those prepared for the insurance supervisor; and • Between the financial reports and calculations prepared for companies incorporated in the jurisdiction, and branch operations of companies incorporated in another jurisdiction.
<p>Description</p>	<p>Introduction of the automated reporting system ARAS, combined with more aggressive monitoring has greatly improved reporting. Similar comments apply to this section as contained within Principle 7—liabilities regarding developments in insurance accounting being promulgated by IASB. In addition, the BNA will be amending the current legislation to include fines for late reporting.</p> <p>In the past, some audited financial statements were submitted over 18 months after the due date.</p>
<p>Assessment</p>	<p>Broadly observant</p>
<p>Comments</p>	
<p>Principle 13</p>	<p>On-Site Inspection The insurance supervisor should be able to:</p> <ul style="list-style-type: none"> • Carry out on-site inspections to review the business and affairs of the company, including the inspection of books, records, accounts, and other documents. This may be limited to the operation of the company in the jurisdiction or, subject to the agreement of the respective supervisors, include other jurisdictions in which the company operates; and • Request and receive any information from companies licensed in its jurisdiction, whether this information be specific to a company or be requested of all companies.
<p>Description</p>	<p>The bank has been executing field examinations (on-site inspections) for over eight years and has developed a comprehensive procedures manual, much of which has been amended and added to since the last self-assessment report involving the Fund which was completed in 2001. The manual is finalized and will be reviewed periodically. As mentioned above there are no market conduct rules and this aspect is not included in the on-site procedures manual. In the meantime, market conduct examination procedures have been drafted, but are yet to be introduced.</p> <p>The bank keeps to the standards of the U.S. based Society of Financial Examiners and several of the staff of the Bank are Certified Financial Examiners.</p>
<p>Assessment</p>	<p>Observant</p>
<p>Comments</p>	

<p>Principle 14</p>	<p>Sanctions Insurance supervisors must have the power to take remedial action where problems involving licensed companies are identified. The insurance supervisor must have a range of actions available in order to apply appropriate sanctions to problems encountered. The legislation should set out the powers available to the insurance supervisor and may include:</p> <ul style="list-style-type: none"> • The power to restrict the business activities of a company, for example, by withholding approval for new activities or acquisitions; • The power to direct a company to stop practices that are unsafe or unsound, or to take action to remedy an unsafe or unsound business practice; and • The option to invoke other sanctions on a company or its business operation in the jurisdiction, for example, by revoking the license of a company or imposing remedial measures where a company violates the insurance laws of the jurisdiction.
<p>Description</p>	<p>Article 31 of the legislation, as well as permitting refusals, revocations, and penalties, contains a menu of remedial actions, including legally binding instructions and the withdrawal of the license, in case of serious noncompliance with regulatory provisions. The insurer is obliged to follow the instruction within the period stipulated by the BNA. For example, an insurance company that was conducting life and nonlife business in one and the same legal entity was instructed to transfer the life business to another legal entity. In response to a case in which an insurance intermediary falsely claimed to represent certain insurance companies and collected premiums without passing these on, the BNA instructed all insurance companies to periodically publish the names of their intermediaries in the newspapers. The intermediary in question was considered to conduct insurance business without a license. The BNA turned the case over to the Public Prosecutor, as required in Article 122 of the Ordinance.</p> <p>In addition, in the past years, the BNA has issued several instructions to insurance companies, and silent trustees have been appointed on different occasions (currently there is one company under silent trusteeship), licenses of companies that no longer comply with the licensing conditions have been revoked.</p>
<p>Assessment</p>	<p>Observant</p>
<p>Comments</p>	
<p>Principle 15</p>	<p>Cross-Border Business Operations Insurance companies are becoming increasingly international in scope, establishing branches and subsidiaries outside their home jurisdiction, and sometimes conducting cross-border business on a services basis only. The insurance supervisor should ensure that:</p> <ul style="list-style-type: none"> • No foreign insurance establishment escapes supervision; • All insurance establishments of international insurance groups and international insurers are subject to effective supervision; • The creation of a cross-border insurance establishment is subject to consultation between host and home supervisors; and • Foreign insurers providing insurance cover on a cross-border services basis are subject to effective supervision.
<p>Description</p>	<p>All insurers operating in the Netherlands Antilles, including subsidiaries and branches of overseas insurers, need to be licensed although incidental cross-border business is permitted on a services basis. Allowing cross-border business is a balancing act. On the one hand, the bank needs to ensure the local population has the availability of cover (especially important with catastrophe insurance and hard-to-place or price sensitive risks, such as professional indemnity insurance), but on the other hand, there needs to be a level playing field with local providers, and an elimination of any areas, which may be open to abuse. The legislation addresses this by enabling the minister of finance to prohibit or impose rules, on specific inwards cross-border business, if the actions of the insurer are not thought to be in the interests of local policyholders. In addition, the bank uses a provision in the law to require brokers to submit annual details of all insurers with whom business has been placed. An alternative way of addressing this problem would be to have a register of overseas insurers who are permitted to cover local risks on a cross-</p>

	border basis, specifying which classes of business they are allowed to underwrite. It would then be necessary to amend the legislation (both insurer and the proposed broker) in order to mandate that only licensed or registered insurers could underwrite local risks and brokers, who would be licensed, could only place business with those insurers. If overseas insurers have resident non broker agents in the Netherlands Antilles, it should be made clear that the insurer would need a license. Temporary licenses could be issued in certain cases. In this way, the bank should be aware of the insurers covering local risks, except for those that are contacted by the client directly. This may help negate the problems of the past, where catastrophe cover was found to be with insurers of no substance.
Assessment	Broadly observant
Comments	
Principle 16	<p>Coordination and Cooperation</p> <p>Increasingly, insurance supervisors liaise with each other to ensure that each is aware of the other's concerns with respect to an insurance company that operates in more than one jurisdiction, either directly or through a separate corporate entity.</p> <p>In order to share relevant information with other insurance supervisors, adequate and effective communication should be developed and maintained.</p> <p>In developing or implementing a regulatory framework, consideration should be given to whether the insurance supervisor:</p> <ul style="list-style-type: none"> • Is able to enter into an agreement or understanding with any other supervisor both in other jurisdictions and in other sectors of the industry (i.e., insurance, banking, or securities) to share information or otherwise work together; • Is permitted to share information, or otherwise work together, with an insurance supervisor in another jurisdiction. This may be limited to insurance supervisors who have agreed, and are legally able, to treat the information as confidential; • Should be informed of findings of investigations where power to investigate fraud, ML, and other such activities rests with a body other than the insurance supervisor; and • Is permitted to set out the types of information and the basis on which information obtained by the insurance supervisor may be shared.
Description	<p>MoU's have been concluded with Aruba, the Netherlands, and Venezuela. Rules on exchange of information on captives and reinsurers with any relevant supervisory or enforcement authority will be taken into consideration when revising the insurance laws. These laws are scheduled for revision by December 2004.</p> <p>Insurance companies are currently covered by the new AML/CFT guidelines issued by the BNA in June 2003. These are applicable to all categories of insurance companies with the exception of nonlife insurers for which the guidelines will become operational at a later date. Captives and professional reinsurers are also covered.</p>
Assessment	Broadly observant
Comments	
Principle 17	<p>Confidentiality</p> <p>All insurance supervisors should be subject to professional secrecy constraints in respect of information obtained in the course of their activities, including during the conduct of on-site inspections.</p> <p>The insurance supervisor is required to hold confidential any information received from other insurance supervisors, except where constrained by law or in situations where the insurance supervisor who provided the information provides authorization for its release.</p> <p>Jurisdictions whose confidentiality requirements continue to constrain or prevent the sharing of information for supervisory purposes with insurance supervisors in other jurisdictions, and jurisdictions where information received from another insurance supervisor cannot be kept confidential, are urged to review their requirements.</p>
Description	Article 78 of the Insurance Ordinance provides for confidentiality of supervisory information,

	but allows exchange of information on a reciprocal basis with insurance supervisors in other jurisdictions, under condition that the other jurisdictions maintains the confidentiality of the information.
Assessment	Observant
Comments	

Recommended action plan

Table 6. Recommended Action Plan to Improve Observance of IAIS Insurance Core Principles

Core Principle	Recommended Action	Implementation and Authorities' Comments
Organization of an Insurance Supervisor (CP 1)	<p>It is recommended that the bank reevaluates the resources required for achieving the planned field examination program, and for implementing the changes required in order to keep up to date with international regulatory developments.</p> <p>It is also recommended that the bank, in a thoughtful and structured way, complete their excellent desk and field examinations manuals and ensure that all examiners are fully understanding, and in agreement of the provisions.</p>	<p>Compliance: In January 2003 the BNA prepared a tight schedule for on-site inspections, including AML inspections. Per end June 2003, the BNA has conducted 18 inspections of which 4 general scope inspections, and the remainder targeted inspections, including AML and investment portfolio inspections.</p> <p>The BNA is conducting interviews with candidates for new staff positions and offers were made to an actuary and an auditor. One new staff has already taken up his duties.</p> <p>The staff of the department includes two actuaries; other staff members have at least bachelor's degrees in business administration or accounting. In addition, staff members follow national and international specialized insurance courses. Most staff members have between 10–15 years' insurance supervision experience.</p> <p>Compliance: The bank will, where applicable, implement the appropriate changes in its field examination process. In addition, the necessary funding will be made available for a proper and continuous training of the staff members. The manuals have been completed and were distributed to the staff members; staff members are being provided with the</p>

		<p>appropriate training.</p> <p>Date set for completion: This is a continuous process.</p>
<p>Licensing (CP 2)</p>	<p>It is recommended that prior to licensing any such overseas incorporated captive or reinsurer, the BNA has procedures in place, and follows those procedures, which include a specific MoU with the jurisdiction of incorporation to assist in case of problems occurring.</p> <p>Segregation of life and nonlife business is recommended. If a captive or a professional reinsurer underwrites composite (both life and nonlife) insurance business in one entity the poor results from the nonlife insurance business can impair the ability of the insurer to meet its life insurance obligations. This is especially the case in an insolvency situation. It is in particular recommended that in future, composites are prohibited, unless the life insurance fund is statutorily protected, especially in the case of insolvency. This is important in the captives, but is even more so with professional reinsurers, where the solvency is based on premiums booked, rather than, for life reinsurance, the amount of the life fund.</p> <p>It is strongly recommended that the bank has the power to issue conditions, on licensing, or at any time thereafter, and to penalize (fines or imprisonment) breaches of the law relating to captives and professional reinsurers.</p>	<p>Compliance: Regulation requires that the business should be conducted exclusively from the Netherlands Antilles. Legislation makes it clear that the bank is the leading supervisor.</p> <p>Compliance: Article 9 of the Ordinance makes it clear that the exercise of life and nonlife insurance business within one and the same licensed entity is in principle prohibited. Licensing of composites is an exception. Companies need to motivate their request carefully in order to be considered for an exception. The bank has designed a new reporting system, which segregates both life and nonlife business. In addition, subsequent to the amendment of the legislation, it will be the bank's policy not to license composite reinsurance companies. The BNA will issue a regulation to prohibit composites pending the change of the law.</p> <p>Date set for completion: December 2004.</p> <p>Compliance: During the process of updating the captive decree, this recommendation will be taken into consideration. The bank will pursue a range of money penalties (fines) and will also include criminal penalties as included in the Insurance Supervision Ordinance. All licensed entities are subject to the Ordinance that provides for additional conditions, which can be imposed and that provides for a broad range of corrective action (see in particular Article 31, Article 51, Article 55, and Article 59). The Bank will pursue a range of money penalties (fines) and will also include criminal penalties.</p> <p>It is noted though that the bank has not decided yet whether it will</p>

	<p>It is recommended that the bank extend the grounds for refusal or revocation of a license to include comprehensive fit and proper aspects (including if connected persons have been involved in unsound transactions etc.), and also to protect the reputation of the Netherlands Antilles.</p> <p>It is recommended that details of revocation of a license be published</p>	<p>eliminate the Special Insurance License Decree and make both captives and reinsurers subject to the provisions of the Insurance Ordinance.</p> <p>Date set for completion: December 2004.</p> <p>Compliance: No license will be issued to an institution of which a policymaker does not comply with the fit and proper requirements of the BNA.</p> <p>Compliance: Currently the bank is by law required to publish revocations of licenses issued by virtue of the Insurance Supervision Ordinance. The reason for the revocation is not made public. With regard to captives and reinsurers there is no publication duty. This will be considered during the process of updating this decree.</p> <p>Date set for completion: December 2004</p>
<p>Changes in Control (CP 3)</p>	<p>It is recommended that the above requirements are brought into the legislation and that there should be a prior approval process. There should be appropriate sanctions in cases of noncompliance.</p> <p>It is recommended, to avoid doubt, that the prescribed application form/legislation are amended so that the applicant has to supply details of beneficial and ultimate beneficial ownership. The legislation should be amended, so that any changes in control (including those of substance over form), should require notification to, and prior approval by, the Bank. Failing to do so or supplying misleading or false information should be an offense.</p>	<p>Compliance: A prior approval process is included in the procedures manual, which is based on Article 17 of the Insurance Ordinance. During the process of updating the Insurance Ordinance, the recommendation to create a statutory base for this rule will also be taken into consideration.</p> <p>Date set for completion: December 2004.</p> <p>Compliance: The bank has issued a Policy Rule on Integrity Testing (based on Article 17 of the Insurance Ordinance and 4 of the Special License Decree) which addresses the issue of supplying misleading and false information. This policy paper was sent to all institutions. In addition the bank has instituted an “Actualization and Harmonization all Bank Legislation Committee” that has the objective to come up with umbrella legislation. This legislation</p>

		<p>will address issues such as administrative fines, supervision costs, MoU's, exchange of information and integrity tests.</p> <p>Date set for completion: December 2004.</p>
<p>Corporate Governance (CP 4)</p>	<p>It is recommended that this and other guidance notes are referred to in the legislation or, if legally possible, are issued to all financial institutions under the motivated instructions article of the National Ordinance. The opportunity should be taken to include within the guidelines certain aspects of the Core Principles that are not yet covered, e.g., complaints procedures, improving customer awareness.</p> <p>It is recommended that there are at least two locally resident senior managers who are fit and proper (honest, competent, and solvent) and there is also a supervisory Board with the necessary local control, including locally resident, fit and proper, nonexecutive directors. The bank has issued a policy memorandum on the implementation of the fit and proper tests and corporate governance requirements. This was recently replaced by the Policy Rule on Integrity Testing, which was sent to all supervised institutions. The opportunity should be taken to give these (and other relevant guidelines) the basis of law, including any necessary sanctions in cases of noncompliance.</p>	<p>Compliance: In the revised guidelines reference will be made to Article 31 of the Ordinance. With respect to the complaints procedures, etc., these are considered part of market conduct supervision and will be included in the Market Conduct Examination Procedures Manual.</p> <p>Date set for completion: December 2003.</p> <p>Compliance: The first part of this recommendation is partially addressed in the Insurance Supervision Ordinance (Article 16(2)), although this does not require residency. As concerns the special licensees (captives and reinsurers), mandatory four-eyes management and a requirement to have a Supervisory Board will be discussed during the pending review of the Special Insurance License Decree. With respect to the second part of this recommendation, the new Policy Rule on Integrity Testing issued by the bank is based on Article 17 of the Insurance Supervision Ordinance respectively Article 4 of the Special Insurance License Decree. Finally, the "Actualization and Harmonization of Bank Legislation Committee" has been created with the objective to come up with an umbrella legislation to address issues such as administrative fines, supervision costs, MoU's, exchange of information and integrity tests.</p> <p>Date set for completion: December 2004</p>
<p>Assets (CP 6)</p>	<p>It is recommended that one single set of regulations is produced covering all relevant aspects, together with rules on loans and pledges, financial derivatives, risk management of assets,</p>	<p>Compliance: These items are being included in the "New Valuation Guide" and should be completed on or about the time of the introduction of</p>

	<p>and resilience testing. These regulations should have the force of law (including sanctions) and be reflected in the procedures manuals, guidelines, and ARAS.</p> <p>It is recommended that prior to licensing, the bank ensure (by legislation), that assets are under the control of the directors or managers resident in the Netherlands Antilles unless, due to the nature of the operation, it is felt that this requirement can, exceptionally, be waived.</p>	<p>the ARAS 2.8 systems.</p> <p>Date set for completion: December 2003.</p> <p>Compliance: This recommendation will be considered in the pending revision of the legislation. One possibility would be to request an agreement between the owners and management of the company, which delineates the responsibilities and authorities of management.</p> <p>Date set for completion: December 2004.</p>
<p>Liabilities (CP 7)</p>	<p>It is recommended that the BNA issue their own standards for the valuation of liabilities.</p> <p>It is recommended that BNA improves its control over the technical provisions further by assessing long-tail casualty insurance business using triangulation techniques and by bringing out a policy on discounting of loss reserves.</p> <p>It is recommended that the bank consider requiring policyholders' approval, as well as that of the bank, for transfers of rights of certain types of long-tail insurance business.</p>	<p>Compliance: These standards will be included in the "New Valuation Guide."</p> <p>Date set for completion: December 2003.</p> <p>Compliance: The comprehensive filings (version 2.8) that will be introduced to the industry in the latter part of 2003 will include filings to follow the loss development of nonlife insurers. These are included in the 228 series of filings and consist of triangular developments on all indemnity groups. The policy for the discounting of loss reserves will be stipulated in the New Valuation Guide.</p> <p>Date set for completion: December 2003.</p> <p>Compliance: During the process of updating the Insurance Laws this recommendation will be taken into consideration.</p> <p>Date set for completion: December 2004</p>
<p>Capital Adequacy and Solvency (CP 8)</p>	<p>It is recommended that the bank consider reviewing the existing minimum solvency requirements and bringing in an additional (so that there is a combination of two methods, e.g., using the greater of a premium and a claims based methods) or replacement test that deals with the complexity and business risks of the insurer.</p>	<p>Compliance: The bank will research solvency requirements of different jurisdictions and compare these with our solvency requirements. Where necessary our requirements will be changed and taken into consideration during the</p>

	<p>Those types that could be considered include claims based methods, exposure based methods, and asset and liability risk based capital methods. The bank should also document and publish its policy regarding multiple gearing of capital within a group of companies.</p> <p>Special comments relating to captives and professional reinsurers.</p> <p>It is recommended that the bank review the appropriateness of the margins of solvency. Capital adequacy requirements should reflect the size, complexity, and business risks of the insurer or the professional reinsurer. An exclusively premium based system falls short of this requirement.</p> <p>It is recognized that internationally there is no ideal regulatory recommended system of addressing capital adequacy.</p> <p>Because of the relatively small size of many offshore insurers it is usually possible to individually assess each company from a risk aspect (technical exposures, investment risk, and credit risk—especially of the reinsurers) and use this method for the primary control whilst at the same time using the premium and claims based methods as the secondary or back-up controls. Where there is a secondary method based on net premium income rather than gross premium income it is essential that account be taken of the effectiveness of the reinsurance program and, especially, the ability of the reinsurers to meet their obligations when there are claims. As already stated, the solvency requirement for professional reinsurers would appear to be low and the bank should review this aspect. The supervision of assets is an important feature of solvency assessment and, in the past, this area has been found one of the most vulnerable for offshore insurance supervisors.</p> <p>It is recommended that captives and, if found practical, professional reinsurers, report to the bank annually on a prescribed exposure spread sheet outlining, each and every loss and aggregate exposures, expected losses, and probable maximum losses, per line of business, reduced by reinsurance per class and aggregate (if placed).</p> <p>In order to assess the capital adequacy, it is recommended that the legislation is amended, so</p>	<p>revision of the Insurance Ordinance.</p> <p>Date set for completion: Tentative date to finalize the revision of the Insurance Ordinance is December 2004.</p> <p>Compliance: Will be done during revision of Insurance Law. A decision is yet to be taken relative to the captive legislation. Decree or eliminate this and make captives and reinsurers subject to the provisions of Insurance Ordinance (by explicitly excluding a few provisions).</p> <p>Date set for completion: December 2004.</p> <p>Compliance: The Captive and professional reinsurers ARAS systems provide this information in aggregate through their annual reporting to the bank. Individual losses and exposure are reviewed during the course of an on-site examination.</p> <p>Compliance: The bank is considering introducing quarterly reports for</p>
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	<p>that the insurer has to report to the bank whenever there are material changes to the plan of operations (which should include the insurance and reinsurance program).</p>	<p>insurance companies. This issue will then be resolved by the frequent reportings. In the meantime this recommendation will be discussed with the Policy Making Department with the aim to issue a regulation to the industry. Furthermore, the legislation need not be changed for this purpose. The bank can by virtue of Article 31 of the Insurance Ordinance issue directives to insurance companies. In addition, once a company is licensed it must submit annual statements to the bank. These actual figures are compared with the figures in the business plan and the company is required to explain material changes and differences.</p> <p>Date set for completion: July 2004</p>
<p>Derivatives, Off-Balance Sheet Items (CP 9)</p>	<p>It is recommended that when the guidance paper has been prepared it should be linked into the legislation and that there are appropriate sanctions for noncompliance. As there is believed to be little or no use of derivatives an alternative treatment would be to not allow insurers to invest in such instruments without the specific permission of the bank. This permission could be reserved for legitimate uses of derivatives, such as hedge funds, for which guidance should be issued.</p>	<p>Compliance: The earlier version of the “Asset Valuation Guide” provided for the reporting of derivatives and the valuing of same. The “New Valuation Guide” will include more extensive guidelines relative to the reporting and valuing of derivatives.</p> <p>Date set for completion: December 2003.</p>
<p>Reinsurance (CP 10)</p>	<p>It is recommended that aspects of credit for reinsurance should be prescribed within the legislation or regulations thereto.</p>	<p>Compliance: These are currently included in the ARAS system and the asset valuation guidelines. Once the comprehensive filings are finalized, the BNA will issue instructions relative to how these filings should be completed. These instructions will be in the form of regulations and will also deal with the valuation of reinsurance credits.</p> <p>Date set for completion: December 2003</p>
<p>Market Conduct (CP 11)</p>	<p>It is recommended that the bank, consider amending the draft Ordinance in order to give the proposed market conduct guidelines some legal backing, including making serious breaches thereof, an offense. The market conduct guidelines should include fair treatment of customers; disclosure aspects (including, the insurer, intermediaries, product details, risks,</p>	<p>Compliance: Market conduct issues will be dealt with in the proposed legislation (amendment to the Insurance Supervision Ordinance), which was sent to the Minister of Finance in February 2002. This legislation provides the legal backing for market</p>

	<p>benefits, obligations, charges, and estimated returns as appropriate); customer fact-finds prior to giving advice; dealing with conflicts of interest; and dealing with complaints.</p> <p>Special comments relating to captives and professional reinsurers.</p> <p>It is recommended that the proposed National Ordinance on the Insurance Brokerage Business take account of the supervision of offshore insurance brokers. Offshore insurance brokers are those companies that are registered in the Netherlands Antilles, owned by overseas residents and are placing risks overseas (often in a different jurisdiction to their residency). Offshore insurance brokers, because of their nature are often impossible to supervise, unless there is real control in the jurisdiction of incorporation.</p> <p>It is recommended that, where licensed insurers deal directly with policyholders and prospective policyholders of the general public, in other jurisdictions where there are no market conduct rules, they should abide by the market conduct guidelines of the Netherlands Antilles. Where they are dealing through overseas brokers the bank should ensure that the insurers check the bona fides of those brokers and that they are fit and proper persons to place insurance business.</p>	<p>conduct supervision and contains the necessary sanctions and penalties. The BNA has drafted Market Conduct Examination Guidelines and an examination procedural manual. Procedures are yet to be implemented.</p> <p>Date set for completion: December 2003.</p> <p>Compliance: Research will be conducted by the BNA's Policy Making Department on this issue. The BNA's preliminary position is not to allow offshore insurance brokers.</p> <p>Date set for completion: The research is planned to take place by July 2003.</p> <p>Compliance: Research will be conducted by the bank's Policy Making Department on this issue. The BNA's preliminary position is not to allow offshore insurance brokers. Since the bank is the home supervisor, these companies have to abide under any circumstances by our market conduct guidelines. In addition, the bank will always communicate with the foreign supervisor on this issue. With respect to the second part of the recommendation, it is the bank's position to consider issuing a regulation to our licensed insurance companies in which we will address this issue. The companies will be informed that when they deal with overseas brokers, they should ensure that the backgrounds of these brokers are more or less the same as those of our local brokers. Reference will, in this respect, be made to the requirements as laid down in the draft Brokers Legislation.</p> <p>Date set for completion: December 2003.</p>
<p>Financial Reporting (CP 12)</p>	<p>It is recommended that, recognizing that the late submission of audited financial statements is one of the key indicators of potential problems,</p>	<p>Compliance: This will be accomplished through proposed future legislation (inclusion of administrative</p>

	<p>in these instances, action (even to the extent of a suspension of new insurance business) should be taken immediately, unless there are valid reasons, such as ARAS complications, for an extension to the period allowed for the required submission.</p> <p>It is recommended that the bank commence to bring out their own standards for the valuation of assets and liabilities, for regulatory purposes.</p>	<p>finer). The industry has, in the meantime, become more familiar with the new ARAS and a change for the better has been noted in their reporting behavior.</p> <p>Date set for completion: December 2004.</p> <p>Compliance: Such standards are currently being drafted in the “New Valuation Guide.”</p> <p>Date set for completion: December 2003.</p>
<p>On-site inspection (CP 13)</p>	<p>It is recommended that the bank extend their on-site inspections to insurance brokers, paying special attention to AML, and market conduct aspects.</p> <p>It is recommended that the bank follow through with their stated policy of having more structured meetings with external auditors.</p> <p>Special comments relating to captives and professional reinsurers.</p> <p>It is recommended that the bank formalize their field examination program involving captives and professional reinsurers and aim to complete the first program (which is two-thirds finished) within a reasonable time scale.</p>	<p>Compliance: The Market Conduct Guidelines will include procedures for the examination of agents and brokers. The bank is currently conducting some on-site examination of agent and brokers by making use of a provision in the Insurance Supervision Ordinance.</p> <p>Date set for completion: December 2003.</p> <p>Compliance: Examination procedures provide for meetings with external auditors and the bank has included the auditors in its annual ARAS presentations. The BNA stands ready to provide assistance to any and all external auditors. In addition, the bank has started conducting meetings with the external auditors to discuss ongoing supervisory issues. Also, meetings were conducted with the external auditor to discuss issues which were discovered by the Bank during the review of financial statements audited by them.</p> <p>Compliance: The bank has resumed its field examinations of captives and professional reinsurers.</p>
<p>Sanctions (CP 14)</p>	<p>It is recommended that the bank consider, including within the legislation, different, specific types of directions that may be used, as well as keeping an all-encompassing power. This is considered to be important if current thinking on international human rights legislation reaches</p>	<p>Compliance: All the mentioned conditions can be imposed by virtue of Article 31 of the Insurance Supervision Ordinance. Some of these requirements are already explicitly mentioned in the law, e.g., the</p>

	<p>the Netherlands Antilles. Specifically, the bank should be able to require:</p> <ul style="list-style-type: none"> • changes in the composition of the Board and/or senior management; • independent checks on data reported by an independent foreign establishment; • limitation on payment of dividends for an undercapitalized insurer; • removal/disqualification of the external auditor; and • retention by the insurance supervisor of a special auditor, at the expense of the insurer/intermediary, where appropriate. <p>In addition, the bank should be able to impose a range of civil money penalties (not criminal fines) against individuals and the insurer/intermediary, which are sufficiently large so as to discourage noncompliance with the law and regulations, and which may be applied daily. They should also be able to suspend on a temporary basis or longer (with court approval), malfeasant directors and/or officers of the insurer/intermediary.</p> <p>As well as the above, the bank should consider including within the legislation the possibility of imposing conditions on insurers, classes of insurers or all insurers.</p>	<p>removal of an external auditor. With respect to the first part of the recommendation, the bank will pursue a range of money and criminal penalties (reference is made to CP 2). Once a silent trustee is appointed by the bank, policymakers of an institution cannot take any actions without the prior approval of the silent trustee.</p> <p>This recommendation will be discussed with the bank's Policy Making Department and the Legal Department in order to include, where necessary, specific types of directions.</p> <p>Date set for completion: December 2004.</p> <p>Compliance: Conditions can be imposed by virtue of Article 31 of the Insurance Supervision Ordinance.</p>
<p>Cross Border Operations (CP 15)</p>	<p>It is recommended that the bank becomes more proactive (and amends their procedures accordingly) in consulting with overseas insurance supervisors whenever there are cross border issues, including licensing, and whenever necessary for ongoing supervision. This suggestion recognizes that, internationally, there is generally still poor consultation in this area.</p> <p>It is also recommended that the legislation be changed so that a licensed insurer needs to seek specific approval in order to operate cross border.</p>	<p>Compliance: This recommendation will be carried out. The bank has in the meantime become more proactive: examples are recent contacts with the Trinidad & Tobago and Jamaican Insurance Supervisor relative to a change in control in one of our companies and the already frequently contacts with the Dutch and Aruban supervisors.</p> <p>Date set for completion: This is considered a continuous process and has already started.</p> <p>Compliance: During the process of updating the insurance laws, this recommendation will be taken into consideration.</p>

	<p>It is also recommended that there is legislation in place to accept, by a home supervisor, notified, on-site inspections of local branches of overseas insurers, as long as confidentiality provisions apply, there is a sharing of information, and the purpose of the visit is exclusively for supervisory reasons.</p>	<p>Date set for completion: December 2004.</p> <p>Compliance: This is a practice of the bank and will remain so. The bank will, however, pursue the enactment of appropriate legislation.</p> <p>Date set for completion: December 2004.</p>
<p>Coordination And Cooperation (CP 16)</p>	<p>It is recommended that, in addition to the above, the bank expedites the remaining planned MoU's (taking into account the requirements of the IAIS CP 16) with other relevant jurisdictions, and that the insurance legislation is changed to ensure that reciprocity is not mandatory in individual cases of information exchange with other authorities.</p> <p>Special comments relating to captives and professional reinsurers.</p> <p>It is recommended, for avoidance of doubt, that comprehensive exchange of information (with any relevant authority) provisions, are expressly included in the legislation relating to captives and professional reinsurers, if this legislation remains separate.</p> <p>It is strongly recommended that AML controls for life and nonlife insurance be comprehensively extended to encompass all captives, professional reinsurers, and offshore intermediaries. This would include the requirement, just mentioned, that there are established lines of communication between management, law enforcement, investigatory authorities, and the insurance supervisor for the reporting of irregular and suspicious activities.</p>	<p>Compliance: This recommendation has been carried out. MoU's with relevant jurisdictions are already in place.</p> <p>Date set for completion: December 2003.</p> <p>Compliance: During the process of updating the insurance laws, this recommendation will be taken into consideration.</p> <p>Date set for completion: December 2004.</p> <p>Compliance: Implemented through new AML/CFT guidelines for insurers, issued in June 2003. The BNA introduced its updated AML indicators for the sector; these are applicable to all categories of insurance companies (life, nonlife insurers captives, and professional reinsurers) and will become operational on a later date.</p>
<p>Confidentiality (CP 17)</p>		

Authorities' response to the assessments

32. The comments of the authorities to the recommendations have been incorporated in the action plan in Table 6.

III. ASSESSMENT OF RULES AND POLICIES AGAINST AML/CFT

A. Information and Methodology Used for the Assessment

33. The assessment was performed in April 2002, based on study of the AML/CFT laws and regulations of the Netherlands Antilles, as detailed in Attachment I. Also, discussions were held with the Deputy Director of the BNA for Policy and International Relations, the Head of International Relations, the Heads of the Banking and Insurance Supervision Departments of BNA, Head and staff of the Unusual Transactions Reporting Center (UTRC), the Attorney General of the Netherlands Antilles, and the Head of the Customs Service. As agreed with the authorities, the February 2002 draft AML/CFT Methodology was used as the basis for the assessment. Since the assessment was performed, a new methodology and criterion-by-criterion assessment worksheet was developed and agreed on between the IMF, World Bank, and the FATF. These materials were not available at the time of the missions. The AML/CFT assessment has been updated through July 2003, in consultation with the authorities, to take into account recent developments of relevance to the assessment, including the issuance in June 2003 of new AML/CFT Guidelines for Banks and insurance companies.²

² The new assessment methodology, agreed between the IMF, World Bank, and the FATF in October 2002 recognizes that assessors should be aware that the legislative, institutional, and supervisory framework for AML/CFT may differ substantially from one jurisdiction to the next. Provided the relevant international standards for AML and CFT are met, it is acceptable that jurisdictions implement the standards in a manner consistent with their national legislative and institutional systems. Consistent with the modalities for assessments under the ROSC framework, account should be taken of each jurisdiction's stage of economic development, its range of administrative capacities, and different cultural and legal conditions. Moreover, the report should provide the context for the assessment and make note of any progress that has been or is being made in implementing the international standards and the criteria in this methodology.

Table 7. Detailed Assessment—Legal Requirements for Supervision and Regulation

Legal Requirements for Supervision and Regulation	
<i>Client Due Diligence</i>	
<p>Financial intermediaries should be required to verify the identity of customers, to keep records of financial transactions, and to report unusual or suspicious transactions to a competent authority. In addition, financial institutions should establish internal procedures to prevent ML and terrorism financing, make employees aware of money-laundering laws, and screen applicants for employment. Adequate sanctions should be provided for failure to comply with such laws.</p>	
Description	<p>Financial intermediaries¹ are prohibited from engaging in a financial transaction before having verified the client’s identity on the basis of an official identifying document. They must keep a record of the evidence of the client’s identity and a record of all correspondence between the client and the financial intermediary; review the identification when information appears to be out-of-date, keep records to enable the transaction to be readily reconstructed at any time by the UTRC,² and report unusual transactions to the UTRC (Article 2, Article 3, Article 6, Article 7, and Article 8 of the Identification Ordinance). With respect to banks and life insurance companies, see BNA AML Guidelines for Banks of June 1, 2003 (based on Article 21.2 of the Banking Ordinance) and the AML Guidelines for Insurance Companies of 2000 of the same date (based on Article 17.2 of the Insurance Ordinance). If the client is a legal entity, its legal existence and structure, including the legal form, trade name, address, domicile, and location of head office must be verified, and all authorized agents and representatives duly identified (Article 3(2) of Identification Ordinance; Article 6 of the Implementation Decree of the Identification Ordinance, Official Gazette 1998, No. 19; AML Guidelines for Banks p. 4, last paragraph; AML Guidelines for Insurance Companies, p. 4, para. A.1). Financial intermediaries are required to establish the identity of ultimate beneficiaries of a transaction (Article 5(1), (2), and (3) of the Identification Ordinance; AML Guidelines for Banks and for Insurance Companies, respectively, p. 5 and p. 3, para. A).</p> <p>All banks are required to maintain identification documents for 10 years and hold them available for inspection (Banking Ordinance, Article 42). A general obligation applies to all companies to hold documents for 10 years, as stated in the Civil Code, Book 3, Article 15(a)(3) and the Code of Commerce, Article 4).</p> <p>Other financial intermediaries, including life insurance companies and money transmitters (MTs), are required to maintain client transaction records for at least five years, either from the termination of the agreement or the execution of the transaction and should hold them available for inspection (Article 1(b), Article 6(c) and (d), and Article 7 of the Identification Ordinance).</p> <p>All financial intermediaries are required to identify complex or unusual transactions, and complex and unusual patterns of transactions that have no apparent economic or lawful purpose, to examine as far as possible the background and purpose of such transactions and to file prompt reports to the UTRC (Appendices A, B, and C of the Ministerial Decree to Implement the Reporting Ordinance; Article 11 of the Reporting Ordinance; AML Guidelines for Banks, p. 3, para. 2.1; AML Guidelines for Insurance Companies p. 5, para. A.2). Financial Intermediaries are required to report all transactions over NA f. 250,000 (US\$140,000) and other transactions over NA f. 20,000 (US\$11,000) that also exhibit other indicators (criteria), such as the exchange for larger denominations, for another currency, involving securities, or involving traveler’s checks (Ministerial Decree to Implement the Reporting Ordinance, Appendix A(1)).</p>

Criteria have been established to assist financial intermediaries in determining whether a transaction needs to be reported to the UTRC. This includes paying special attention to certain transactions and to the background and purpose of such transactions. Financial intermediaries, including their officials, are protected from criminal or civil prosecution for reporting suspicious transactions in good faith to the UTRC (Article 14 and Article 15 of the Reporting Ordinance). Financial intermediaries, including their officials, are bound to secrecy in respect to information submitted to the UTRC; tipping-off is prohibited (Article 21(1) of the Reporting Ordinance).

Financial intermediaries are required to follow FATF Special Recommendation VII (on wire transfers) pursuant to a letter from the BNA to banks and MTs (March 2002) to attach originator information and any messages relevant to funds transfers that should remain with the transfer throughout the payment process (see also AML Guidelines for Banks p. 6, last paragraph). It is explicitly required that financial institutions pay enhanced scrutiny to funds transfers that do not contain originator information and should report such transactions to the UTRC. This is covered by the criteria of Appendix A of the Ministerial Decree. Also, new Ministerial Decrees on the financing of terrorism (FT) have been adopted (October 4, 2002) to add FT as a criterion for reporting of unusual transactions to the UTRC. Also, FT transactions which are reported to the law enforcement authorities are also to be reported to the UTRC, per Decrees 119, 120, and 121 of October 4, 2002. By letter of October 22, 2002 the central bank informed the financial sector again on the obligation to implement special recommendation VII, by sending them the Interpretative Notes of the FATF on implementation of Special Recommendation VII. These Interpretative Notes have been finalized and adopted by the FATF and are placed on its website. The central bank also addresses this issue in its new AML and CFT guidelines.

Financial institutions and MTs are required to implement internal procedures to prevent their institutions from being used for ML (Article 3(e) of the Reporting Ordinance). Banks (AML Guidelines for Banks, p. 8, para. II.2) and life insurance companies (AML Guidelines for Insurance Companies, p. 8, para. Ad(B)) are required to take adequate measures to make employees aware of AML/CFT laws and related procedures and policies. This includes the designation of a compliance officer at management level. Other sectors, such as company service providers (CSPs), often participate in training on a voluntary basis.

There is no explicit statutory requirement that financial institutions screen employment applicants from an AML/CFT angle. However, under the revised March 2003 BNA Policy Rule on Integrity Testing, which includes assessment of fit and proper criteria, any criminal records prospective managers and qualifying shareholders of financial institutions and other relevant persons are considered by the BNA in its review.

Intentional violation of identification and record-keeping requirements is punishable with either imprisonment of up to four years, or with a fine of up to NA f. 500,000 (US\$280,000), or both (Article 9(1) of the Identification Ordinance); unintentional violation of verification and record-keeping requirements is punishable with either imprisonment of up to one year, or a fine of up to NAf 250,000 (US\$140,000), or both (Article 9(2) of the Identification Ordinance). Where the violation is committed by or by order of a legal entity, punishment is pronounced either against the legal entity, or against those who ordered the act to be committed, or against both (Article 11 of the Identification Ordinance). Intentional violation of reporting and tipping-off requirements is punishable with either imprisonment of up to four years, or with a fine of up to NAf 500,000 (US\$280,000), or both; unintentional violation of reporting and tipping-off requirements is punishable with either imprisonment of up to one year, or with a fine of up to NAf 250,000 (US\$140,000), or both (Article 23 of the Reporting Ordinance). Where the violation is committed by or by order of a legal entity, punishment is

	pronounced either against such legal entity, or against those who ordered the act to be committed, or against both (Article 25 of the Reporting Ordinance). With respect to MTs, Article 28 of the Foreign Exchange Ordinance provides for imprisonment not exceeding two years, and a fine not exceeding Naf 25,000 (US\$14,000). Financial institutions are required to comply with instructions from their supervisory authorities (Article 23 of Reporting Ordinance; Article 22 of Banking Ordinance; and Insurance Ordinance, Article 31(2)).
Assessment	Compliant
Comments	<p>Nonlife insurance companies, underwriters, brokers, and agents will shortly be covered by the AML/CFT framework. Draft legislation on supervision of brokers and agents has been submitted to parliament. Currently, lawyers, notaries, accountants, consultants, real estate agents, and dealers in high-end goods, such as antiques, jewelry, and auctioneers are not covered under the AML framework. The authorities are closely following developments in the FATF in this respect and will adapt their legislation accordingly, after the FATF finishes the revision of the 40 recommendations, most probably in June 2003. Self-regulation by associations of lawyers or notaries is not sufficient for these purposes.</p> <p>Regarding penalties for violations of laws, consideration should be given to the amendment of relevant laws to allow the BNA, the CSPs Board, and the Gaming Control Boards to impose, either directly or through a court order, money penalties or administrative fines on institutions and their employees. Administrative penalties have a number of advantages, including (i) that they may be imposed by the BNA, without the need to refer such matter to a public prosecutor, and the attendant prosecutorial discretion that may result in a low priority being given to such referral; (ii) administrative penalties are subject to a lower standard of proof than criminal penalties and, therefore, are easier to impose; (iii) in amounts that are sufficiently high, such penalties may discourage those who contemplate violating the law, or raise the costs of doing so to a sufficient level, so as to act as a significant deterrent; and (iv) the use of such penalties is becoming more common internationally as an integral part of financial regulatory and AML laws.</p> <p>Finally, an explicit statutory requirement that financial institutions screen applicants for employment to prevent the use of their institutions by money launderers or terrorists is needed. Such aspects may not always be evident from the regular fit and proper test. Statutory fit and proper criteria for directors, senior officers, and shareholders should also include explicit reference to this aspect. Screening of applicants for positions in any supervised financial intermediary is covered by the new AML/CFT Guidelines for Banks and insurance companies, issued by the BNA in June 2003.</p>
Legal Requirements for Supervision and Regulation	
<i>Fit and Proper Test and Financial Transparency</i>	
Laws should provide that financial institutions and other financial intermediaries are not controlled by criminals, are subject to some form of authorization, registration, or licensing, and that their owners, controlling shareholders, directors, and management are subject to an appropriate fit and proper test. Laws should also provide that companies or other entities subject to any specific benefit from or regulation by the state are not controlled by serious criminals.	

<p>Description</p>	<p>The relevant laws only mention the general screening of antecedents, but do not explicitly refer to the lack of a criminal record as a fit and proper criterion for managers and qualifying shareholders. Therefore, the BNA has replaced the fit and proper criterion with a stricter and more appropriate fitness and integrity criterion, including the screening of all antecedents involved, as mentioned in its revised March 2003 Policy Rule on Integrity Testing. An extract from the police records is required, certifying that the applicant has no criminal record. Further, the BNA is in the process of preparing draft legislation, harmonizing, and bringing up-to-date all relevant financial supervision laws, mentioning specifically the integrity of the financial sector as a main supervisory goal.</p> <p>Also under current practice, a criminal record is taken by the BNA as a disqualification for a position as a manager or key functionary of a supervised institution, in the context of the BNA approval procedure for managers and qualifying shareholders (Banking Ordinance, Sections 4(1)(e) and (f), and 23(2)(a)). Section 23(2)(b) prohibits transfers of control without BNA approval. With respect to life insurance companies, Article 17 of the Insurance Ordinance requires BNA approval of senior officials and shareholders, and Article 32 requires approval of changes in managing and supervisory directors. With respect to MTs, members of the managing and Supervisory Board of Directors, as well as shareholders, are subject to integrity and/or fit and proper tests (MT Admission Requirements, pp. 2–3).</p> <p>With respect to banks, life insurance companies, and MTs, adequate sanctions are provided for failure to comply with any of the requirements of law.</p> <p>For the formation of any corporate entity, shell corporation, charitable or noncharitable foundation, a declaration of no objection is required from the ministry of justice, certifying that the corporation’s envisaged activities are not in contravention of the law.</p>
<p>Assessment</p>	<p>Largely compliant</p>
<p>Comments</p>	<p>The pending legislative proposal to adopt stricter licensing procedures for MTs should be adopted immediately.</p>
<p>Criminalization of Money Laundering and Terrorism Finance</p>	
<p>Laws should provide for the criminalization of ML and terrorism finance as serious offenses. Money laundering and financing of terrorism should be separate offenses. Money laundering should extend to all serious crimes and should conform to the definition set out in the 1988 Vienna Convention. Financing of terrorism should conform to the definition set out in the UN Convention on Financing of Terrorism.³ The criteria below are consistent with FATF Recommendation I, and FATF Special FATF Recommendations I and II.</p>	
<p>Description</p>	<p>Money laundering is criminalized under Article 1 of the National Ordinance on the Prevention of Money Laundering (AML Ordinance). Criminalization of FT is not covered explicitly in that term; FT, is not used but rather is covered by the Criminal Code as an accessory offense to or participation in certain of the crimes set forth in the conventions referred to in the 1999 Suppression of the Financing of Terrorism Convention.</p> <p>The Netherlands Antilles through the Kingdom of the Netherlands are a party to and have ratified the Vienna Convention. The Suppression of Terrorism Convention has been signed by the Kingdom of the Netherlands but not ratified. The Palermo Convention was signed on December 12, 2000 by the Kingdom of the Netherlands, also on behalf of the Netherlands Antilles, but has not been ratified yet.</p> <p>The offense of ML covers both the predicate offense and laundering as well as only laundering (Article 1 and Article 3 of the AML Ordinance; Article 38e of the Criminal Code). It is not necessary that a person be convicted of a predicate offense to establish that assets were the proceeds of a predicate offense and to convict any person of laundering such</p>

	<p>proceeds (AML Ordinance, Article 1, Article 2, and Article 3). All crimes are considered predicate offenses for ML (AML Ordinance, Article 1). FT itself is not explicitly mentioned as a crime. Acts that can be considered to support FT are criminalized in Article 49 and Article 50 of the Criminal Code. The FATF considers this to be satisfactory compliance with Special Recommendation II of the FATF. The offense of ML extends to all assets that represent the proceeds of crime (AML Ordinance, Article 1, as amended by Article 1 of the National Ordinance of August 3, 2001 (No. 7, 2001)). The predicate offenses to ML also extend to those crimes committed extraterritorially. However, to ensure that ML does not address activities deemed lawful domestically, only those acts that would have constituted a predicate offense had they occurred domestically are included (AML Ordinance, Article 1). The offense of ML requires the element of knowing, including knowledge from objective factual circumstances (Article 1 and Article 3(1)(b) of the AML Ordinance). Also legal entities are punishable for ML (Article 5 AML Ordinance).</p> <p>Intentionally engaging in ML is punishable either with imprisonment of up to 12 years or a fine of up to NA f. 1,000,000 (approximately US\$560,000), or both (Article 1 of the AML Ordinance); repeat offenders are liable to imprisonment of up to 16 years or a fine of up to NA f. 1,250,000 (approximately US\$700,000), or both (Article 2 of the AML Ordinance); individuals deemed guilty of ML by default are liable either with imprisonment of up to 4 years or a fine of up to NA f. 250,000 (approximately US\$140,000), or both (Article 3 of the AML Ordinance). With respect to banks, Sections 9(1)(a), (e), and (f) of the Banking Ordinance provides for revocation of license to the extent that there is a violation of the AML Guidelines for Banks, which are issued under Article 21 of this ordinance. With respect to life insurance companies, Article 55(c) and (d) of the Insurance Ordinance contain a similar provision. Administrative penalties for violations of the AML Ordinance are not provided for in the law.</p>
Assessment	Compliant
Comments	The authorities received technical assistance from the Netherlands for the drafting of implementation legislation to be able to ratify the 1999 U.N. Convention on FT. In addition, consideration should be given to expanding the authority for administrative penalties as outlined in the comments section of “Client Due Diligence” above.
<p>Confiscation of Proceeds of Crime or Assets used to Finance Terrorism</p> <p>AML/CFT laws should provide for the confiscation of the proceeds of crime and of assets used to finance terrorism, but should adequately protect the rights of innocent parties. The Palermo Convention and other related conventions should be signed and ratified.</p>	
Description	<p>The Criminal Code and the Criminal Procedure Code, both as amended by National Ordinance 255 of December 1998 on the Forfeiture of Illegally Obtained Gains, provide for the seizure and forfeiture of the proceeds of crime and protection of third party rights. Confiscation takes place upon application by the Public Prosecutor to the court for an order to take away an illegally obtained financial advantage or object (Article 38e, Article 119, and Article 119a of the Criminal Code). The Palermo Convention was signed December 12, 2000 by the Kingdom of the Netherlands, also on behalf of the Netherlands Antilles, but has not yet been ratified. The Strasbourg Convention has been signed and ratified in 1999. Confiscation of assets of organizations found to be primarily criminal in nature (i.e., whose principal function is to perform or assist in the performance of illegal activities) is allowed. There is no provision in the Criminal Code on confiscating property of equivalent value.</p> <p>The Criminal Code provides for measures to seize or freeze assets that are the proceeds of crime during an investigation (Article 38e(3) of the Criminal Code). The measures require a court order (Article 38e(3) of the Criminal Code). Legal safeguards are provided to protect the rights of owners of frozen or seized assets (Article 47 of the Criminal Procedure Code).</p>

	<p>Civil confiscation is not permissible under the legal system of the Netherlands Antilles. Orders to identify and trace assets suspected of being proceeds of crime or used for terrorist financing are allowed (Criminal Procedure Code, Articles 120–129).</p> <p>When assessing the value of illegally obtained advantage, third party rights shall be deducted from the amount assessed (Article 38e(6) of the Criminal Code). However, the nature and extent of such rights are not explicitly defined, nor how a third party may prove any interest he may have in confiscated property. In addition to confiscation and criminal sanctions, there is authority to void contracts or render them unenforceable, where parties to the contract knew or should have known that as a result of the contract the authorities’ ability to recover financial claims resulting from the operation of AML/CFT laws would be prejudiced (Article 119(d) of the Criminal Procedure Code).</p>
Assessment	Compliant
Comment	Consideration should be given to adopting a statutory provision to permit confiscation of property of equivalent value.
<p>Financial Intelligence Units</p> <p>National authorities should create mechanisms whereby financial information relevant to the prevention of money laundering and terrorism finance is collected, analyzed, and disseminated to appropriate supervisory and law enforcement authorities. Financial institutions’ suspicious transactions reports are an integral component of this mechanism.</p> <p>The typical process is one where the financial institutions are required to make suspicious activity reports, often through their national supervisors, to a financial intelligence unit (FIU or other national AML/CTF Competent Authority). The FIU acts as the central repository to gather information, primarily in the form of the suspicious activity reports, and turns this raw reporting into intelligence that is provided to the appropriate authority to support a national anti-money laundering effort.</p> <p>The FIU should be authorized to effect, either through its own authority or by reference to a law enforcement or supervisory agency, on-site inspections, freeze and blocking orders, compliance audits, and administrative sanctions or penalties.</p> <p>The overall effectiveness of fighting money laundering crime (and now terrorism finance) will often depend on the sharing of information and intelligence among several jurisdictions. This sharing of information is facilitated by interaction between FIUs, law enforcement agencies, and supervisory agencies.</p>	
Description	<p>There is a centralized Financial Intelligence Unit (FIU) in the Netherlands Antilles, the UTRC (Article 2 of the Reporting Ordinance). The UTRC is responsible for receiving and analyzing financial transaction reports to determine the presence of possible ML (Article 3(a) of the Reporting Ordinance). On the basis of government Decrees 129, 130, and 131, of October 11, 2002, confirming ministerial decrees of October 4, 2002), transactions suspected of being related to terrorism should also be reported to the UTRC.</p> <p>Reporting parties are required to report any unusual transaction to the UTRC (Article 11(1) of the Reporting Ordinance). The ministers of finance and justice in consultation with the UTRC issue guidelines on the identification of unusual transactions (Article 10(1) of the Reporting Ordinance). The UTRC is obliged to report to the investigative and prosecuting authorities any information from which a reasonable presumption of ML and terrorism could ensue, could provide leads to ML or terrorism activities, or could help prevent ML or terrorism in the future. The UTRC is authorized to determine the manner in which transactions should be reported (Article 3(b) and (c) of the Reporting Ordinance).</p>

	<p>The UTRC may require reporting parties to provide additional documentation if necessary (Article 12 of the Reporting Ordinance). The UTRC may request assistance from the BNA with respect to entities regulated by the BNA, which implies that the BNA and UTRC share information. However, there is no explicit provision of law on information sharing between the UTRC and the BNA. With respect to regulated entities that are not under the responsibility of the BNA, or with respect to nonregulated entities, the UTRC has no explicit authority to request the BNA assistance.</p> <p>Although the UTRC itself is not authorized by law to impose an ex parte temporary freezing or blocking of transactions that it suspects are connected to ML or terrorism financing, it is authorized to request the public prosecutor to do so.</p> <p>The UTRC, as the recipient and processor of suspicious transaction reports, does not itself have the authority to audit compliance with AML and CFT obligations. With respect to entities supervised by the BNA, compliance audits are performed by the BNA (Procedures Manual for Banking and Institutional Investor’s Supervision Departments).</p> <p>Noncompliance with reporting obligations under the provisions of the Reporting Ordinance is punishable under this law. The UTRC may request prosecution of such cases of noncompliance under regular Netherlands Antilles law on criminal procedure.</p> <p>The UTRC has the legal authority “to collect, register, process, and analyze the data obtained by it, in order to determine whether these data may be important to prevent and detect money laundering...” (Reporting Ordinance, Article 3(a)). On the basis of Decrees 119–121 and 129–131, Official Gazette 2002, FT activities will also need to be reported to the UTRC. The UTRC has access to sources of financial and other relevant information, including databases, to assist in its analysis. At a minimum, these include (i) business/corporate registries (on-line); (ii) real property registries; (iii) vehicle registries; (iv) credit reporting records (not applicable); (v) police charge sheets and criminal records; and (vi) immigration and customs records.</p> <p>The UTRC is required by law to disseminate information and intelligence, either on its own initiative or upon request, to domestic authorities for investigation or action when there are reasonable grounds to suspect ML or terrorism financing (Reporting Ordinance, Article 6). Laws provide adequate safeguards, including confidentiality, to ensure that domestic authorities use properly the information and intelligence disseminated by the UTRC (Reporting Ordinance, Article 20). The UTRC also has the authority, either on its own initiative or upon request, to exchange information with foreign FIUs, subject to a MoU (Reporting Ordinance, Article 7(2), as amended by National Decree, Official Gazette 2001, No. 78). The UTRC may share information and intelligence with foreign FIUs only if they provide adequate safeguards to ensure proper use of such information and intelligence, including that information or intelligence exchanged (i) shall be used only for the specific purpose for which the information or intelligence was sought or provided; (ii) shall not be shared with a third party without the UTRC’s prior consent; and (iii) shall not be used in an administrative, prosecutorial, or judicial purpose without its prior consent (National Decree, Official Gazette 2001, No. 69, Article 4).</p> <p>The UTRC has authority to (i) undertake investigations into developments in the field of ML, to improve its methods to prevent and detect ML (Article 3(d) of the Reporting Ordinance); (ii) conduct research into ML (Article 3(d) of the Reporting Ordinance); (iii) devise training materials and programs and/or to conduct training for reporting institutions and others (Reporting Ordinance, Article 3(f)); (iv) provide “information as regards the phenomenon and prevention of ML” (Article 3(f) of the Reporting Ordinance);</p>
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	<p>and (v) advise the government and parliament on ML and terrorism financing policy and on necessary amendments to legislation.</p> <p>The UTRC has been established as an independent governmental authority. The appointment, suspension, and removal of the head of the UTRC and other officials of the UTRC is performed by National Decree, after consultation with the UTRC Guidance Committee, at the initiative of the ministers of finance and justice (Article 8 of the Reporting Ordinance). The UTRC operates under the authority of the ministry of finance (Article 2 of the Reporting Ordinance). A Guidance Committee provides assistance and advice to the UTRC. The Guidance Committee comprises representatives of the ministries of justice and finance, regulatory agencies, and the private sector, and numbers up to 12 members (Article 16, Article 17, and Article 18 of the Reporting Ordinance). The budget of the UTRC is determined by the ministries of finance and justice upon hearing the recommendations of the Guidance Committee (Article 9 of the Reporting Ordinance). The UTRC presents an annual report of its activities and plans to the minister of finance (Article 3(g) of the Reporting Ordinance). The UTRC has adequate safeguards with respect to maintaining confidentiality of information (Article 20 and Article 23(1) of the Reporting Ordinance). The UTRC has internal rules and procedures to ensure effective operation.</p> <p>There is no explicit protection of UTRC officials and staff against lawsuits arising from the execution of their duties, although they are considered to be adequately protected by general, civil, and administrative law, provided they perform their functions responsibly.</p>
Assessment	Largely compliant
Comments	<p>Filing of Unusual Transaction Reports (UTRs) by banks and other reporting entities is still uneven. This could suggest that some reporting institutions are more diligent than others, or that some institutions are more successful than others at repelling suspicious transactions. In some cases, additional enforcement may need to be considered. On-site inspections of reporting entities are neither frequent enough nor uniform across the reporting sectors. This could be remedied in part by having the BNA conduct on-site AML inspections of regulated entities more frequently than once every two years, by having other regulators, including the CSP Supervisory Board (CSP Ordinance, Article 2)⁴ and the Gaming Control Boards do so as well, and by targeting AML inspections to those institutions in each regulated sector that appear to be underreporting. In addition, the relevant laws should be amended (i) to permit information sharing between each of the regulators and the UTRC; and (ii) to provide the UTRC with the authority to obtain a court order to allow it to gain entry to premises of reporting parties, or to authorize it to require the BNA, the CSP Supervisory Board, and other regulators to inspect a regulated entity on request by the UTRC. On-site inspections by the BNA to review compliance with AML/CFT requirements for banks are too infrequent to be fully effective.</p> <p>Consideration should be given to empowering the UTRC to impose, either directly or through a court order, civil penalties, or administrative fines on reporting parties for failure to make timely reports and for other violations of AML laws.</p> <p>Although the UTRC's budget is approved annually by the council of ministers and the parliament, approval for each purchase of goods and services must be obtained in advance by the UTRC from the ministry of finance, along with a monthly projection of planned expenditures. This approach is cumbersome and time-consuming, and should be replaced by a budgetary allocation and yearly audit by the ministry or other appropriate agency of the government. The minister of finance has been informed about, and is addressing this problem.</p>

	<p>The UTRC should take steps to ensure that its written procedures clearly reflect its policies and practices.</p>
<p>International Cooperation in AML/CFT Matters</p>	
<p>Laws should permit multilateral cooperation and mutual assistance (including investigation, prosecution, and extradition) in AML/CFT matters based on accepted international practices. There should be provisions for the sharing of information and intelligence relating to money laundering and terrorism, both formally and informally, with other jurisdictions. There should be procedures to extradite individuals charged with a ML or FT offense or related offenses or to permit prosecution domestically when not extraditable.</p>	
<p>Description</p>	<p>The UTRC may exchange information with other FIUs based on an MoU, without the need for a treaty. In addition, provisions for the sharing of information and intelligence relating to ML and terrorism, both formally and informally, with other jurisdictions are included in several multilateral and bilateral treaties (Official Gazette 2001, No. 69, Amendment to the Reporting Ordinance).</p> <p>Mutual legal assistance is possible pursuant to a treaty and may be initiated in the Netherlands Antilles based on a determination that ML or a predicate crime was committed in the Netherlands Antilles by a person under criminal investigation in the foreign state (Article 579(a), Article 579(*b), and Article 579(c) of the Criminal Code). There are procedures to provide effective legal assistance in criminal matters in the identification, freezing, seizure, or confiscation of proceeds of crime (Article 579 (b) and 579(c) of the Criminal Code). Assistance may be provided if an individual is charged with ML or FT only, as well as if the individual is charged with both the predicate and the ML offense or terrorism. Assistance may be provided even where there are different standards concerning the intentional elements of the crime to the extent possible under domestic law.</p> <p>International cooperation is effected primarily through bilateral treaties between the Netherlands Antilles, as represented by the Kingdom of the Netherlands, and a foreign state (Article 579 (a) (1) of the Criminal Code), such as between the Kingdom and the United States, and the Kingdom and Australia, on mutual assistance in criminal matters. There are also a number of treaties for mutual assistance, including, inter alia, the Strasbourg Convention, which has been ratified by the Kingdom of the Netherlands.</p> <p>Controlled delivery is accepted in jurisprudence as a legitimate special investigation method and is regularly used both by the Netherlands Antilles investigators and in response to requests of foreign countries.</p> <p>Measures to enable the sharing of confiscated property with other countries are determined by treaty, for instance with the United States. Under the Extradition Decree Official Gazette 1926, No. 61, as amended extradition is permitted for the purpose of assisting a criminal investigation by the petitioning the state for crimes punishable by imprisonment of more than one year (Extradition Decree, Article 2).</p>
<p>Assessment</p>	<p>Compliant</p>
<p>Comments</p>	<p>None</p>

Controls and Monitoring of Cash Transactions	
<p>This includes information on controls on the import and export of bank notes, and the procedures for the monitoring of and recording of cross-border movements of cash (e.g., declaration of large amounts of cash on entry and exit. In addition, information should be included on the general financial conditions that influence the use of cash. Any particular factors that have resulted in increase or decrease in the use of cash in transactions should be recorded (e.g., existence of financial transaction taxes, use of credit or debit cards, limitations on size denomination of bank notes, confidence in the banking system, etc.).</p> <p>(For information only, not assessment)</p>	
Describe controls on the import and export of bank notes	Under the Ordinance on Cross Border Cash Transports (Official Gazette 2002, No. 74, of March 25, 2002; “Cross Border Ordinance”), all exports and imports of cash above NA f. 20,000 (US\$11,000) must be reported to the Customs Office. A reporting form has been developed by the Customs Office and the UTRC. Under Article 4 of the Cross-Border Ordinance, the UTRC is charged with the management of the information received by the Customs Authority. The Netherlands Antilles have not established a system to collect and process information on noncash domestic and international currency transactions above a fixed amount, as performed by financial institutions, unless the transaction can be considered a suspicious transaction and is subject the Reporting Ordinance.
Describe procedures for monitoring and recording cross-border movements of large amounts of cash	Financial intermediaries are required to identify, record, and report all cash transactions over NA f. 250,000 (US\$140,000) and most transactions over NA f. 20,000 (US\$11,000) (Implementation Decree to the Unusual Transaction Reporting Ordinance, Official Gazette 1997, No. 253) to the UTRC. This information is made available to competent authorities for use in ML cases, subject to strict safeguards to ensure proper use of this information. The BNA monitors and verifies these reports through on-site inspections of banks, life insurance companies, and MTs. Information with respect to international currency and monetary instruments ¹ (but not precious metals, gems, etc.) transactions is made available on a monthly basis to the IMF and the BIS on quarterly basis.
Describe factors which influence the use of cash in transactions	Banks have been promoting the use of credit and debit cards, direct deposit of salary checks, and book entry recording of securities for some time.

¹ Financial intermediary is, for instance, anyone who renders financial services by virtue of his profession or in the ordinary course of his business. This includes, inter alia, the following: banks; life insurance companies, including agents, subagents, and brokers; MTs; and CSPs, such as trust companies or fiduciaries regulated under the CSP Ordinance, casinos, and internet gambling.

Financial services are, for instance: custody of securities, money, precious metals, or other valuables; the opening of an account on which a balance may be kept in securities, money, precious metals, or other valuables; the renting of a safe deposit box; performing payments, selling, brokering, or paying out under a life insurance contract; crediting or debiting of an account, and the providing of other services to be designated by national decree.

Nonlife insurers, agents, subagents, brokers, captives, and professional reinsurers are currently not covered in the AML framework in the Netherlands Antilles. However, agents and brokers will soon become subject to BNA supervision. Draft legislation to this effect has been submitted to parliament. MTs are licensed and supervised by the BNA under the Foreign Exchange Ordinance and the MT Admission Requirements. Foreign exchange houses (bureaux de change) are not permitted by policy of the BNA. Lawyers, notaries, accountants, consultants, real estate agents, and dealers in high-end goods, such as antiques, jewelry, and auctioneers, are not currently covered under the AML framework, although the Antillean authorities are closely following the discussion within the FATF and waiting for the revision of the FATF 40 recommendations. The

recommendations on this topic were finalized in February 2003. Also with regard to CSPs, new FATF guidance is awaited, after which the Antillean AML framework will be adapted.

² The UTRC is the FIU in the Netherlands Antilles.

³ The key elements are outlined in FATF 40 4–7; UNML Articles 1–10, Article 17, Articles 19–23, Articles 28–48, Articles 53–55, and Articles 56–79, and UNMC Article 21 through Article 33 (Attachment I).

⁴ The Supervisory Board has indicated that it does not expect to begin on-site inspections of CSPs before January 2003 at the earliest.

IV. ASSESSING THE AML/CFT IN PRUDENTIALLY REGULATED SECTORS

A. Module 1—AML/CFT in the Banking Sector

Table 8. Detailed Assessment of Compliance with AML/CFT Requirements for Banking Supervision

Organizational and Administrative Arrangements	
<p>The supervisor determines that banks have in place adequate policies and procedures that deter improper use by criminal elements while promoting high ethical and professional standards. Measures should provide for prevention and detection of money laundering and other criminal activity, as well as ensure appropriate reporting of suspected money laundering activities. These supervisory and institutional arrangements are consistent with FATF Recommendation 19, 26, and 27, referring to the role of the supervisor and establishment of internal policies, procedures, and audit and training programs to deter money laundering. The supervisor promotes high ethical and professional standards by banks</p>	
Description	<p>The BNA verifies that the banks have proper policies and procedures in place to identify customers and to detect the unlawful use of the bank by criminals during the on-site examinations. The BNA undertakes on-site inspections, of which, AML forms a part every two years. There are specific internal procedures for ML deterrence for the examiners (BNA AML Inspection Checklist; internal BNA document).</p> <p>During the on-site inspection, the BNA examiners hold interviews with the bank’s staff and senior officers involved in AML measures to establish whether the current policies and procedures are adequate (Section III of the AML guidelines). Any shortcoming or violation of the AML legislation is included in the examination report, and directives are set out to correct deficiencies in AML compliance.</p> <p>Ongoing AML training for the BNA personnel takes place through local and international programs. Among the specific sources of training were cited: the Netherlands Institute for Banking Training, Oceana Publications Annual Conference on Money Laundering and Cyber Crime, Money Laundering Alert of the CFATF, UTRC training activities, The Bankers Association’s Financial Institute (headed by the Financial Director of the BNA, at the initiative of the industry) and the Compliance Officers Association, organize regular training programs. On occasion, the BNA provides instructors and participants to these courses. The bank examiners at the BNA receive regular AML training, both locally and internationally. The BNA’s Head of International Relations has among her responsibilities keeping the institution informed on ML and FT issues, also with a view to determining staff training needs.</p> <p>The BNA encourages the implementation of good governance practices by banks’ Supervisory</p>

	<p>Boards by means Sections II, III, and IV of the “Guidance Notes for the Supervisory Board of Supervised Financial Institutions”(hereinafter “Corporate Governance Guidance Notes”).</p> <p>Under Section II of the BNA’s AML Guidelines for Banks, banks are required to issue a formal policy statement from its Board of Directors and senior management expressing the institution’s commitment to prevent ML (issued on the basis of Article 21 (2) (e) of the Banking Ordinance (hereinafter “AML guidelines”). The examiners review procedures on integrity issues, ensuring that the staff is aware of their contents.</p> <p>On good governance, the scrutiny of shareholders and directors of banks requires compliance with the fit and proper test established in the revised March 2003 BNA Policy Rule on Integrity Testing. Additionally, disclosure of a “Statement of Compliance” with the Corporate Governance Guidelines is required. The “Statement of Compliance” has to be sent to the BNA at least once a year, after its certification by the bank’s external auditor (BNA letters of August 8 and 16, 1997).</p> <p>The BNA has established a special Financial System Integrity Unit to assist other supervision departments with additional expertise in the area or integrity risk prevention and when conducting on-site examinations. This unit executes its advisory, instructive, and coordinating function within the BNA, on the basis of several instruments, amongst which the Register Integrity Financial Sector (with Regulation Code), the August 2002 Covenant on Information Exchange with the Public Prosecutor’s Office, other MoUs, and the new BNA Policy Rule on Integrity Testing.</p> <p>During on-site examinations, the BNA verifies compliance with the specific instructions on training plans and programs for the bank’s personnel contained in para. II.4 of the AML Guidelines for Banks. AML training requires to cover new employees, staff dealing directly with the public, staff dealing with account opening or new clients, and senior staff (Section II.4 (a), (b), (c), and (d) of the AML Guidelines for Banks). Periodic and ongoing training should be available to keep employees informed of new developments Section II.4 (e) of the AML Guidelines for Banks). The ML element of the on-site review includes verification of documented policy statements on ethics and professional behavior, and the communication of such policies to the staff (BNA Internal AML Inspection Checklist). The weaknesses identified in the examination report are communicated to the management of the institution, who are then obliged to implement the corrective measures directed by the BNA. Noncompliance with such instructions can result in the revocation of the license by the BNA (Article 9 (1) (f) of the Banking Ordinance).</p> <p>The BNA has the authority to instruct a bank to take the necessary measures with regard to compliance with the AML Guidelines for Banks to counteract noncompliance with the Identification and/or Reporting Ordinances (Banking Ordinance, Article 22 (1) and (2) or to respond to signs of risks to the liquidity position of a bank. Pursuant to Article 9 (1) (f) of the Banking Ordinance, noncompliance with such instructions can be a ground for revocation of the license. The BNA does not have power to impose fines, although it can impose administrative sanctions for noncompliance with the anti-money laundering requirements set in the Identification Ordinance or the Reporting Ordinance.</p> <p>The BNA is authorized to file a report with the Public Prosecutors Office against a bank, its management, and directors, if it considers that there are reasons to believe that a criminal act has been committed (Banking Ordinance, Article 40).</p> <p>The BNA has provided specialized expertise in financial issues to other competent authorities, for instance, to the Public Prosecutors to assist in the prosecution of ML cases.</p>
Assessment	Largely compliant

<p>Comments</p>	<p>Given the size of the banking sector in the Netherlands Antilles, the BNA should carry out on-site reviews more frequently than every two years. The mission considers that annual on-site inspections would be more appropriate.</p> <p>The enforcement powers of the BNA need to be enhanced through the amendment of the Banking Ordinance, granting specific authority to level fines for violations of the AML legislation and capacity to take prompt action against a bank, its management, and directors.</p>
<p>Customer Identification and Due Diligence</p> <p>The supervisor determines that banks have documented and enforced policies for identification of customers and those acting on their behalf as part of their anti-money-laundering program. Information requirements on customers need to be commensurate with the assessed risk of money laundering posed by those customers. The customer identification requirements are consistent with the Basel Committee paper on Customer Due Diligence for Banks and FATF Recommendations 10 and 11.</p>	
<p>Description</p>	<p>Compliance with the Identification Ordinance and the AML Guidelines is verified by the BNA during its on-site inspections. This includes (i) prior due diligence on resident and nonresident individuals and legal entities before rendering any financial service (Article 2, Article 3, and Article 8 of the Identification Ordinance); (ii) Verification of the adequacy of procedures to determine the identity of the ultimate beneficial owner of an account or a transaction, including individuals or legal entities, trustees, foundations, and of corporate vehicles of all kinds (Article 5 (1), (2), (3), and (4) of Identification Ordinance); Section II.1.1 (A) of the AML guidelines); and (iii) appropriate records of identification documents and regular updating (Article 3(3), Article 6, and Article 7 of the Identification Ordinance; Section II.1.1 of the AML guidelines).</p> <p>The AML guidelines include advice on some types of customers that are likely to pose a higher-than-average risk to a bank, such as corporate customers and clients with nominee accounts (Section II.1.1 (A) of the AML guidelines).</p> <p>Section II.1 of the AML Guidelines for Banks provides more detailed guidance on the identification of resident and nonresident personal customers, corporate customers, clients with nominee accounts, and in transactions with nonaccount customers or occasional customers.</p> <p>There are no specific provisions regulating numbered accounts, but such accounts fall under the Identification Ordinance. Therefore, anonymous accounts or with fictitious names are effectively prohibited by the Identification Ordinance (Article 2). According to the BNA, there are no numbered accounts in the Netherlands Antilles.</p> <p>The updated BNA AML/CFT guidelines issued in June 2003, instruct banks to conduct a more extensive due diligence for private banking activities or high-risk customers. This will be verified during subsequent on site inspections. By the letter of March 2003, the BNA has instructed all financial institutions subject to the AML/CFT framework to give special attention to business relations and transactions with persons from countries on the FATF list of non cooperative countries and territories. If necessary, these relations and transactions are to be reported to the UTRC.</p> <p>Section II.1.1 (A) of the AML Guidelines for Banks provides additional guidance on the identification of corporate customers and identification of clients with nominee accounts.</p> <p>The AML guidelines require that a “Source of Funds” form be filled out by the client. The form does not explicitly require ascertaining that the customer’s source of wealth is not from illegal activities. The form is used when funding a new account and when carrying out a transaction.</p>

	<p>The AML guidelines instruct banks to be watchful with regard to accepting funds wire transferred from noncustomers and noncorrespondent banks for subsequent transfer to other unknown parties. If such funds are accepted, suitable identification of the new depositor and knowledge of the source of funds has to be required (Section II.1.2 BNA AML guidelines). The BNA issued Circular No. SH/rp/2002-04.845, dated March 22, 2002, which requires banks to ensure that electronic money transfer information, includes the sender’s full name, address, and account number before executing the transaction. The same circular advises that this matter will be verified during the next on-site review.</p> <p>The BNA’s Circular No. SH/rp/2002-04.845 instructs banks that transfers without full originator information (name, address, and account number) should not be executed, consistent with FATF Special Recommendation VII. By National Decree of August 7, 2000 (Official Gazette 2000, No. 121, the electronic transfer of money has been made subject to the Identification Ordinance, requiring proper identification and registration of the identity of customers.</p> <p>During on-site inspections, the examiners confirm if, when performing wire transfers, the bank requires that the originator fill a “Source of Funds” declaration when accepting funds from nonregular customers and noncorrespondent banks (Section II.1.2 and Appendix “A” of AML guidelines). The guidelines require the bank to refuse the transaction when it is reasonable to believe that a wire transfer is related with criminal or terrorist activity, or if the client refuses to sign the form (Appendix “A” of AML guidelines).</p> <p>The examiners check that the bank keeps a record of the information used to identify the originator, the amount involved in the transaction and the corresponding account number (Article 6 (a), (b), (c), and Article 7 of the Identification Ordinance).</p> <p>There are no specific legal provisions related to enhanced attention to correspondent banking services from banks without physical presence in their jurisdiction or when the jurisdiction is known to have an inadequate AML framework.</p> <p>The BNA regularly sends FATF typologies reports to the Bankers Association as a means to maintain the awareness of the industry on the ML threats inherent in new or developing technologies that favor anonymity, and they take measures to prevent their use in ML schemes.</p>
Assessment	Largely compliant
Comments	<p>The AML guidelines need to be amended to provide specific guidance on the enhanced scrutiny needed in private banking activities and transactions with high-risk customers, such as politically exposed persons.</p> <p>The AML guidelines should make specific reference to enhanced and special attention to correspondent banking services from banks without physical presence in their jurisdiction or when the jurisdiction is known to have an inadequate AML framework.</p>
Monitoring and Reporting of Suspicious Activities	
<p>The supervisor determines that banks have formal procedures to recognize and report potentially suspicious transactions. Banks and competent authorities should establish and regularly revise systems for detection of unusual or suspicious patterns of activity that provide managers and compliance officers with timely information needed to identify, analyze and effectively monitor customer accounts.</p>	
Description	<p>Also see descriptions above, under I B, Financial Intelligence Units.</p> <p>The UTRC provides the banks with specific instructions for filing UTRs.</p>

	<p>Compliance with the relevant legislation is tested during on-site inspections. Banks are required to identify complex or unusual transactions, and complex and unusual patterns of transactions that have no apparent or visible economic or lawful purpose, to examine as far as possible the background and purpose of such transactions, and report the information promptly to the UTRC (Appendices A, B, and C of the Ministerial Decrees containing the indicators to detect unusual transactions; Article 11 of the Reporting Ordinance).</p> <p>The verification procedure consists of the examination of policies, procedures, and significant samples of client files. Compliance with the relevant legislation is tested during the on-site inspection. The procedure consists in the examination of policies, procedures, and significant samples of client files. The inspection includes verification of the existence of an adequate filing system for unusual transactions detected at the bank, kept by the compliance officer (Section II.1.2 (C) of the AML guidelines).</p> <p>The BNA verifies during the on-site examination that the management of the banks has adopted formal statements of policy that should include internal control procedures for reporting unusual transactions and keep adequate records of the transactions to the competent authority and compliance officers responsible for ensuring day-to-day observance of the policy, as required by the regulation (Sections II and II.2 of AML guidelines).</p> <p>The AML guidelines require the prompt disclosure of unusual transactions to the UTRC (Section II.2 (B)), consistent with Article 11 of the Reporting Ordinance. Any person filing a UTR to the UTRC is bound to secrecy on the matter (Reporting Ordinance, Article 21 (1)).</p> <p>The working relationship with the UTRC and the banks affords the BNA the occasion to ensure that banks and its employees are following the instructions from the UTRC.</p> <p>Decrees have been issued in October 2002 (Government Decrees 129, 130, and 131) that require reporting of transactions that could be related to FT. Also, reporting is mandatory when there is cause to presume that the transaction may relate to monies derived from criminal activities (Ministerial Decree on indicators to detect unusual transactions, Appendix A, Section II.1).</p> <p>Guidance on measures for compliance with aforementioned legislation is provided in the AML Guidelines for Banks. The guidelines require banks to detect and report unusual transactions to the UTRC, including proposed, uncompleted transactions (Section II.1.2).</p>
Assessment	Compliant
Comments	None
Record Keeping, Compliance and Audit	
<p>The supervisor determines that banks have formal record keeping procedures regarding customer identification, individual transactions, and the retention period. Record keeping procedures should be regularly reviewed for compliance with applicable laws and internal policies. The criteria used are consistent with FATF Recommendation 12.</p>	
Description	<p>In the course of its supervisory functions, the BNA confirms the designation of a senior officer or officers in banks to be responsible for ML deterrence and detection, pursuant to the AML guidelines, Section II.2. The examiners verify that client transaction records are maintained and held available for inspection for at least five years, either from the termination of the agreement or the execution of the transaction (Article 6(c), (d) and Article 7 of the Identification Ordinance). The frequency and sufficiency of the updating of customer information obtained for identification and due diligence purposes is also verified during the on-site examination (Section II.1.1 of the AML guidelines).</p>

	<p>The on-site examination includes a review of the internal control systems for customer due diligence and the reporting of unusual transactions, pursuant to the relevant laws and regulations.</p> <p>The banks' AML policies are required to cover a system of independent testing of the procedures, at least annually, by internal audit personnel, the compliance department, or by a competent third party (AML guidelines, Sections II.2, II.3, and II.4). Deficiencies detected by the internal audit department or by a competent third party shall be reported to management or to the compliance officer, indicating a suggested corrective action with a deadline for compliance (AML guidelines, Section II.3).</p> <p>The BNA is authorized to file a complaint with the Public Prosecutors Office against a bank and its management and directors, if it deems there are reasons to believe that a criminal act has been committed (Banking Ordinance, Article 40). Enforcement of compliance with the Identification Ordinance is mandated to the criminal justice authorities. The BNA itself has no authority to impose specific sanctions (administrative or civil) for noncompliance with the Ordinance with regard to the maintenance for at least five years of identification records and availability for inspection (Article 6 (b) and Article 7 of the Identification Ordinance).</p> <p>The BNA is empowered to engage a silent trustee to assist in correcting any detected deficiencies with regard to compliance with applicable laws or regulations (Article 21 (1) of Banking Ordinance). Based on Article 22 of the Banking Ordinance, if the BNA deems that noncompliance with any AML provision might endanger the liquidity or solvency, the BNA can request the bank to take corrective measures and ultimately decide that the exercise of powers by all or any particular department of the bank is subjected to the prior approval of one or more persons appointed by the central bank.</p>
Assessment	Compliant
Comments	None
Cooperation with Supervisors and Competent Authorities	
<p>The supervisor is able, directly or indirectly (<i>including through a FIU</i>), to share with domestic and foreign financial sector supervisory authorities information related to suspected or actual criminal activities.</p>	
Description	<p>The BNA is authorized to share any information obtained in the execution of its duties as supervisor of the banking system with foreign supervisory authorities engaged in the supervision of financial markets (Banking Ordinance, Article 41).</p> <p>The BNA is a member of the UTRC Guidance Committee. However, it is restricted in sharing information directly with the UTRC directly, but can provide evidence in criminal proceedings.</p> <p>The UTRC also has the authority, either on its own initiative or upon request, to exchange information with foreign FIUs subject to a MoU (Reporting Ordinance, Article 7(2), as amended by National Decree 2001, No. 78). The UTRC may share information and intelligence with foreign FIUs only if they provide adequate safeguards to ensure proper use of such information and intelligence, including that information or intelligence exchanged (i) shall be used only for the specific purpose for which the information or intelligence was sought or provided; (ii) shall not be shared with a third party without the UTRC's prior consent; and (iii) shall not be used in an administrative, prosecutorial, or judicial purpose without its prior consent (National Decree 2001, No. 69, Article 4). Although the UTRC may share information with foreign FIUs only under condition of confidentiality, there are no mechanisms to establish whether the exchange of information with foreign counterparts would be secure.</p>

	In the course of the on-site review, the examiners meet with the bank’s compliance officer and verify that his department maintains records of all dealings with the UTRC. The compliance officers are required to keep an adequate filing system of the UTRs within the bank (Section II.1.2, (C) of the AML guidelines).
Assessment	Compliant
Comments	None
Licensing and Authorizations	
<p>The competent authorities that authorize banking activities should take the necessary legal or regulatory measures to ensure that fit and proper persons control financial institutions. Measures should prevent control or acquisition of a material participation in financial institutions by criminals or their confederates. The licensing requirements also conform to FATF Recommendation 29.</p>	
Description	<p>The law establishes the required information that allows the BNA to determine the fit and properness of major shareholders; the transparency of ownership structure, directors and senior management, and the source of the initial capital are done on the basis of Article 3 of the Banking Ordinance. This information includes the identity and background of the prospective management and directors (Article 3(2) (a), (b), (c), (d), (e), (f), and (j) of the Banking Ordinance). Upon receiving an application for a license, the BNA may request all necessary additional information during the analysis of the information submitted during the licensing process (Article 5 of the Banking Ordinance).</p> <p>The data provided for the evaluation are obtained by means of police records from the country of origin, personal questionnaires, and the curriculum vitae of the individuals indicated above, in order to ascertain their knowledge and experience in relevant financial operations commensurate with the intended activities of the bank.</p> <p>The expertise and integrity of the proposed directors and senior management is evaluated by the BNA through a fit and proper test. The criteria and qualities for the assessment of the fitness and propriety of management and directors are outlined in the revised March 2003 Policy Rule on Integrity Testing by the BNA.</p> <p>BNA senior staff is aware of the reputational risk for domestic institutions in less regulated host jurisdictions. The BNA has the power to instruct the domestic bank to apply appropriate safeguards to prevent the reputational risk and/or to close down any of its overseas establishments, when it deems it necessary in the interest protecting the solvency or the liquidity of the institution (Article 21.1 of the Banking Ordinance).</p> <p>The BNA may condition approval for opening foreign branches and subsidiaries on the observance of the Netherlands Antilles AML legislation by the overseas establishment (Article 23 (1) (3) of the Banking Ordinance). In the event of noncompliance with this condition, the BNA may withdraw approval for the foreign establishment.</p> <p>At the date of the assessment, only two domestic banks had a foreign operation. The BNA is satisfied with the quality of that jurisdiction’s AML framework and benefits from close contacts with its foreign counterparts.</p> <p>The BNA has the authority to carry out inquiries to determine if a person or entity is engaging in unauthorized banking business (Article 8 (1), (2), (3), and (4) of the Banking Ordinance). If the results of the inquiries confirm the performance of unauthorized banking business, the BNA will order such person or entity to stop its banking activities (Article 8.4 of the Banking Ordinance).</p> <p>In the event the order to stop banking activities is not observed, the BNA is authorized to file</p>

	charges with the Public Prosecutors Office, as noncompliance with the instructions issued by the BNA in the discharge of its functions is punishable under criminal law (Article 50 of the Banking Ordinance).
Assessment	Compliant
Comments	None

B. Module 2—AML/CFT in the Insurance Sector

Table 9. Detailed Assessment of AML/CFT Elements for Insurance Supervision

Organizational and Administrative Arrangements	
<p>The insurance supervisor determines that insurance entities have in place adequate policies and procedures that deter improper use by criminal elements while promoting high ethical and professional standards. Measures must provide for prevention and detection of money laundering and other criminal activity, as well as ensure appropriate reporting of suspected money laundering activities. The criteria for supervisory and institutional arrangements are consistent with FATF Recommendation 19, 26, and 27, referring to the role of the supervisor and establishment of internal policies, procedures, and audit and training programs to deter money laundering.</p>	
Description	<p>In June 2003, the BNA issued the Guideline on the Detection and Deterrence of Money Laundering in Life Insurance Companies (hereinafter the “AML Guidelines for Insurance Companies”). This document outlines an internal control system seeking to detect and deter ML by emphasizing the identification of customers and prospective customers, the appointment of compliance officers, appropriate training for personnel, and the reporting of unusual transactions.</p> <p>To ensure compliance with the recommendations made in the AML Guidelines for Insurance Companies and test the adequacy of the mechanisms for the detection and reporting of unusual transactions, the BNA prepared a procedures manual for its staff in January 2001. The BNA started its on-site inspection program of insurance companies in January 2003.</p> <p>AML is covered in both off-site and on-site supervision of life insurers. However, staff needs more training to be familiar with ML trends and patterns in the insurance sector. According to BNA, the insurance industry in the Netherlands Antilles, in general, does not encounter ML problems.</p> <p>The Corporate Governance Guidance Notes for the Supervisory Board of Supervised Financial Institutions apply also to all insurance companies, life and nonlife. The institutions concerned have to send a compliance report to the BNA at least once a year, which has to be certified by their external auditor before its submission.</p> <p>During on-site examination, the examiners verify that the Supervisory Board of all insurance companies actually carry out what they indicated in the annual “Statement of Compliance” which is based on the Corporate Governance Guidelines and certified by the companies’ external auditors.</p> <p>The Board of Directors and senior management of each institution is required to issue a “Statement of Policy” outlining the institution’s policies and procedures to combat ML. The policy statement should include an appropriate training program for personnel to increase employee awareness and knowledge in the field of ML prevention and detection (Section II.1 of AML Guidelines for Insurance Companies).</p>

	<p>The UTRC issued a revised instruction manual on reporting on unusual transactions in January 2002 that applies to life insurance companies. Additional guidance for detecting and reporting unusual transactions is contained in Section II.1 (A.2) of the AML Guidelines for Insurance Companies issued by the BNA.</p> <p>The BNA may also issue binding instructions to all insurers (life and nonlife), which must be followed by the insurer within the time stipulated by the BNA. The BNA may issue such instructions when deemed necessary in the interest of current or potential policyholders, insured persons, or beneficiaries. The BNA is entitled to take prompt action against the insurer if the instruction has not been complied with or has been complied insufficiently, conditioning the management of the company to the approval of one of more persons appointed by the BNA (Article 31 (3) (a) of the Insurance Ordinance). This provision can be applied as regards the infringement of AML measures because the reputational risk derived from ML operations in the insurance company ultimately will affect the interests of the policyholders.</p> <p>In the event its instructions, pursuant to Article 31 of the Insurance Ordinance, are not followed, the BNA is authorized to appoint a silent trustee or file charges with the Public Prosecutors Office, as noncompliance with the instructions issued by the BNA in the discharge of its functions is punishable under criminal law (Article 122.1 of the Insurance Ordinance).</p>
<p>Assessment</p>	<p>Largely compliant</p>
<p>Comments</p>	<p>More AML training is needed for the BNA staff and industry.</p> <p>Only life insurers are bound to comply with the Reporting and Identification Ordinances. Thus, inadequate controls for the prevention of ML and nonreporting of unusual transactions in other types of insurance companies are not subject to sanctions by the BNA. Amendments to the implementation decrees of the Reporting and Identification Ordinances need to encompass all insurance and reinsurance companies and professionals.</p> <p>The BNA has revised its AML Guidelines for Insurance Companies per June 2003, to update them in conformity with the IAIS Anti-Money Laundering Guidance Notes for Insurance</p> <p>Supervisors and Insurance Entities, introduced in January 2002. An AML committee has been installed in the BNA to update all AML guidelines and issue new ones where necessary.</p> <p>In January 2003 a schedule of onsite inspections of insurance companies has started, also covering AML/CFT aspects.</p>
<p>Customer Identification and Due Diligence</p>	
<p>The insurance supervisor determines that insurance companies have documented and enforced policies for identification of customers and those acting on their behalf as part of their anti-money-laundering program. Through underwriting, it will enable an insurance company to understand the business written. Underwriting will include checking the presence of insurable interest when accepting applications and processing claims. Information requirements on customers need to be commensurate with the assessed risk of money laundering posed by those customers. The requirements are consistent with the FATF Recommendations 10 and 11.</p>	
<p>Description</p>	<p>Life insurers are required to establish the identity of a customer before rendering any financial service on the basis of an official identifying document (Article 2 and Article 3 of the Identification Ordinance); keep records of their identity (Article 6 and Article 7 of the Identification Ordinance); and review the identification when it appears that the data is no longer valid (Article 3(3) of the Identification Ordinance). Life insurers are prohibited from rendering a financial service if the identity of the customer has not been established (Article 8 of the Identification Ordinance).</p>

	<p>The AML guidelines provide direction to life insurers in the establishment of effective policies and procedures to ensure proper identification of customers and discourage transactions that appear to have illegitimate purposes (Section II.1, Ad. (A) of the AML guidelines).</p> <p>In January 2001, the BNA issued a procedures manual to provide guidance to examiners in ensuring that appropriate procedures to prevent, detect, and report unusual transactions are in place as required by the guidelines.</p> <p>On-site examinations targeting compliance with the AML policies have started early in 2003. The adequacy of AML policies and procedures in nonlife insurers is not assured, since neither the Identification Ordinance nor the Reporting Ordinance bind them.</p> <p>There is no specific guidance on the establishment of the true nature of the relationship between the insured risk and a policyholder.</p> <p>Life insurance companies and brokers have the obligation to determine the true identity of their policyholders before entering into life insurance contracts with them and develop a centralized record keeping system for the identification and/or transaction information (Section II.1 Ad. (A) of AML guidelines). Even though the guidelines require due diligence of clients on life insurance brokers, these professionals are not covered by the Identification Ordinance nor by the Reporting Ordinance.</p> <p>The Internal Control Policy for the identification of customers is set forth in Section II.1 (A.1) of the AML guidelines. The guidelines include guidance for identification when processing policies for key personnel of corporations (Section II.1 (A.1) (iv) of AML guidelines). The Anti-Money Laundering Guidelines for Life Insurance Companies do advise to require additional information when dealing with companies established abroad (Section II.1 (A.1) (iv)).</p> <p>Life Insurance Companies are required to report applications for life insurance where the initial premium payment or the purchase sum exceeds NA f. 25,000 (approximately US\$14,000) if the policyholder resides outside of the Netherlands Antilles or if the initial premium payment or deposit of the purchase sum is effected from an account in a bank outside of the Netherlands Antilles, and two or more additional indicators are met (Ministerial Decree setting indicators to detect unusual transactions, Appendix B (II) (2) (a) and (c)).</p> <p>Reporting is also obligatory in the case of any payment over NA f. 100,000 (approximately US\$55,000) into an account with a bank outside the Netherlands Antilles within five years from the signing of the policy (Ministerial Implementation Decree to the Unusual Transaction Reporting Ordinance, Official Gazette 1997, No. 253, Appendix C (i) (2)).</p> <p>Verification is not specifically required in the event claims, commissions, and other monies are to be paid to persons other than the policyholder. However, in this case, reporting is obligatory if the insurer has any cause to presume the insurance concerned is related to ML (Ministerial Decree, Appendix C (II) (1)).</p>
<p>Assessment</p>	<p>Largely compliant</p>
<p>Comments</p>	<p>The Identification Ordinance needs to be amended to cover all nonlife insurance and reinsurance companies, as well as captive insurers, insurance brokers, and agents. The authorities are considering requesting technical assistance, as needed, to draft these provisions. June 2003 AML Guidelines for Insurance Companies also cover nonlife insurance companies.</p> <p>The BNA needs to focus on more AML training for the industry, although much is being done already. One of the BNA directors chairs the Financial Institute, which organizes AML courses,</p>

	<p>also for insurers. In July 2002, training has been completed for 193 financial sector staff, including insurers,. The course was repeated in November 2002, in cooperation with an auditing company. Attention is needed with regard to ML threats inherent in new or developing technologies that favor anonymity.</p> <p>The AML guidelines need to be amended to include specific guidance for establishing the true nature of the relationship between insured risk and the policyholder.</p> <p>The BNA needs to issue specific guidance for transactions with customers based in jurisdictions with inadequate AML framework.</p> <p>Per June 2003, the BNA has revised its AML Guidelines for Insurance Companies in conformity with the IAIS Anti-Money Laundering Guidance Notes for Insurance Supervisors and Insurance Entities.</p>
<p>Monitoring and Reporting of Suspicious Activities</p>	
<p>Insurance entities should be vigilant in deterring criminals from making use of them for the purpose of money laundering. Consistent with Insurance Core Principle 5.9 and 5.10, the supervisor has the authority to require that institutions have formal procedures to recognize potential suspicious transactions and to require that they have established lines of communication to management, law enforcement authorities, and/or the supervisor for the reporting of irregular and suspicious activities.</p>	
<p>Description</p>	<p>The procedures manual for insurance examiners provides adequate guidance for the verification of the adequacy of the systems in place for the detection and internal reporting of unusual or questionable transactions. This manual does not cover nonlife insurers, life reinsurers, and nonlife reinsurers.</p> <p>Guidance for the implementation of a formal system of internal control to deter unusual transactions is provided in Section II.1 (A) and (A.2) of the AML guidelines.</p> <p>Guidance for evaluation of transactions to determine whether they are unusual and for reporting unusual transactions is provided in the regulation (Section II.2, A.2 (i) and (iii) (a) and (b) of AML Guidelines for Insurance Companies). Further Guidance is provided by the UTRC's "Reporting Procedure for Unusual Transactions."</p> <p>Guidance on the procedure for internal reporting is provided in the AML guidelines to the compliance officer (Section II.2, (A.2) (iii) (a)). Pursuant to Section II.2 (A.2) (iii) (b) of the guidelines, the compliance officer is required to prepare the external report of unusual transactions to the UTRC.</p> <p>Insurers are bound to comply with the instructions of the BNA (Article 31.2 of the Insurance Ordinance). In the case of an investigation, insurers are bound to comply with the instructions from the Public Prosecutor.</p> <p>On the basis of Decrees 119, 120, and 121 of October 4, 2002, transactions that are suspected to relate to the FT need to be reported. Also, reporting is mandatory in all cases when there is cause to presume that the transaction may relate to ML (Ministerial Decree, Appendix B, II, 1).</p>
<p>Assessment</p>	<p>Largely compliant</p>
<p>Comments</p>	<p>The Reporting Ordinance needs to be amended to cover all nonlife insurance and reinsurance companies, as well as captive insurers, insurance brokers, and agents.</p>

Record Keeping, Compliance, and Audit	
<p>The supervisor determines that insurers have formal record keeping and internal control procedures regarding identification of policyholders, individual transactions, and the retention period. The insurer should keep records after termination. In the case of a life insurance company, termination includes the maturity or earlier termination of the policy. The criteria are consistent with FATF Recommendation 12.</p>	
Description	<p>The procedures manual for the verification of compliance of the AML guidelines is suitable to determine whether the life insurer has appointed compliance officers, and whether the life insurer's AML policy manual contains measures for keeping records of questionable policyholders and transactions, maintaining an audit trail for questionable funds, and a formal system of internal control to identify clients and prospective clients. It also allows to determine whether insurance companies can keep adequate records of these clients and transactions and to inquire into the source of funds for the transaction. (Section II.1, Ad. (A) and (B) and Section II.1.2 and Appendix "A" of AML guidelines).</p> <p>The compliance officers in life insurance companies are required to review the observance of the company's policy and procedures (Section II.1, Ad (B) of the AML Guidelines for Insurance Companies). The guidelines also require a yearly independent testing system of the policies and procedures by the internal audit department or by a third party, such as the company's external auditors (Section II.1, Ad (C) of the AML Guidelines for Insurance Companies).</p> <p>Life insurance companies are required to establish an internal audit function independent from management and reporting directly to the Supervisory Board or an Audit Committee appointed by the Supervisory Board (Section IV.1 (c) and (i) of the Corporate Governance Guidelines). This includes ongoing focus on control issues and periodic review of all aspects of the institutions operations, in order to ensure compliance with all applicable policies and procedures and reviewing whether the insurer's policies and practices are implemented. In practice, the companies either have in place an internal audit department or outsource the internal audit function to local accounting firms.</p> <p>Reporting systems to alert senior management and/or the Board of directors to noncompliance or inadequate execution of AML procedures are not specifically required, but the insurance examiners verify the existence of such systems and their adequacy, in practice, with regard to life insurance companies. Close working relationships between underwriters and claims investigators are not specifically required.</p>
Assessment	Largely compliant
Comments	The BNA started implementing the on-site inspection program for life insurers in January 2003.
Cooperation with Supervisors and Competent Authorities	
<p>The insurance supervisor is able, directly or indirectly (<i>including through a FIU</i>), to share with domestic and foreign financial sector supervisory authorities information related to suspected or actual criminal activities.</p>	
Description	The BNA is authorized to exchange information with foreign insurance supervisors (Article 78 of the Insurance Ordinance).
Assessment	Compliant
Comments	None
Licensing and Authorizations	
<p>The competent authorities should take measures to authorize fit and proper persons to control insurers and or sell insurance products. Measures should prevent control or acquisition of a material participation in an insurance company by criminals or their confederates. The licensing requirements also conform to FATF Recommendation 29.</p>	
Description	The BNA applies fit and proper tests to all shareholders, directors, and senior management of

	<p>supervised institutions and can block the appointment of any of these persons. Article 17 of the Insurance Supervision Ordinance states that the persons who determine the insurer’s day-to-day policies should, to the judgment of the BNA, be sufficiently qualified to operate the insurance business. The actions and records of persons who determine or help determine the policies of the insurer shall not give the BNA reason to believe that the interests of policyholders and other interested parties could be jeopardized. Based on this provision, the BNA has issued revised personal questionnaires, covering areas related to integrity, which must be completed by all candidates for policy level positions in the insurance industry every two years. On the basis of these questionnaires, the BNA decides on the integrity and, hence, acceptability of the candidates every two years. This system permits the BNA in a consistent manner to refuse a license if the candidates are not considered fit and proper and/or their integrity is not (no longer) beyond doubt for other reasons.</p> <p>The policies on corporate governance are set out in the BNA’s “Guidance Notes for the Supervisory Board of Supervised Financial Institutions.” The ML element of the on-site review includes verification of documented policy statements on ethics and professional behavior and its clear communication to the staff. Life insurers send a compliance report to the BNA at least once a year that has to be certified by their external auditor.</p> <p>As regards good governance, shareholders, and directors of insurance companies must pass the fit and proper test established in the BNA’s “Policy Rule on Integrity Testing” and must disclose a “Statement of Compliance” with the Corporate Governance Guidelines.</p> <p>The BNA staff is aware of the high reputational risk that operating in some countries could create. There are some foreign branches controlled by companies for which the BNA is the home supervisor. The other jurisdiction exercises supervision in a way considered adequate by the BNA. The BNA has regular contacts with this supervisor.</p> <p>The Integrity Financial Sector Unit of the BNA also assists the insurance supervision department with respect to integrity issues.</p> <p>The causes for revocation of an insurance license include ceasing to meet the requirements set for obtaining the license (Article 55.c of the Insurance Ordinance) and serious defaults in complying with statutory regulations (Article 55.e of the Insurance Ordinance). The BNA is authorized to issue directives and take action when needed (Article 31 of the Insurance Ordinance).</p> <p>The BNA has not taken measures to ensure compliance by foreign branches and subsidiaries. There is one life insurance company with branch operations in another jurisdiction, i.e., Aruba. The BNA considers Aruban insurance supervision to be adequate and has regular contacts with the Aruban supervisory authorities.</p> <p>The law does not specifically require that insurers should inform the BNA when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures of the Netherlands Antilles.</p> <p>The BNA is authorized to file charges with the Public Prosecutors Office against engaging in unauthorized insurance business, as the infringement of the express prohibition of carrying out the insurance business without authorization in Article 9.1a is considered a felony (Article 122.1 of the Insurance Ordinance).</p>
Assessment	Compliant
Comments	None

Recommended action plan and authorities' response to the assessment

Table 10. Recommended Action Plan to Improve Implementation of the AML/CFT Measures

AML/CFT Requirements	Recommended Action	Recommended Implementation By
Part 1: AML/CFT in the Legal and Institutional Framework		
Suggested Actions for the Legal and Institutional Arrangements		
All financial intermediaries should be covered by AML/CFT framework	Nonlife insurance companies, underwriters, brokers, and agents are not currently covered by the AML/CFT framework. This should be remedied with an amendment to the relevant laws or ministerial decrees.	January 1, 2004; with the introduction of the June 2003 AML/CFT guidelines, this and many of the following recommendations are covered on a temporary basis until legislative changes are made.
Consideration should be given to providing regulatory bodies with the full range of enforcement penalties, including civil or administrative penalties.	The relevant laws should be amended to allow the BNA and other regulatory bodies, including the CSP Board, and the local Gaming Control Board to impose administrative fines on institutions and their employees.	January 1, 2004.
All financial institutions should be licensed.	The pending legislative proposal to introduce stricter licensing requirements for MTs should be adopted immediately.	January 1, 2004.
Confiscation of property of equivalent value is recommended.	Adoption of an amendment to this effect of the confiscation provisions of the Criminal Code is recommended.	January 1, 2004.
Sufficiently frequent on-site inspections of reporting entities are recommended.	The BNA should conduct on-site AML inspections of entities it regulates more frequently than once every two years. Other regulators, including the CSP Supervisory Board and the Gaming Control Board should do so as well, and target AML inspections to those institutions in each regulated sector that appear to be underreporting. In addition, the relevant laws should be amended (i) to permit information sharing between each of the regulators and the UTRC; (ii) to provide the UTRC with the authority to obtain a court order to allow the UTRC to gain entry to premises of reporting parties; and (iii) to authorize the UTRC to require the BNA, the CSP Supervisory Board, and other regulators to inspect a regulated entity at the request of the UTRC.	September 2003.
The UTRC should have adequate powers to enforce reporting requirements and impose sanctions against other violations of AML laws and regulations.	The BNA should be empowered to impose administrative fines on reporting parties for failure to file timely reports and against other violations of AML laws and regulations.	January 1, 2004.

AML/CFT Requirements	Recommended Action	Recommended Implementation By
The autonomy of UTRC is diminished as a result of micromanagement by ministry of finance of UTRC purchases of goods and services	This system should be replaced by a budgetary allocation and yearly audit by the ministry of finance or other appropriate agency of the government.	September 2003.
Part 2: AML/CFT in Prudentially Regulated Sectors		
Banking Sector		
AML/CFT Requirements	Recommended Actions	Recommended Implementation by
Banks should conduct more extensive due diligence for private banking activities and high risk customers.	The BNA needs to require and provide specific guidance for the enhanced scrutiny needed in private banking activities and transactions with high-risk customers, such as politically exposed persons.	June 2003
Insurance Sector		
Establishment of internal policies, procedures, and audit and training programs to deter ML.	More AML training is needed for BNA insurance supervision staff and for the industry.	Ongoing
Verification in respect of the parties entering into the insurance contract.	The AML guidelines need to be amended to include specific guidance for establishing the true nature of the relationship between principals and the policyholder.	June 2003

Authorities' response to the assessment

The authorities are broadly in agreement with this assessment. They have been provided opportunity to comment on the subsequent drafts, and their comments have been duly taken into consideration. In particular, the authorities consider that many of the suggested actions for the legal and regulatory framework, as well as for the prudentially regulated sectors, have been addressed, pending legislative changes by the June 2003 AML/CFT Guidelines for Banks, insurance companies, and other financial intermediaries. Furthermore, a number of factual comments and corrections were given, The authorities stressed the continuous nature of the process to adapt their policies and rules to new international rules.

LAWS AND REGULATIONS ON ANTI MONEY LAUNDERING AND COMBATING FINANCING OF TERRORISM IN THE NETHERLANDS ANTILLES

Official Gazette

- 1993, No. 52 National Ordinance Penalization of Money Laundering.
- 1996, No. 21 National Ordinance Reporting of Unusual Transactions (MOT Ordinance).
- 1996, No. 23 National Ordinance Identification When Rendering Financial Services.
- 1997, No. 252 Enactment National Ordinance Reporting of Unusual Transactions.
- 1997, No. 253 Ministerial Decree with General Operations, September 30, 1997 of laying down the indicators.
(Indicators stipulated on the basis of Official Gazette 1996, No. 21)
- 1997, No. 258 Ministerial Decree Enactment of the Reporting Center Register Code.
- 1997, No. 259 Ministerial Decree Empowering the Head of the Reporting Center to exercise the actual management of the register.
- 1997, No. 269 National Decree Enacting the National Ordinance identification when Rendering Financial Services.
- 1997, No. 294 National Ordinance Modification of the National Ordinance indemnification when Rendering Financial Services.

Article 3.4 and 9 of the Official Gazette 1996, No. 23 were modified.
- 1998, No. 19 Ministerial Decree with General Operations Implementing the National Ordinance Identification when Rendering Financial Services. Article 1, Article 2, Article 3, and Article 4 were implemented.
(Official Gazette 1996, No. 23.)
- 1998, No. 134 Ministerial Decree With General Operations, June 7, 1998 of laying down the Indicators. Indicators stipulated on the basis of MOT Ordinance. (Official Gazette 1996, No. 21.)
- 1998, No. 255 National Ordinance Amending the Penal Code and the Code of Criminal Procedure on Freezing, Seizing and Forfeiture of Assets, Derived from Crime.

- 2000, No. 64 National Decree Enacting the National Ordinance on Freezing, Seizing and Forfeiture of Assets, Derived from Crime
- 2000, No. 120 National Decree- Containing General Measures, August 7, 2000, in Implementation of Article I, Section a, under 90, of the National Ordinance on Reporting of Unusual Transactions.
- Implementation of the reporting obligation re credit cards and money remitters (Western Union, DHL, Money Gram) whereby these transactions were appointed as financial services. (Official Gazette 1996, No. 21.)
- 2000, No. 121 National Decree Containing General Measures, August 7, 2000 Executing Article 1, Section b, under 90 of the National Ordinance Identification when Rendering Financial Services.
- 2000, No. 127 Ministerial Decree With General Operations. September 7, 2000 of laying down the Indicators with reference to transactions Using Financial Services, by means of credit cards and money transfers.
- 2000, No. 128 National Decree Containing General Measures, September 15, 2000 Approving the Indicators, as established by Ministerial Decree indicator Unusual Transactions using credit cards and money transfers.
- 2001, No. 46 Ministerial Decree With General Operations, April 4, 2001 Establishing the Indicators used to judge whether a transaction shall be considered an unusual transaction (Decree Indicators Unusual Transactions).
- 2001, No. 47 National Decree Containing General Measures, April 11, 2001 Containing approval of the Indicators, as stipulated in the Decree Indicators Unusual Transactions. (National Decree approval Indicators Unusual Transactions.) (This Decree allows the indicators to remain valid for more than 6 months.)
- 2001, No. 48 Ministerial Decree With General Operations, April 11, 2001 Modifying the Decree Indicators Unusual Transactions (Hereby, the "A" attachment to the Decree Indicators Unusual Transactions, Official Gazette (PB) 2001, No. 46 was replaced).
- 2001, No. 49 National Decree Containing General Measures, April 11, 2001 Approving the Indicators as per Ministerial Decree with General Operations Modifying Decree Indicators Unusual Transactions, (PB) 2001, No. 48.

(Hereby the Indicators in the “A” attachment referred to in PB 2001, no. 48 remains valid for more than 6 months).

- 2001, No. 58 National Decree Containing General Measures, April 20, 2001 Modifying the National Decree (PB) 2000, No. 120 appointing Gaming Transactions as Financial Services to be reported.
- 2001, No. 59 National Decree Containing General Measures, April 20, 2001, by which Identification is required (PB) 2000. No. 121 with regard to gaming.
- 2001, No. 60 Ministerial Decree With General Operations, April 27, 2001 Establishing Indicators for all forms of gaming.
- 2001, No. 61 National Decree Containing General Measures, May 2, 2001 Containing Approval of the Indicators, as stipulated in the Decree Indicators Unusual Transactions concerning gaming. (National Decree approval indicators Unusual Transactions concerning gaming.)
- 2001, No. 69 National Decree Containing General Measures, July 13, 2001 in implementation of Article 7, first paragraph of the National Ordinance Reporting of Unusual Transactions.
- Implementation of Article 7, first paragraph of the National Ordinance Reporting of Unusual Transactions makes it possible to exchange information within and outside the Kingdom of the Netherlands.
- 2001, No. 77 National Ordinance, August 3, 2001 Containing Modification of the National Ordinance Penalization of Money Laundering. (This Ordinance extends Money Laundering through the use of money, securities or claims to also include valuable goods.)
- 2001, No. 78 National Ordinance, August 3, 2001 containing modifications of the National Ordinance Reporting of Unusual Transactions. Article 7, second paragraph was modified. From August 18, besides a Treaty, an administrative agreement (MoU) is also sufficient to exchange information outside the Kingdom of the Netherlands.
- 2001, No. 81 National Ordinance on the Supervision of Fiduciary Business.
- 2001, No. 147 National Decree of December 19, 2001, No. 65, enacting the National Ordinance on the Supervision of Fiduciary Business.
- 2001, No. 114 Ministerial Decree implementing Article 4a (1) of the Foreign Exchange Transactions Ordinance.

- 2002, No. 27 National Decree of January 10, 2002 implementing Article 4 (1) of the Foreign Exchange Transactions Ordinance.
- 2002, No. 58 Decree of March 6, 2002, Proclaiming the Royal Decree of December 20, 2001, on the Approval of the International Treaty of New York of December 9, 1999, with regard to the Combating of the Financing of Terrorism.
- 2002, No. 33 National Decree Containing General Measures, December 19, 2001 Modifying the National Decree appointing unusual transactions as financial services (PB) 2000, No. 120.
- 2002, No. 34 National Decree Containing General Measures, December 19, 2001 Modifying the National Decree identification when Rendering Financial Services (PB) 2001, No. 121.
- 2002, No. 119 Ministerial Decree of October 4, 2002, Modifying the Decree on Indicators of Unusual Transactions.
- 2002, No. 120 Ministerial Decree of October 4, 2002, Modifying the Decree on Indicators of Unusual Transactions, Concerning Credit Cards and Money Transfers.
- 2002, No. 121 Ministerial Decree of October 4, 2002, Modifying the Decree on Indicators of Unusual Transactions, Concerning Gaming.
- 2002, Nos. 129, 130, 131 National Decrees of October 11, 2002, Approving the Indicators Modified by Ministerial Decrees 119, 120 and 121.
- 2003, No. 7 Ministerial Decree of December 11, 2002, Modifying the National Decree Freezing the Assets of the Afghanistan Taliban c.s. and Usama Bin Laden c.s. (Official Gazette 2002, No. 27).

Other sources

Central Bank of the Netherlands Antilles

- July 1998 Policy Memorandum on the Implementation of the Fit and Proper Test.
- October 2002 Letter to the Banks on FATF Special Recommendation VII on Banks' Policies and Procedures to Deter and Detect Money Laundering and Terrorist Financing.

- February 2003 Policy Rule of the Central Bank of the Netherlands Antilles on Integrity Testing.
- (..) Admission Requirements for Money Transfer Companies Operating in the Netherlands Antilles.
- March 21, 2003 Letter to the Banks on Dealings with Jurisdiction Classified as Non Cooperative Countries and Territories.
- June 2003 Guidelines on the Detection and Deterrence of Money Laundering (Banks).
- June 2003 Guidelines on the Detection and Deterrence of Money Laundering (Insurance Companies).

Government of the Kingdom of the Netherlands

- November 30, 2001 Joint Declaration on Greater Cooperation Between the Territories of the Kingdom of the Netherlands for Combating International Terrorism.