

Change in branch limits for credit institutions and insurers and exemption for large exposures BES

Regulation of the Minister of Finance of 2025-0000000000, Financial Markets Directorate, amending the Financial Markets Regulation BES 2012 (increasing branch limits for credit institutions and insurers and exempting large exposures)

THE MINISTER OF FINANCE,

Having regard to Article 1:26 of the BES Financial Markets Act and Article 2:17 of the BES Financial Markets Decree;

DECISION:

ARTICLE I

The **Financial Markets Regulation BES 2012** is amended as follows:

A

Article 1:5 is replaced by the following:

Article 1:5 (Large exposure exemption)

The following large exposures are exempt from the obligation in Article 4:19(1) and (2) of the Decree:

- a. asset items representing claims on the public entities Bonaire, St. Eustatius or Saba;
- b. asset items representing claims on the State of the Netherlands, the country Aruba, the country Curaçao or the country Sint Maarten;
- c. asset items representing claims on foreign governments, provided that prior permission has been obtained from the Nederlandsche Bank;
- asset items representing claims expressly guaranteed by the legal persons referred to in subparagraphs (a) and (b);
- asset items and other exposures fully secured by collateral in the form of cash deposits or securities listed on a recognised stock exchange as referred to in Article 2.7, provided that the exposure does not exceed 70 per cent of the average market value of those securities during the last 12 months;
- interbank exposures with a residual maturity of no more than six months;
- g. intragroup exposures.

B

Article 2:1 is amended as follows:

1. In paragraph 1, 'USD 90 million' is replaced by 'USD 600 million'.
2. In paragraph 2, 'USD 5 million' is replaced by 'USD 35 million'.

ARTICLE II

This Arrangement shall enter into force on [1 April 2025].

This regulation will be published in the Government Gazette together with the explanatory notes.

THE MINISTER OF FINANCE,

EXPLANATORY NOTE

General

1. Introduction

This regulation aims to change the regime that applies to branches in¹ the Caribbean Netherlands of foreign credit institutions and insurers. In addition, the opportunity was taken to transfer the large items scheme that had so far been included in the AFM and DNB Regulations to the BES Financial Markets Regulation (Regeling financiële markten BES). The amendment to the branch regime is explained below. For the transfer of the large exposures scheme, which is of a more technical nature, reference is made to the article-by-article explanatory note to Article I, part A.

2. Branches of credit institutions and insurers

The regime regulating access for branches of foreign credit institutions and insurers needs to be reviewed. Under the Financial Markets Act BES (Wfm BES) introduced in 2012 and the regulations based thereon,² credit institutions and insurers with their registered office in Curaçao or Sint Maarten are permitted to operate in the Caribbean Netherlands through branches, provided that those branches are small in size.³ By also allowing services from branches, the existing market conditions were aligned, which still reflected the old market structure of the Netherlands Antilles. At the same time, prudent and reluctant policies were pursued with regard to the size of branches from a prudential point of view. It has now become apparent that it is precisely this reticent policy that inadvertently threatens to have a market-distorting effect, because the branch limits are significantly lower than the limits above which it becomes economically viable to convert a branch into an independent legal entity with its registered office in the Caribbean Netherlands.

Current regime of branches

Before the constitutional reforms in 2010, the head offices of credit institutions and insurers were mostly located in Curaçao or Sint Maarten and they had small, independent branches on Bonaire, Sint Eustatius and Saba. One licence from the Bank of the Netherlands Antilles (the supervisory authority at the time) was sufficient to be able to operate in the entire area of the Netherlands Antilles. After the reforms, a situation has arisen in which credit institutions from the new countries Curaçao and Sint Maarten, in addition to a license from the Central Bank of Curaçao (CBCS) for their activities in their own country, now also need a license from the Dutch Central Bank (DNB) for their branches in the Caribbean Netherlands.

In order not to create unnecessary thresholds, the Wfm BES provides for a simplified licensing regime for branches invested with DNB, because branches in the Caribbean Netherlands are only permitted from credit institutions and insurers based in Curaçao or Sint Maarten that are subject to a full licensing regime (including prudential supervision) of CBCS there. The simplified regime focuses mainly on integrity supervision with regard

¹ The Caribbean Netherlands consists of the public bodies Bonaire, Saba and St. Eustatius.

² Financial Markets BES Decree (Bfm BES) and Financial Markets Regulation BES 2012 (Rfm BES).

³ The legal framework is as follows. Pursuant to Section 2:1 of the Wfm BES, it is prohibited without authorisation to carry on the business of a credit institution in or from the public sector bodies (an authorisation is therefore required for carrying on the business from a registered office, branch or by way of provision of services). Under that same article, it is prohibited to carry on the business of life insurer, funeral insurer in kind or non-life insurer in the public sector without a licence from an establishment (i.e. from a registered office or branch) and the incoming provision of services is subject to a reporting obligation under Section 2:23 of the Wfm BES. Pursuant to Section 3:1 of the Wfm BES, a financial undertaking wishing to operate in the Caribbean Netherlands must have its registered office in the public sector bodies, Curaçao or Sint Maarten. Pursuant to Article 2:17 of the Bfm BES, credit institutions and insurers may carry on business from a branch in the public sector bodies only if the sum of the payment accounts, savings and deposits held at the branch at the end of the last financial year closed does not exceed an amount to be determined in the Rfm BES. That amount is set at USD 90 million for credit institutions and USD 5 million for insurers.

to the activities of branches in the Caribbean Netherlands. The prudential supervision of the branch shall be based on the prudential supervision exercised by the CBCS over the entire business of the credit institution or insurer concerned.⁴ Because branches are not independent legal entities, but are part of the established company in Curaçao or Sint Maarten, independent prudential supervision of such a branch is difficult (a branch does not hold its own financial guarantees such as a minimum capital or sufficient solvency and liquidity). Branches in the Caribbean Netherlands of credit institutions and insurers with their registered office in Curaçao or Sint Maarten are presumed to comply with the prudential requirements of the Wfm BES, as long as the credit institution or insurer in the country of registered office has a licence from the CBCS.⁵ It is important that this is a presumption, not an irrefutable assumption. This means that if, for example, DNB receives signals that give it cause to doubt the financial soundness of a credit institution or insurer with its registered office in Curaçao or Sint Maarten, it remains authorised to become aware of the financial situation at that credit institution or insurer and of the possible consequences of that situation for branches in the Caribbean Netherlands. Depending on its findings, DNB may take measures to protect the interests of the branch's customers.

At the time, this regime sought to do as much justice as possible to the existing market relations of the small local market in the Caribbean Netherlands and the strong interconnectedness of the financial markets in the former Netherlands Antilles. The regime prevents double supervision and unnecessary (accession) barriers. For micro-prudential reasons, it has been prudent to allow only small branches, partly because the Caribbean Netherlands is not part of an internal market as it exists in the European Union, with harmonised supervisory rules, mutual recognition and home country supervision. The branch limit for credit institutions is linked to the sum of current accounts, savings and deposits held at the branch and currently does not exceed USD 90 million. The branch limit for insurers is linked to gross premium income received through the branch for the last closed financial year and currently does not exceed USD 5 million.⁶ These branch limits, which were already set on the low side at the time, have never been indexed since then because of inflation or economic growth.

In the Caribbean Netherlands, three branches of credit institutions from Curaçao are active, six branches of insurers from Curaçao and two branches of insurers from Sint Maarten.⁷ Some of these branches are approaching or exceeding the branch limit in the current situation. The maintenance of the current low branch limits makes a choice for these credit institutions and insurers between 'subsidiaries' (the transformation of the branch into an independent legal entity with its registered office in the Caribbean Netherlands) or the termination of the branch's activities inevitable.

Market disruption due to current branch limits

In recent years, the Ministry of Finance and DNB have investigated the consequences of the branch limits introduced in 2012. Several discussions with the financial sector on-site and with DNB in recent years have shown that the branch limits distort the market in view of the small local market in the Caribbean Netherlands⁸ and the existing market conditions on-site.

⁴ For financial undertakings having their registered office in the public sector bodies, the framework of Article 2:3 Bfm BES applies. Financial undertakings having their registered office abroad and operating in public sector bodies are subject to Section 2:4 of the Bfm BES, under which no financial guarantees apply (Sections 3:16 to 3:19 of the Wfm BES) because these undertakings are subject to prudential supervision in the State in which they have their registered office.

⁵ See Article 3:20 of the Wfm BES and the explanatory memorandum, Parliamentary Papers II 2010/11, 32784, No 3, pp. 12-13 and 62.

⁶ See Article 2:17 of the Decree on financial markets BES in conjunction with Article 2:1 of the Regulation on financial markets BES 2012.

⁷ By way of comparison: The Caribbean Netherlands has only one established credit institution (on Bonaire) and no established insurers.

⁸ The local market is small. In the Caribbean Netherlands, Bonaire has approximately 24,000 inhabitants, Sint Eustatius approximately 3,300 and Saba approximately 2,000. Curaçao has about 150,000 inhabitants and Sint Maarten about 50,000.

This is due to the fact that entities are only able to independently comply with the legal requirements of the Wfm BES from a certain size, which, moreover, is far above the current branch limits. Only then can a profitable business model be implemented that can bear the costs of a full licence. These include, for example, costs to comply with governance requirements, independent risk management and prudential requirements. In addition, for a profitable business model, the potential profitability on the ground is under pressure because of the limited prospect of scaling up due to the small local market. According to the discussions with the financial sector on the ground, maintaining the current low branch limits would lead to a reduction in the supply of service providers in the Caribbean Netherlands. This is because credit institutions and insurers will be forced to reconsider their presence in the Caribbean Netherlands. It would not be profitable for them to subsidise their branches beyond the current branch limits.

In their research, the Ministry and DNB have examined whether the obligations that the legal framework entails in the case of a full licence can be alleviated in order to make the transformation into an independent entity with a full licence more profitable. However, it has been found that such relief is not feasible without calling into question the principle that an independent undertaking can operate sufficiently independently and independently.

In view of the above, the current low branch limits mean that the number of credit institutions and insurers operating in the Caribbean Netherlands through a branch has come under increasing pressure. This has undesirable consequences for market and competition conditions and access to financial services on the ground, which in turn affects the functioning of the financial sector in the Caribbean Netherlands as a whole. Indeed, the functioning of the financial sector depends on a sufficient number of individual financial service providers who together ensure a good and sufficient supply of financial services and a well-functioning payment system on the ground. In addition, because of the small local market, services provided by banks and insurers in the Caribbean Netherlands mainly take place from branches of main companies (with registered office in Curaçao or Sint Maarten), not from locally located companies. The presence of these branches is important for the inhabitants of the Caribbean Netherlands. Because digital services and connectivity in the Caribbean Netherlands are low, these branches are often the only option for residents of the Caribbean Netherlands to purchase banking or insurance services. Taking these services on another (nearby) island of the Caribbean part of the Kingdom certainly means a costly day trip for residents of the Windward Islands. Against this background, the microprudential importance of applying low branch limits no longer outweighs the risks for residents and the financial sector in the Caribbean Netherlands. For this reason, the present scheme provides for an increase in the branch limits for credit institutions and insurers.

It was considered that deposits held at branches established in the Caribbean Netherlands fall under the deposit guarantee scheme for Bonaire, Sint Eustatius and Saba (DGS-BES) and are therefore largely protected.⁹ It is also important that credit institutions (only with a licence from DNB, comparable to the branch licence) and insurers (after reporting to DNB)¹⁰ with their registered offices in Curaçao and Sint Maarten may also offer their services directly in the Caribbean Netherlands via the provision of services, with no thresholds being applied and prudential supervision is also based on the prudential supervision exercised by the CBCS.¹¹ All this leads to the conclusion that the current low

⁹ The coverage limit of the deposit guarantee scheme (DGS) for the BES islands (Bonaire, St. Eustatius and Saba) will be increased to USD 25,000 from 1 January 2025 with an amendment to the Bfm BES. If a bank goes bankrupt, customers will get back up to USD 25,000. Previously, it was \$10,000 per person. This means that at least 90% of all the money in savings accounts of account holders in the Caribbean Netherlands is covered. The DGS system will henceforth be financed by the sector itself.

¹⁰ See note 2.

¹¹ Pursuant to Section 2:23 Wfm BES.

branch limits are not effective in combating microprudential risks due to the adverse market distorting effects. Increasing the branch limits to a more realistic level does not create additional microprudential risks in view of the above.

Increase of branch limits

The new branch limits have been set at a level that can be expected to bear the costs of converting from a branch to a fully-fledged independent subsidiary given the size of the business and the long-term scale of the business model. For credit institutions, that tipping point is USD 600 million.¹² If the sum of the payment accounts, savings and deposits held at the branch exceeds that amount, conversion to a company based in the Caribbean Netherlands is necessary and an independent banking licence must be applied for under the Wfm BES.¹³ For insurers, that point is set at USD 35 million. If the gross premium income received through the branch over the last closed financial year exceeds that amount, an independent license as an insurer and registered office in the Caribbean Netherlands is necessary. The other requirements that are imposed on branches remain the same, such as the condition that branches are not allowed to carry out offshore activities and that a bank or insurer that wants to operate in the Caribbean Netherlands through a branch must have a registered office in Curaçao or Sint Maarten.¹⁴ This change has no consequences for credit institutions and insurers that, in the current situation, operate through a branch in the Caribbean Netherlands. All branches existing in the current situation may continue to operate as branches after the increase of the branch limits. The size of the activities of branches present in the Caribbean Netherlands also remains (well) below the new branch limits.

Consequences of increasing branch limits

The increase in the branch limits also makes it possible for larger branches of credit institutions and insurers with their registered offices in Curaçao and Sint Maarten.

As a result of the increase in the branch limits, the growth in the activities of a branch in the Caribbean Netherlands is less likely to result in a full licence under the Wfm BES with a conversion to a company based in the Caribbean Netherlands and prudential supervision by DNB. Because the prudential supervision of branches in the Caribbean Netherlands is primarily invested in CBCS, prudential supervision will also be primarily invested in the CBCS for larger branches after the increase in the branch limits. As mentioned above, for the prudential supervision of branches in the Caribbean Netherlands, we assume that the prudential requirements will be met as long as the main company has the required authorisation there and therefore complies with the applicable supervisory rules. DNB will therefore rely to a large extent on the supervision of the CBCS for the prudential supervision of branches. In this context, it is also relevant to mention that cooperation between DNB and the CBCS has intensified considerably in recent years. In December 2020, a cooperation intention was also signed by the presidents of DNB and the CBCS. This is in line with the existing MoU (Memorandum of Understanding), to which the Central Bank of Aruba and the Netherlands Authority for the Financial Markets are also parties. This has given impetus to mutual exchange and cooperation on supervisory files. The relaunch of the Board of Kingdom Supervisors established under the MoU¹⁵ also has a

¹² The tipping points, including those for an insurer's branch, were determined on the basis of discussions held with the sector and DNB.

¹³ The conversion obligation follows from Article 2:17 of the Bfm BES. The first paragraph refers to credit institutions, the second paragraph to insurers. For the legal framework, see further note 1.

¹⁴ See Article 2:17(1)(b) and (2)(b), which stipulate that the credit institution and the insurer from the branch exclusively or mainly focus on residents of the public bodies, Curaçao or Sint Maarten or companies established there.

¹⁵ The College is also known as the Presidential Conference. The College discusses supervisory matters for the Caribbean part of the Kingdom and is engaged in harmonisation and the maintenance of mutual relations. A technical committee is attached to the College and working groups are active. There are currently working groups in the field of: harmonisation Integrity supervision, conduct of business supervision, reviews and the prudential framework for insurers.

positive impact on the development of cooperation between the supervisors within the Kingdom.

However, in connection with the increase in the branch limits, the exemption from the obligation to submit periodic reporting statements to DNB will lapse. Pursuant to Article 1:5 of the Rfm BES, credit institutions and insurers from Curaçao and Sint Maarten were not required to comply with the obligation to submit statements on an annual basis laid down in Articles 5.5 and 5.6 of the Bfm BES. Now that the branch limits (flink) are being increased, it is desirable from a prudential point of view that DNB can monitor foreign credit institutions and insurers more directly, without sitting on the seat of the CBCS. However, this will not lead to additional burdens for the companies concerned, as DNB uses the same states as the CBCS in the Caribbean Netherlands. The credit institution or insurer in question can therefore submit the same statements to DNB as to the CBCS.

3. Consultation

The draft regulation was publicly consulted from ... to¹⁶ [PM discussion consultation.]

Article by Article

ARTICLE I

A

Article 4:19 of the Wfm BES contains what is also known as the 'major postal scheme': the obligation for credit institutions to spread assets across different parties in order to mitigate concentration risks. However, it is not always possible to diversify all assets sufficiently. Credit institutions in the Caribbean Netherlands have a relatively large amount of cash, while the local need for credit is limited. In view of this, Article 7(1)(c) of the AFM Regulation and DNB detailed rules Wfm BES and Wwft BES 2012 already included a reference to the CBCS *Supervisory Regulations for credit institutions III – Limitations on extensions of credit to any one borrower or group of connected borrowers ('large exposure regulation')*, which allow credit institutions to hold certain large exposures. On closer inspection, however, it is more pure to give form to this rule as an exemption rather than as a further requirement of the supervisor. For this reason, this further implementation of the large post scheme is now being transferred to the Rfm BES. As a result, the supervisor's further requirement may lapse.

The text of the new Article 5(a) to (f) *corresponds to the large exposure regulation of the CBCS*,¹⁷ on the understanding that the relevant provision is now explicitly tailored to the situation in the Caribbean Netherlands. New in this enumeration are the intragroup exposures in subsection g. This category was initially included in another regulation of the CBCS¹⁸, but has been added to the enumeration in the new Article 5 for the sake of completeness.

Simultaneously with the inclusion of the new Article 5, the existing Article 5, which included the exemption from the obligation to submit reporting statements for credit institutions and insurers with branches in the Caribbean Netherlands, lapses.

B

Article 2:17(1)(a) of the Bfm BES provides that the sum of payment accounts, savings and deposits held at a branch of a foreign credit institution may not exceed an amount to

¹⁶ See [...]

¹⁷ See CBCS *Supervisory Regulation III.7, section 1*.

¹⁸ See CBCS *Supervisory Regulation II.6*; see also Section 7(1)(b) of the AFM and DNB Regulations on detailed rules for Wfm BES and Wwft BES 2012.

be determined by ministerial order. Paragraph 2(a) of that article contains a similar provision with regard to the maximum amount of gross premiums that may be received by a branch of a foreign insurer. These amounts, the 'branch limits', were set at USD 90 million and USD 5 million respectively in Section 2:1 Rfm BES, and are now increased to USD 600 million and USD 35 million.

ARTICLE II

In connection to the entry into force of this regulation, which will enter into force on 1 April 2025, the fixed change dates have been adhered to.

THE MINISTER OF FINANCE,