

Summary Bill Housing Act BES

Why is it necessary?

In the Caribbean Netherlands (Bonaire, St. Eustatius and Saba), affordable housing for low- and middle-income earners is in high demand, whilst supply in this segment is very limited. This is reflected in the long waiting lists for social housing. There are several reasons for the sizeable waiting lists for social housing, including the long building time due to supply of building materials, uncertainty about land ownership and the limited supply of other housing (including the use of housing from the existing stock for the lucrative tourist rental business). Another important reason is poor access to finance for the building of social housing. The building and/or the management of these houses is provided by housing foundations, one of which operates on each of the islands. These foundations are forced to borrow on the commercial market, at unattractive modalities and high interest rates. This makes it financially difficult for the housing foundations to build social housing to such an extent to meet the high demand.

In the European Netherlands, there is a long tradition of admitted institutions (AI). An admitted institution is a housing corporation that meets the requirements of the Housing Act and operates on a not-for-profit basis. After admission, the Housing Corporation Authority (hereinafter referred to as: the HCA) supervises the admitted institution. The AI status is also a prerequisite for participation in the guarantee facility: the Social Housing Guarantee Fund (hereinafter referred to as: the SHGF).

However, the Housing Act does not apply in the Caribbean Netherlands and under the current legislation housing foundations operating there can, therefore, not be admitted institutions within the meaning of the Housing Act. With the Housing Act BES, we are making it possible for housing foundations in the Caribbean Netherlands to also join the system of admitted institutions. Admission safeguards the quality of the housing foundation (after admission, an admitted institution) by enabling supervision, including financial supervision. In addition, participation in the SHGF can become possible after the necessary adjustments to the guarantee system have been implemented and all conditions are met. This would give admitted institutions in the Caribbean Netherlands access to secured loans that provide more favourable¹ conditions when raising finance on the capital market. As a result, more social housing can be built and the availability of social housing in the Caribbean Netherlands can be improved.

Why in the form of an Act?

Currently, the Central Government needs to provide structural assistance to finance the building challenge in the Caribbean Netherlands. It is desirable if the housing associations can realise these houses independently in the future by attracting cheaper financing. Admission to the corporation system represents a major step in the professionalisation of the housing foundations in the Caribbean Netherlands. Thorough supervision is becoming increasingly important as the building of social housing is in full swing and the housing stock of the housing foundations is also increasing as a result. Therefore, a Housing Act BES is being drafted, based on the Housing Act but where the sections are made appropriate for the Caribbean context. This offers the best opportunity for sustainable customisation, as there will then be no practical and legal objections to the admission of housing associations on Bonaire, Saba and St. Eustatius.

To whom will this apply?

The Housing Act BES creates the legal framework for admitted institutions in the Caribbean Netherlands. Housing foundations that are not admitted institutions are not required to comply with the rules and conditions laid down in this Act. However, these rules and conditions do provide a framework for further professionalisation of the social housing sector. The housing foundations and Public Entities can choose to work towards meeting the rules and conditions as much as possible.

Purpose of the Act

The purpose of the Housing Act BES is to improve the availability of social housing by creating the legal framework conditions for admission to the AI system. It also establishes the supervision of future admitted institutions in the Caribbean Netherlands and provides comfort to SHGF participants

¹ Compared to the commercial market.

that admitted institutions covered by the Housing Act BES are solid institutions that can handle the responsibilities of the corporation system. This makes it possible for admitted institutions to submit an application for participation to the SHGF. If SHGF - after the necessary adjustments to the guarantee system - approves the application, future admitted institutions have better access to financing for the building of social housing.

Content of the Act

This Bill creates a system for regulated social rental in the Caribbean Netherlands, sets out the conditions under which future admitted institutions can be admitted to that system, addresses the activities of admitted institutions and their supervision, and creates the (legal) frameworks within which those admitted institutions can carry out their activities.

1. General provisions: conditions for admission to the system

The HCA is authorised to rule on admission on behalf of the Minister. To be admitted, housing foundations must meet some basic conditions. For example, the articles must include that the foundation operates exclusively in the field of public housing. Conditions regarding financial capacity and continuity must also be met and it must be guaranteed that officers and supervisors of the foundations and associations are suitable. The Executive Council of the relevant Public Entity and the relevant tenants' organisation can give their views on the intention of the housing foundation to be admitted. In exceptional instances, authorisation may be withdrawn, for example if the AI ceases to exist or ceases to operate exclusively in the field of public housing. The AI may appeal against the withdrawal to the Joint Court of Justice of Aruba, Curaçao, St. Maarten and of Bonaire, St. Eustatius and Saba.

2. Legal form and organisation

The internal organisation of admitted institutions is formed by the board, the Supervisory Board (hereinafter referred to as: the SB)² and - in the case of admitted institutions that are associations - the general meeting of members (hereinafter referred to as: the GMM). The SB appoints the officer(s), internally supervises the board and must give approval for important board resolutions. Some board resolutions, e.g. the sale of immovable property, require approval from the Minister (implemented by the HCA). Before officers or members of the SB are appointed, the HCA conducts a suitability and reliability screening. The Act includes a basis for the HCA to seek an opinion from the Kingdom Representative for this purpose. Members of the SB are allowed to be members for a maximum of eight years or, in the instance that no other suitable candidate can be found after that term, 12 years. Tenants at the housing foundation are also allowed to be SB members and are proactively involved in the appointments.

The supervision on the governance and organisation by the HCA focuses on the principles of good governance. The guiding principles around integrity, suitability and reliability, and the prevention of (the appearance of) conflicts of interest are identical to those that are applicable in the European-Dutch system. At the same time, the context in the Caribbean Netherlands is different from the European Netherlands, especially due to the small scale (especially on St. Eustatius and Saba). Consequently, the labour force is also small, which in all probability makes the circle of people who can hold board or supervisory positions small. Therefore, the HCA has been given room for risk-based customisation in the practical elaboration of the supervision.

The annual financial statements, the annual report and the public housing report jointly provide accountability from the admitted institution for the performances it has delivered. The admitted institution must make these documents available to the HCA, the Public Entity in which it operates and the tenants' organisation. To ensure unity in reporting, the annual financial statements must meet the same standards as for the European Netherlands. The admitted institution should separate social and non-social activities administratively in the

² In the European Netherlands, legal entities like a private limited company (B.V.) and a public limited company (N.V.) usually have a Board of Supervisory Directors. Foundations and associations generally have a Supervisory Board. Housing corporations are an exception to this in the European Netherlands and have an BSD. In the Caribbean Netherlands, however, the term SB is common for housing foundations. This practice was followed. Legally, the terms have no difference and can be regarded as synonymous with each other.

annual financial statements and the annual report. Separate accounting of the assets and a legal separation between social and non-social activities is not mandatory. In the annual financial statements, the property is valued in a manner consistent with the current practice on the islands because the determination of the market value in a let condition (as is common in the European Netherlands) is not easily possible due to the small scale and different market conditions.

3. *Activities of the admitted institution*

Housing vision and local performance agreements

It is preferred that, following the practice in the European Netherlands, the Public Entity draws up a housing vision on which the admitted institution submits a bid. The implementation and elaboration of this bid is then done within reciprocal local performance agreements between the Public Entity, the admitted institution and the tenants' representation. As long as there is no housing vision or similar document on which to submit a bid, the admitted institution bases its bid in any instance on the national priorities: availability, affordability, sustainability and liveability. Within the local performance agreements the local dialogue is crucial. Nevertheless, disputes may arise that prevent performance agreements from being concluded at all. The parties can then refer this dispute to the Minister of Housing and Spatial Planning. The latter will rely on an opinion of the same Advisory Committee as in the European Netherlands: the Advisory Committee Dispute Resolution Performance Agreements Housing Act. To ensure that the Caribbean context is properly taken into account in the opinion, the Act created the possibility of adding a temporary member or involving an adviser who is familiar with this context.

The working area

The Housing Act BES proposes three core working areas where admitted institutions are allowed to operate in full: one area per island. This was chosen because the housing markets on the three islands are very different and the local housing foundations already active on the islands currently only operate on their own island. However, after exemption from the HCA, it is possible for the AI to build or acquire immovable property on another Caribbean Netherlands island or to form a joint venture outside its own working area. Other instances of cooperation and mutual service provision between admitted institutions (e.g. setting up a joint back office or shared service organisation, not building or acquiring immovable property) do not require a declaration of no objection and permission from the supervisory authority. Extension of a Caribbean Dutch institution admitted under the Housing Act BES to the European Netherlands is not possible under this Act. The reason is threefold: it could jeopardise the significant public housing challenge in the Caribbean Netherlands, there is already a large corporation sector operating in the European Netherlands and the supervision of admitted institutions in the Caribbean Netherlands focuses on the local context of the activities there. Conversely, European Dutch admitted institutions can continue to operate in the Caribbean Netherlands under Section 40 of the Housing Act.

Role of Public Entities

The Minister gives the Public Entity an opportunity to issue its opinion in instances of admission to the system, a merger and when a designation is given to the AI. These opinions are not mandatory, but give the Public Entity an opportunity to express its perspective. The Public Entity is also entitled to information from the AI and consults with the Executive Council on demolition regulations in instances of demolition.

Area of public housing

The task assigned to admitted institutions under this Act is to house people who, due to their income or other circumstances, are unable to independently obtain suitable housing and to contribute to pleasantly liveable neighbourhoods in which the admitted institution owns property. To ensure that admitted institutions in the Caribbean Netherlands are focused on this core task and thus prevent leakage of social assets, Services of Public Housing Interest have been delineated. This entails:

- Building and acquiring social housing (which may have a maximum rent equal to the island liberalisation threshold).

- Building and acquiring social immovable property, provided it is in districts or neighbourhoods where the AI owns immovable property and the immovable property has a district or neighbourhood-oriented function.
- Providing services to residents directly related to the occupation.
- Sustainability of corporation property.
- Contributing to liveability in the neighbourhoods with corporation ownership (including social management and cooperation with care parties), in the course of which the admitted institution does not engage in activities for which other organisations are primarily responsible.
- Facilitating the tenants' organisation.
- Activities that necessarily arise from the work domain, e.g. land acquisition or area development.

Investing in small-scale commercial immovable property is also allowed, although this is not part of the Services of Public Housing Interest. The same principles as applicable to the social immovable property are applicable to this.

Currently, each island has its own liberalisation threshold, which is set by Island Ordinance. The Housing Act BES includes a maximum rent and indexation provision per island equal to the provisions laid down in the Island Ordinance. However, a legal link is not being made. In practice, the two amounts will remain the same unless there are unforeseen changes on either side that cannot be adopted by the other. To avoid this and to ensure consistency, there will be close cooperation with the Public Entities.

Allocation

Maximum income thresholds for allocation of social housing are applied to ensure that the available housing is allocated to the right target group. These thresholds are different for each island to match the local context and current practices as much as possible (gross household income per year, 2025 price level):

	Single-person household	Multi-person household
Bonaire	\$50,000	\$60,000
St. Eustatius	\$54.132 (2.5x minimum wage)	\$64,958
Saba	\$53.560 (2.5x minimum wage)	\$64,272

The income thresholds will be indexed annually on 1 January through a Ministerial Decree based on the wage trends per island. At least 80% of the housing that becomes available annually must be allocated to households with incomes below the said thresholds. The 20% free allocation space can be used for households that may have higher incomes but need urgent housing for other reasons. The Public Entity may provide for an urgency policy in an Island Ordinance. If there is no ordinance or as a further elaboration of the same, an order of urgencies can be elaborated based on health, safety, social factors, force majeure or contingencies.

4. Consultation

To define the role of tenants' representation, part of the Consultation Act was adopted into the Housing Act BES. This defines the tenants' organisation and sets a number of requirements. It also establishes the rights of the tenants' organisation. There is a right to information in case of policy and management that directly affect tenants, their housing units or housing environment and in case of annual financial statements, annual report and audit opinion. The tenants' organisation has consultation and advisory rights regarding the intentions to change the policy or management. The tenants' organisation has the right to consent to changes in policy around service charges. At least once a year, the AI consults with the tenants' organisation. The TI facilitates the tenants' organisation and is subject to a best-efforts obligation to support the formation of a board. The HCA has the room to monitor the compliance of the AI with the consultation section.

5. Guarantee provision and financial security

The SHGF is designated as the guarantee facility for institutions admitted under the Housing Act BES. This guarantee means that the SHGF takes over the payment obligations (interest and repayment) of a participant when they can no longer meet the obligations themselves. This allows admitted institutions to raise loans on more favourable terms for their core

business: building and maintaining social housing. The guarantee is possible only for the guaranteeable targets, which fall within the frameworks of Services of Public Interest.

The guarantee system offers several buffers and safety nets. The last safety net is the 'backstop': the provision of interest-free loans to an ailing corporation.

Currently, it is not legally possible for Public Entities to provide interest-free loans. Even if this were possible, such a backstop is a substantial financial obligation that would put a disproportionate strain on the budget of the Public Entity. Therefore, a different solution is being sought here, considering the full carrying of the backstop by the Central Government.

Because the European rules on state aid are not applicable in the Caribbean Netherlands, the Central Government can, in the extreme instance, provide a restructuring subsidy to an ailing corporation so that necessary social activities can continue. A number of steps precede this. If the AI does not meet the ratios from the joint assessment framework of the HCA and the SHGF, the AI itself must make sufficient adjustments to meet the ratios again. If this fails, they are asked to draw up a recovery plan. In this regard, solidarity instruments such as a peer loan can be used. Where an ailing AI cannot independently meet financial ratios within 10 years and the continuation of the activities is not acutely endangered, it is requested to prepare a restructuring plan. If these plans do not improve the situation and thus jeopardise the continuation of the necessary activities, the AI submits an application to the Central Government for restructuring aid. The solidarity instrument of project support is not included in the Housing Act BES. This is a heavy instrument stemming from European regulations. Although mutual solidarity is also encouraged in this regard, the instrument of project support - which stems from European regulations - is not needed because the state aid argument is not applicable here. The Central Government can provide additional funds if necessary and possible.

6. Supervision and administration

The Housing Corporation Authority supervises, among other things, the legality of actions, governance and integrity and the preservation of financial continuity of admitted institutions. The HCA conducts ongoing supervision, including through inspections and visitations. Approval is also required for certain actions undertaken by an admitted institution, such as the sale of assets. The HCA bases its assessment on the regulations and policy rules, in which there is some policy space to tailor to local circumstances departing from a risk-based approach. This is crucial for the Caribbean Netherlands. It was therefore chosen to include more open standards in the Housing Act BES, giving the HCA discretionary power to tailor to the specific context of the situation at hand. In addition, the Housing Corporation Authority intends to draft policy rules and possibly other documents specifically for Caribbean Dutch admitted institutions, where cultural differences and smallness of scale can be taken into account in the supervisory assessment. Hence, the supervision is not fully equal to the system in the European Netherlands, but it is equivalent. However, a number of non-negotiable aspects have been identified that need supervision. These are:

- a. The prevention of leakage of socially bound assets
- b. Effective deployment of assets
- c. Supervision on the financial continuity
- d. Reliable financial information and controlled business operations
- e. Legality of, among other things, allocation and remuneration of the officer

7. Other provisions

An experiment section has been included in the Housing Act BES given the many developments in the field of public housing and the possibility that regulations may not be adequately provided for. The purpose of an experiment is to improve the regulations based on the lessons learnt from the experiment in question. The section is not intended as a one-off possibility to deviate from the legislation in a specific case.

Process

In addition to a Housing Act BES, equivalents of the lower regulations (Admitted Institutions Public Housing Decree and Admitted Institutions Public Housing Regulations) will also be drafted. After the Act comes into force, which is scheduled for 1 January 2027, an application to the HCA for admission to the scheme will be possible. After admission, the admitted institution can then apply for participation in the SHGF.

Consequences for parties involved

Housing foundations

For housing foundations admitted to the system, there is a sharp increase in the regulatory burden. The additional activities arising from the admission process will lead to one-off pressure, whilst in the area of (financial) reporting and accountability, there will be a significant increase in structural regulatory pressure. On the other hand, the regulatory burden on acquiring finance will be reduced.

HCA and SHGF

For both parties, the admission of a new institution and application for a guarantee from that AI means a significantly increased one-off regulatory burden. Even after that, there is a slightly increased structural regulatory burden simply because there is an additional admitted institution where customisation is also required due to the Caribbean context.

Public Entities

The Public Entity with a housing foundation that is/will be an admitted institution experiences additional regulatory pressure by drawing up a housing vision and local performance agreements. These are updated once every five years. There is also a slight increase in regulatory burden due to the issue of opinions and consultation in the instance of demolition. If there is a need for support from the Central Government (financial, expertise or otherwise), the possibilities for this can be explored. For Public Entities with no admitted institutions, hardly any additional regulatory burden is expected.