

The Netherlands Antilles and Aruba

Focco W. Lunsingh Scheurleer
attorney-at-law

**Conference on Netting of OTC Financial
Contracts in Latin America and the
Caribbean**

10 November 2000

Final Version

Promes Trenité Van Doorne

**Legislative Issues on Netting,
Bankruptcy and Collateral of Securities
in the
Netherlands Antilles and Aruba**

Promes Trenité Van Doorne

Topics

- **General information on Netherlands Antilles and Aruba and their law systems**
- **Close out**
- **Set-off**
- **Fraudulent Preference**
- **Conflict of law**
- **Collateral issues and collateralisation of securities**

Netherlands Antilles and Aruba

- **Aruba: separate jurisdiction**
- **Netherlands Antilles: group of five islands in the Caribbean**
- **Kingdom of the Netherlands: the Netherlands, the Netherlands Antilles and Aruba**

Law System

- **Civil law jurisdiction**
- **Most important codes:**
 - **Civil code**
 - **Commercial Code**
 - **Bankruptcy Code**

Courts

- **Netherlands Antilles and Aruba: own courts**
- **Netherlands Antilles and Aruba share one Appellate Court, Curaçao**
- **Subject to jurisdiction of the Supreme Court of the Netherlands**

Most Important Legal Entities

- the company limited by shares (NV: *naamloze vennootschap*)
- For Aruba apart from N.V.: A.V.V. (Aruba exempt company)

Close Out

- **Bankruptcy code: close-out netting**
- **Suspension of Payments: same applies**
- **Termination clauses are recognised**
- **Contractual provisions not necessary**

Insolvency set-off

- **Insolvency set-off is permitted.**
Requirements:
 - **Mutuality**
 - **Delivery of goods and payment of money can not be set-off**
 - **Pre-bankruptcy claims and debts**

Fraudulent preference

- **Close-out netting and insolvency set-off allowed and not fraudulent, exceptions:**
 - Assigned debts/claims and assignee not acting in good faith
 - Claims or debts assigned after the adjudication of the bankruptcy

Conflict of law

- Choice of law recognised

Multibranch Netting Issues

- Treatment of local entities with global operations and foreign branches or offices
- Treatment of local branches and offices of foreign entities

Collateral Issues

- **Tangible assets: lex rei sitae**
- **Claims: the law that governs the contract between the assignor/pledgor and the assignee/pledgee**
- **Securities: depends on nature of the security**

Collateralisation of Securities

- **bearer securities: lex rei sitae**
- **non-bearer securities, registered in the name of the investor:**
 - **laws of the state in which the issuer has its corporate seat**
- **securities registered in a book entry system: position unclear**

Collateralisation of Securities

- **The law of the first intermediary is advocated in the Netherlands Antilles**
- **Promes Trenité Van Doorne is advising law makers in the Netherlands Antilles**

Promes Trenité Van Doorne

Focco W. Lunsingh Scheurleer

Julianaplein 22

P.O. Box 504

Curaçao, Netherlands Antilles

Telephone: + 599 9 461 3400 ext. 160

Telefax: + 599 9 461 2023

lunsinghscheurleer@promes-trenite.com