The Netherlands Antilles and Aruba

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

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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 cannot 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

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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
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