
EASTERN CARIBBEAN CENTRAL BANK



**GUIDELINES ON RELATED PARTY TRANSACTIONS
FOR INSTITUTIONS LICENSED
TO CONDUCT BANKING BUSINESS UNDER THE BANKING ACT**

April 2006

Banking Prudential Guidelines No.3 of 2006

The Eastern Caribbean Central Bank, in exercise of the powers conferred on it by section 36 of the Banking Act,¹ makes the following Prudential Guidelines -

INTRODUCTION

I OVERVIEW

A) These guidelines seek to ensure that related parties of institutions licensed under the Banking Act do not benefit inappropriately from transactions with these institutions, usually at the detriment of the institution. The guidelines also seek to ensure that transactions with related parties are carried out on terms and conditions that are the same as or similar to that with a non-related party.

B) Principle 10 of the [Core Principles for Effective Banking Supervision \(Basle 1999\)](#)² states that:

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 arms-length basis, that such extensions of credit are effectively monitored, and that other appropriate steps are taken to control or mitigate the risks.

These guidelines support the application of this principle.

C) For the purposes of these guidelines a **related party** is defined as -

- a) The directors and staff of the institution;
- b) An affiliate of the institution;

¹ Anguilla Banking Act No. 9 of 2005;
Antigua and Barbuda Banking Act No. 14 of 2005;
Dominica Banking Act No. 16 of 2005;
Grenada Banking Act No. 19 of 2005;
Montserrat Banking Act No. 2 of 2005;
Saint Christopher and Nevis Banking Act No. 4 of 2004;
Saint Lucia – Not yet passed;
Saint Vincent and The Grenadines – Not yet passed.

² These Core principles can be accessed at <http://www.bis.org/publ/bcbs30a.pdf>

- c) Any director, partner, senior officer or guarantor of an affiliate of the institution or their immediate family;
 - d) Any entity in which a director or senior officer of the institution assumes the role of director, partner, officer or guarantor;
 - e) The auditor and senior officers of the institution's audit firm;
 - f) A significant shareholder of the institution, the significant shareholder's senior officers, partner or immediate family member or an entity that the significant shareholder controls or is controlled by;
 - g) A director or senior officer of an entity that controls or is controlled by the institution and includes their partners or immediate family members;
 - h) Any person who maintains a trust on behalf of the institution or its affiliate and includes any director, partner, senior officer or guarantor of the trust or their immediate family;
 - i) A person or class of persons identified under section 16(1)(a) or section 16(1)(c) of the Banking Act³;
 - j) A person or class of persons who has been designated by the ECCB as a related party because of their past or present interest in or relationship with the institution, being such that it can be reasonably expected that this related party can influence the decision of the institution regarding a transaction.
- D) These guidelines do not propose to define all the related party transactions that a financial institution may be a party to. Such transactions as a general rule, would include, but not be limited to transactions:
- Regarding the issuing of credit, financial leasing, deposits, conditional sales agreements, and service agreements with a related party;
 - Relating to the acquisition, sale or lease of assets;
 - Related to the giving of a guarantee on behalf of a related party;
 - Regarding the purchase of securities from or selling of securities to a related party;

³ There may be a variation in the numbering in the Banking Acts of the individual ECCU territories. The Banking Act, 2005 of Anguilla refers to section 15(1)(a) and 15(1)(c), respectively.

- Regarding the institution taking an assignment of or otherwise acquiring a loan made by a third party to a related party;
- For professional services rendered to the institution by a related party;

II Interpretation

"**Affiliate**" has the meaning assigned to it in the Banking Act.

"**Banking Act**" means the Banking Act in force in that territory.

"**Benefit**" means an advantage, privilege, profit or gain, whether or not in exchange for consideration.

"**Central Bank**" has the meaning assigned to it in the Banking Act.

"**Connected person**" means where the interests of two or more persons, or a group of persons are so interrelated that they could be considered as a single unit or a related party.

"**Control**" has the meaning assigned to it in the Banking Act.

"**Controlled entity**" means an entity that is under the control of another entity (known as the controlling entity).

"**Controlling entity**" is an entity that has one or more controlled entities.

"**Cross-Director**" means a director or a senior manager of an institution who is also part of the board or senior management of another institution, or has such significant links or involvement with the other institution that the director or senior manager could be considered associated with the other institution.

"**Immediate Family**" refers to any person or persons who can be expected to influence an individual or be influenced by that individual. This generally includes:

- (a) A spouse, domestic partner or child; or
- (b) Any person living in a common household; or
- (c) A grandparent, parent, brother or sister; or

(d) The spouse or domestic partner of a child, parent, brother or sister.

“Independent Director” means a non-executive director who is free of any business or other relationships that would materially interfere with, or could reasonably be perceived to materially interfere with, the exercise of his unfettered and rational decision making pertaining to the institution.

“Insider” has the meaning assigned to it under the Securities Act, 2001.

“Institution” means a financial institution licensed to conduct banking business under the Banking Act.

“Non-Executive Director” means a director who does not participate directly in the management of the institution.

“Self-dealing” means any transaction with a related party, that is not on terms and conditions that are the same or similar to that offered to a non-related party and which could generate a lesser return to the institution than with a non-related party.

“Senior Officer” or “Senior Management” of an institution means:

- (a) The chief executive officer, deputy chief executive officer, chief operating officer, chief financial officer, internal auditor, company secretary, or manager of a significant business unit of the institution; or
- (b) A person with similar responsibilities or with a position similar to that identified in item (a); or
- (c) Any person who can make a policy decision.

“Significant shareholder” has the meaning assigned to it in the Banking Act.

“Substantially the same terms and conditions” means:

- (a) in respect of a loan, deposit or other service offered by the institution, terms and conditions that are no more favourable than those offered to the public during the ordinary course of its business;
- (b) in respect of other transactions, terms and conditions, including those relating to price, rent, or interest rate that might be reasonably expected to apply to similar transactions in an open market, where parties deal on an arm's length basis, acting knowledgeably and willingly; and
- (c) the adoption of follow-up and enforcement actions that might be reasonably expected of a prudent person in a similar situation.

“Transaction” means a transfer of benefits, resources, obligations, or the provision of services, regardless of whether a price is charged.

III Application

- a) These guidelines apply to all institutions licensed under the Banking Act.
- b) All transactions between an institution and its related parties are subject to these guidelines, except those specifically exempted in section 3 of the guidelines.
- c) The Central Bank may determine that a person or a group of persons are related to the institution and as such require that these persons be treated as a related party for the purposes of these guidelines.

IV Commencement

These guidelines shall come into effect on 15 May 2006.

GUIDELINES

1 THE GENERAL RULE

All transactions with a related party must be carried out on terms and conditions that are consistent with or are substantially the same as with a non-related party. It is the responsibility of an institution's board of directors to ensure that substantially the same terms and conditions are applied to all related party transactions. Institutions should therefore establish policy guidelines and review procedures to minimise the potential for self-dealing. Procedures relating to the review of related party transactions are set out in section 2 and 5 of the guidelines.

2 POLICY FRAMEWORK

- 2.1 Institutions should develop materiality criteria for each type and category of related party transaction. In addition, internal reporting thresholds should be set for each type and category. Related party transaction types and categories are provided in Appendix I.
- 2.2 The materiality of an item is usually determined with reference to the nature or size of that transaction. However, the nature of the relationship between the reporting institution, the related party and the nature of the transaction, should also be considered when determining materiality. Section 2.2 of the guidelines is to be considered when setting the materiality criteria and reporting thresholds.
- 2.3 Subject to section 16(4) of the Banking Act⁴, institutions should develop approval thresholds for each type and category of related party transaction and a cumulative threshold for all outstanding transactions for a related party. Related party transactions above the applicable threshold should require board approval before the transaction is executed. The thresholds for each type and category of related party transaction, for each related party, should in no case exceed 0.1% of the institution's tier I capital or fifty-thousand EC dollars, whichever is less. Transactions with a related party that would cause the cumulative value of existing transactions with that party to exceed 2.0 per cent of tier I capital, should require prior board approval.

⁴ There may be a variation in the numbering in the Banking Acts of the individual ECCU territories.

- 2.4 In approving a transaction with a related party, the board of directors or a subcommittee thereof, should ensure that the transaction's terms and conditions comply with these guidelines and that the transaction will be executed on substantially the same terms and conditions as other similar transactions with unrelated parties.

3 EXEMPTED TRANSACTIONS

3.1 Immaterial Transactions

3.1.1 An institution may enter into a transaction with a related party without review by the board or a subcommittee thereof as required by section 5 of these guidelines, if its value is immaterial to the institution according to the materiality criteria established by its board of directors.

3.1.2 The exemption for immaterial transactions is designed to allow for the timely execution of these transactions. However, the general rule that transactions with related parties must be executed on substantially the same terms and conditions as with non-related parties, must prevail.

3.2 Staff Benefits

3.2.1 Subject to section 16(1)(c) of the Banking Act⁵, any benefit or compensation programme provided to an employee by the institution:

- a) that is widely available to employees of the institution; or
- b) that is reasonable remuneration is exempted.

4 PRE-EXISTING TRANSACTIONS

4.1 Within 60 days of these guidelines coming into effect, each institution should submit to the Central Bank a list of all related party transactions in existence on 28 April 2006,

⁵ There may be a variation in the numbering in the Banking Acts of the individual ECCU territories. The Banking Act, 2005 of Anguilla refers to section 15(1)(c).

together with a description of the nature of each transaction, its principal terms and conditions, remaining term to maturity, and amount outstanding.

5 REVIEW OF RELATED PARTY TRANSACTIONS

- 5.1 All transactions with related parties, excluding exempted transactions, should be reviewed periodically.
- 5.2 The board or the audit or compliance committee as required under the corporate governance guidelines should be designated to monitor and review all related party transactions and ensure compliance.
- 5.3 The board or the audit or compliance committee may determine that a related party transaction is material even when it is below the threshold, after considering the transaction and the nature of the relationship between the institution and the related party. The audit or compliance committee should identify, document and communicate to the board those transactions below the threshold that are considered material.
- 5.4 In carrying out its duties the board or the audit or compliance committee should have the mandate to:
- a) Require the management of the institution to establish procedures and information systems to comply with the requirements of these guidelines and the Banking Act;
 - b) Ensure that all obligations related to these guidelines are adhered to;
 - c) Accept and record declarations of interest submitted by directors to the board of directors as required by section 28 of the Banking Act⁶;
 - d) Review all proposed related party transactions that are material as outlined in these guidelines;
 - e) Review the institution's operations and relevant procedures periodically to ensure compliance with these guidelines; and

⁶ There may be a variation in the numbering in the Banking Acts of the individual ECCU territories.

- f) Review the practices of the institution to ensure that any transaction with a related party that can have a material effect on the stability and solvency of the institution is identified and reviewed in a timely manner.
- 5.5 Where a member of the audit or compliance committee is a related party to a transaction submitted to the committee for review, he/she should declare his/her interest and should be excused from participating in the review process.
- 5.6 The audit or compliance committee should report on its findings to the board of directors at least quarterly.

6 REPORTING REQUIREMENTS

- 6.1 The board of directors should quantify and classify all related party transactions by broad categories or related parties and report these quarterly to the Central Bank. Refer to Appendix II
- 6.2 Related party transactions that are greater than or that would cause the cumulative value of all outstanding transactions of a related party to exceed 2.0 per cent of the institution's tier I capital, should be reported to the ECCB on a quarterly basis. Refer to Appendix III.
- 6.3 Related party transactions that were not granted on terms and conditions similar to that provided to a non-related party, should also be reported to the ECCB on a quarterly basis. Refer to Appendix IV.
- 6.4 Within 90 days after the close of the financial year of the institution, the board of directors should submit a report to the Central Bank on the performance of the audit or compliance committee in executing its responsibilities under these guidelines, including the identification of any violations of these guidelines and corrective measures taken.

APPENDIX I
TRANSACTION TYPES AND CATEGORIES

Related party transaction categories for the purposes of these guidelines are:

- a) Insiders
- b) Financial Affiliates
- c) Non-Financial Affiliates
- d) Other Related Parties

Consistent with the related party definition on page i of the introduction to this guideline, the constituents of a related party transaction category are:

Insiders includes items (a) and (e) of the definition of a related party.

Financial Affiliates includes items (b), (d), (f), (h), (i) and (j) as appropriate of the definition of a related party.

Non-Financial Affiliates includes items (b), (d), (f), (h), (i) and (j) as appropriate of the definition of a related party.

Other Related Parties includes (b), (c), (f), (g), (h), (i) and (j) as appropriate of the definition of a related party.

It is intended that corporate persons be included only as Financial Affiliates and Non-Financial Affiliates and that individuals be included as Insiders and Other Related Parties

Related party transaction types for the purposes of these guidelines are:

- 1. Related Party Deposits
- 2. Related Party Credit
- 3. Related Party Service Contracts
- 4. Other Related Party Transactions

The “Other Related Party Transactions” section is intended to be a catch-all section, where transactions that do not fall into the first three types would be captured.

APPENDIX II

RELATED PARTY TRANSACTIONS SUMMARY

1. OUTSTANDING RELATED PARTY DEPOSITS		XXXX
a) Insiders	XXXX	
b) Financial Affiliates	XXXX	
c) Non-Financial Affiliates	XXXX	
d) Other Related Parties	XXXX	
2. OUTSTANDING RELATED PARTY LOANS AND ADVANCES		XXXX
a) Insiders	XXXX	
b) Financial Affiliates	XXXX	
c) Non-Financial Affiliates	XXXX	
d) Other Related Parties	XXXX	
3. RELATED PARTY SERVICE CONTRACTS OVER THE QUARTER		XXXX
Of which continue to remain outstanding		XXXX
a) Insiders	XXXX	
b) Financial Affiliates	XXXX	
c) Non-Financial Affiliates	XXXX	
d) Other Related Parties	XXXX	
4. OTHER RELATED PARTY TRANSACTIONS OVER THE QUARTER	XXXX	
Of which continue to remain outstanding		XXXX
a) Insiders	XXXX	
b) Financial Affiliates	XXXX	
c) Non-Financial Affiliates	XXXX	
d) Other Related Parties	XXXX	

APPENDIX III

RELATED PARTY TRANSACTIONS

(Related Party Transactions that exceed 2.0 per cent of the Institution's tier I capital)

Complete the following table for each related party transaction approved, that is greater than or which would cause the cumulative value of a related party's transactions to exceed or continued to exceed 2.0 per cent of the institution's tier I capital.

CIF # ⁷	Type of Facility	Transaction Balance	% of Tier I Capital	Terms and Conditions of Facility	No. of Days in Arrears	Other Facilities at Institution (Y/N)

⁷ In the case of a Service Contract or Other related party transaction, please indicate the name of the related party instead of the CIF#

APPENDIX IV

RELATED PARTY TRANSACTIONS

(Exceptions to the General Rule)

Complete the following table for each related party transaction that was not granted on terms and conditions that are consistent or are substantially the same as with a non-related party.

CIF # ⁸	Type of Facility	Transaction Balance	% of Tier I Capital	Terms and Conditions of Facility	No. of Days in Arrears	Other Facilities at Institution (Y/N)

⁸ In the case of a Service Contract or Other related party transaction, please indicate the name of the related party instead of the CIF#

Made by the Eastern Caribbean Central Bank this 15th day of May 2006

K Dwight Venner
Governor