

Unofficial and not binding translation

STATE DECREE containing General Administrative Orders of implementing Article 27a, first paragraph, of the State Ordinance on the Supervision of the Insurance Business ('AB' [*Official Gazette*] 2000 No. 82) in respect of insurance brokers (State Decree on the Supervision of Insurance Brokers)

IN THE NAME OF THE KING!

THE GOVERNOR of Aruba,

Having considered:

that, for the promotion of an orderly course of trade and the integrity of the financial sector, as well as for the protection of the interests of policyholders and other interested parties of an insurance, it is desirable to lay down rules with regard to the conduct of the insurance brokerage business and to place the insurance brokers under supervision.

Having regard to:

Article 27a, first paragraph, of the State Ordinance on the Supervision of the Insurance Business (AB 2000 No. 82);

After hearing the Advisory Council, has decided:

§1. General provisions

Article 1

1. In this State Decree, the following terms shall mean:

| | | |
|----------------------|---|---|
| insurance broker | : | an insurance broker as referred to in Article 27a, fourth paragraph, of the State Ordinance on the Supervision of the Insurance Business (AB 2000 No. 82); |
| the Bank | : | the Central Bank of Aruba; |
| authorized agent | : | representative of an insurer, who, based on an authorization, arranges life insurance contracts or general insurance contracts with clients for the account of that insurer; |
| authorized sub-agent | : | representative of an insurer, who, based on a subauthorization granted by an authorized agent, arranges life insurance contracts or general insurance contracts with clients for the account of that insurer; |
| credit | : | the provision of a sum of money to a client or the provision of a sum of money to third parties for the benefit of a client, under the obligation of the client to make one or more payments in that regard; |
| the State Ordinance | : | the State Ordinance on the Supervision of the Insurance Business. |

2. The provisions laid down by or pursuant to this State Decree concerning authorized agents shall apply mutatis mutandis to authorized sub-agents.

3. The directives to be given by the Bank as referred to in this State Decree shall be announced in a manner to be determined by the Bank.

4. This State Decree shall not apply to representatives as referred to in Article 1 of the State Decree on the Representation of the Insurance Business (AB 2003 No. 12), who have been appointed or designated in accordance with Article 2 of that State Decree.

§2. Market access

Article 2

1. It is prohibited to act as an insurance broker in a professional or commercial capacity in or from Aruba without a license granted by the Bank for this purpose.

2. The prohibition as referred to in the first paragraph shall not apply to:

- a. insurers disposing of a license as referred to in Article 5 of the State Ordinance;
- b. credit institutions disposing of a license as referred to in Article 4 or 24 of the State Ordinance on the Supervision of the Credit System (AB 1998 No. 16), insofar as the acting as an insurance broker has not been prohibited or restricted under that license;
- c. insurance brokers, insofar as they are a travel agency or tour operator, and the insurances for which they act as an intermediary are cancellation insurances or insurances taken out for the purpose of a trip or vacation.

3. A credit institution as referred to in the second paragraph, subparagraph b, shall inform the Bank of its intention to act as an insurance broker before it carries out this intention.

4. Articles 4, first through fourth paragraph, and 5 through 8 shall not apply to enterprises or institutions as referred to in the second paragraph.

5. A credit institution as referred to in the second paragraph, subparagraph b, shall not demand that the client enters into a life insurance contract or a general insurance contract when entering into a credit agreement, unless the client is explicitly granted the right to determine with which counterparty he will enter into that contract.

6. A contract in violation of the fifth paragraph shall be subject to annulment. Only the client can invoke this ground for annulment.

Article 3

The Bank shall grant a license as referred to in Article 2, first paragraph, provided it is evident to it that:

- a. Article 7 of the State Ordinance, except for subparagraphs b and i of that Article, and
- b. the Articles 5 and 8 of this State Decree are complied with.

§3. Statement of mutatis mutandis applicability

Article 4

1. Articles 4, 6, with the exception of the third paragraph, and 7, with the exception of subparagraphs b and i, of the State Ordinance shall apply mutatis mutandis to an application for and granting of a license as referred to in Article 2, first paragraph.

2. Articles 8 and 9 of the State Ordinance shall apply mutatis mutandis to a license granted to an insurance broker as referred to in Article 2, first paragraph.

3. Articles 10, 14d, and 14e of the State Ordinance shall apply mutatis mutandis to insurance brokers.

4. Articles 14a through 14c of the State Ordinance shall apply mutatis mutandis to qualified holdings in insurance brokers.

5. Articles 15, 15a, 15b, 16, 16a through 16i, 23 through 26, and 28 through 30 of the State Ordinance shall apply mutatis mutandis with regard to insurance brokers.

§4. Legal form and management

Article 5

1. Only a legal entity with full legal capacity incorporated under Aruban law shall act as an insurance broker.

2. The day-to-day policy of an insurance broker shall be determined by at least one natural person residing in Aruba.

Article 6

An insurance broker shall not appoint a person for determining the day-to-day policy or a member of the board of supervisory directors or a similar body without the prior written permission of the Bank.

§5. Accounting and reporting

Article 7

1. An insurance broker shall periodically provide the Bank with information reasonably required for the performance of its duties pursuant to this State Decree, in accordance with the directives given by

the Bank concerning the content of this information and the form, manner, periodicity, and the periods of submission, as well as concerning the certification of this information by an auditor.

2. Each year, within six months after the end of the financial year, an insurance broker shall submit its financial statements and annual report to the Bank. The financial statements shall be accompanied by a declaration on the accuracy of the information contained in them, signed by an auditor. The annual report shall give a true and fair view of the state of affairs on the balance sheet date and the course of events during the financial year.

3. The Bank may give directives to insurance brokers concerning the content of the financial statements and the form and manner of submission.

§6. Financial guarantees

Article 8

1. An insurance broker shall dispose of a minimum amount of equity capital.

2. The Bank may give directives to insurance brokers concerning the amount and composition of the minimum equity capital as referred to in the first paragraph.

§7. Duty of care

Article 9

1. Before allowing third parties to act as an intermediary in its name or for its account, an insurer shall ascertain that these third parties are authorized to act as an insurance broker pursuant to this State Decree.

2. An insurer that knows or should know that the license of an insurance broker has been withdrawn shall no longer conclude any new life insurance contracts or general insurance contracts through the intermediary of that insurance broker.

3. Before allowing third parties to act as an intermediary in its name or for its account, an insurance broker shall ascertain that these third parties are also authorized to act as an insurance broker pursuant to this State Decree

4. An insurance broker that knows or should know that a third party who acts as an intermediary in its name or for its account or in whose name or for whose account it itself acts as an intermediary is no longer allowed to act as an insurance broker pursuant to this State Decree shall no longer allow that third party to act as an intermediary in its name or for its account or shall discontinue its own activities in the name or for the account of that third party.

5. For the application of the first and second paragraph, if an insurance broker acts as an intermediary for an authorized agent or an authorized sub-agent, the authorized agent or authorized sub-agent shall be considered equivalent to an insurer.

§8. The legal status of an insurance broker

Article 10

An insurance arranged through the intermediary of an insurance broker or transferred to the portfolio of an insurance broker shall belong to the portfolio of that insurance broker in the relation to the insurer, as long as it has not been transferred from it, or the insurer has not taken over the management of it.

Article 11

1. Without the permission of the insurance broker or its successors in title, an insurer shall not transfer its portfolio in whole or in part to the portfolio of another insurance broker.

2. In derogation from the first paragraph, the insurer shall transfer an insurance from the portfolio of an insurance broker to that of another insurance broker at the written request of the policyholder, unless the insurer has well-founded objections to that insurance broker.

3. The first and second paragraphs shall apply *mutatis mutandis* to the insurer that has taken over the management of an insurance.

4. At the written request of an insurance broker, the insurer shall cooperate in the full or partial transfer of the portfolio of that insurance broker to another insurance broker, unless the insurer has well-founded objections to that insurance broker.

Article 12

1. An insurance broker shall be entitled to receive commission from the insurer in respect of all insurances belonging to its portfolio.

2. Withdrawal of the license of an insurance broker shall leave intact its entitlement to commission in respect of insurances belonging to its portfolio at the time of the withdrawal or to which Article 11, second paragraph, applies.

3. After a transfer as referred to in Article 11, second and third paragraph, the entitlement to commissions shall continue to exist, in derogation from the first paragraph, until the end of the current insurance year, if it concerns a life insurance contract. If it concerns a general insurance contract, the entitlement shall continue to exist until the next renewal date of the insurance contract or until such earlier time as the insurance contract can be terminated by the policyholder by giving notice, unless otherwise agreed on.

Article 13

1. Takeover of the premium collection by an insurer from an insurance broker in insurances as referred to in Article 15, third paragraph, shall leave intact the entitlement to commission of that insurance broker, referred to in Article 12, first paragraph.

2. Notwithstanding the first paragraph, the insurer shall be authorized, after takeover of the premium collection, to charge the insurance broker a fair and objectively justified fee for the premium collection or to buy off the entitlement of the insurance broker to commission. By Ministerial Regulation, further rules may be laid down concerning that fee or buyoff payment.

Article 14

1. Unless otherwise agreed on, the insurance broker shall take care of the premium collection for the insurer. It shall report on its actions to the insurer in respect of this premium collection.

2. Payment of the premium and costs due to the insurance broker shall release the policyholder from its payment obligation towards the insurer. In that case, the obligation to pay the premium and costs due shall pass to the insurance broker.

Article 15

1. Unless the insurer and insurance broker have agreed on otherwise, the insurer may terminate the premium collection by an insurance broker, if:

- a. the insurance broker seriously neglects the premium collection;
- b. the insurance broker fails to pay the premiums collected to the insurer in a timely manner or is guilty of actions that justify the presumption that it will not fulfill its obligations arising from the premium collection.

2. If the license of an insurance broker has been withdrawn, the insurer shall terminate the premium collection by that insurance broker.

3. In the cases in which the premium collection by an insurance broker ends pursuant to the first or second paragraph, it shall be taken over by the insurer.

Article 16

If an insurance broker acts as an intermediary for an authorized agent or an authorized sub-agent, the authorized agent or authorized sub-agent shall be considered equivalent to an insurer for the purposes of Articles 10 through 15.

§9. The authorization

Article 17

1. An authorization or subauthorization shall be granted in writing. The Bank may give directives concerning the content of the authorization.

2. An authorization may be restricted by the insurer granting the authorization.

3. A subauthorization may be restricted both by the insurer granting the authorization and by the authorized agent, as long as its own authorization is effective.

4. Restrictions on an authorization or subauthorization may not be enforced against third parties. The authorized sub-agent shall not be considered a third party insofar as the insurer is concerned.

§10. The remuneration

Article 18

1. Notwithstanding Article 19, second paragraph, the remuneration of an insurance broker shall exclusively consist of commission in respect of the activities performed for arranging insurances, renewing insurances, or collecting premiums.

2. The remuneration an insurance broker receives for the services provided by it from the insurer shall not be such that the interests of the client are or could be compromised by it. If an insurance is offered or arranged through the intermediary of an authorized agent or an authorized sub-agent, the authorized agent or authorized sub-agent shall be considered to be the insurer.

Article 19

1. An insurance broker is not allowed to charge a policyholder or those for whose benefit an insurance has been taken out a claim settlement commission in case of a claim.

2. The Bank may grant a dispensation from the prohibition referred to in the first paragraph, for types of insurances to be determined by Ministerial Regulation, to the insurance broker that proves to the satisfaction of the Bank that it disposes of the suitable business operations and expertise in this respect and that it can make the efforts to be reasonably demanded from it for the settlement of claims .

3. The Bank may have the quality of the business operations, the expertise, and the procedures for the settlement of claims assessed by an expert third party for the account of the insurance broker concerned.

4. The claim settlement commission that may be charged shall not exceed one percent of the amount of the claim to be paid to the insured person.

Article 20

1. It is not allowed to grant, relinquish, or promise directly or indirectly commission, return commission, or any other benefit measurable in money in respect of an insurance to others than the insurance broker to whose portfolio the insurance belongs, without prejudice to Article 12, third paragraph.

2. The Bank may grant a dispensation from the prohibition referred to in the first paragraph, if the prohibition in a concrete situation is contrary to generally accepted customs or the general interest of the insurance business.

§11. The register

Article 21

1. The Bank shall keep a register in which all insurance brokers that have received a license as referred to in Article 2, first paragraph, shall be entered, as well as the credit institutions that have notified to the Bank pursuant to Article 2, third paragraph. The register shall state whether a registered insurance broker is dependent or independent of one or more insurers. Furthermore, the register shall state whether a registered insurance broker is an authorized agent, as well as the name of the insurer to which the authorization applies. The register shall be organized in a manner to be determined by the Bank and shall be available for inspection by each and anyone, free of charge, at the office of the Bank.

2. The Bank shall be responsible for the removal from the register of each insurance broker whose license as referred to in Article 2, first paragraph, has been withdrawn and each credit institution that no longer acts as an insurance broker.

3. The entry in or removal from the register shall be announced by the Bank within two weeks after the day on which it took place in the Official Gazette of Aruba and in two local newspapers.

4. Every year in the month of January, the Bank shall publish a copy of the register as of December 31 of the previous year in the Official Gazette of Aruba and in at least two local newspapers.

§12. Transitional and final provisions

Article 22

1. An enterprise or institution that performs activities falling under the scope of this State Decree on the date of entry into force of this State Decree may file an application for issuance of a license with the Bank within six months after this date, in accordance with the applicable requirements.

2. Article 2, first paragraph, shall not apply to enterprises or institutions as referred to in the first paragraph for a period of six months after the date of entry into force of this State Decree. Furthermore, Article 2, first paragraph, shall not apply to enterprises or institutions as referred to in the first paragraph, which filed an application with the Bank in accordance with the first paragraph, until the moment at which the Bank has decided on the application.

3. Article 6, fourth paragraph, of the State Ordinance, shall apply mutatis mutandis to the process of an application as referred to in the first paragraph.

4. Credit institutions as referred to in Article 2, second paragraph, subparagraph b, which act as an insurance broker on the date of entry into force of this State Decree, shall comply with the notification obligation as referred to in Article 2, third paragraph, within three months after the entry into force of this State Decree.

Article 23

1. This State Decree shall enter into force as of the day following the day of its publication in the Official Gazette of Aruba.

2. It may be cited as the State Decree on the Supervision of Insurance Brokers.

Given in Oranjestad,

The Minister of Finance and Government organization,

The Minister of Justice,