Sanction measures

Sanctions are political instruments in the foreign and security policies of the United Nations and other international bodies. They are meant to be enforceable instruments applied in response to violations of international or human rights law, or to effect policy changes where legal or democratic principles are not being adhered to. Sanctions also play a role in the fight against terrorism and the financing of terrorism.

Pursuant to the Sanctions State Ordinance 2006 (AB 2007 no. 24), which became effective on April 26, 2007, rules may be laid down by State Decree containing general administrative orders for the implementation of a convention or an international resolution that Aruba is obligated to comply with, and which entail a restriction, prohibition or the imposition of an obligation for residents. Consequently, on June 25, 2010 the Government of Aruba enacted the Sanctions State Decree to Combat Terrorism and Terrorist Financing (AB 2010 no. 27), henceforth referred to as the Sanctions State Decree.

The Sanctions State Ordinance requires the freezing of funds or other assets of terrorists, those who finance terrorism and terrorist organizations in accordance with the United Nations Security Council Resolutions 1267 (1999) and 1373 (2001) relating to the prevention and suppression of the financing of terrorist acts.

Resolution 1267 (1999) orders the prompt freezing of funds or other assets that belong to, or are controlled by the terror organization Al Qaeda, the Taliban, Osama bin Laden, or persons and entities that are associated with them, as designated by the UN Al Qaeda and Taliban Sanctions Committee (to be named hereinafter: the Sanctions Committee). Such a freezing should take place without the persons or entities concerned being informed hereof in advance.

Resolution 1373 (2001) is the direct consequence of the terrorist attacks of September 11, 2001 in the United States by Al Qaeda. This resolution prescribes (among other things) the prompt freezing of moneys, other financial possessions or economic resources of:

a. persons who commit terrorist acts, or endeavor to commit these acts, or who participate or aid and abet in committing terrorist acts;

b. entities that belong to, or are directly or indirectly controlled by persons who commit, endeavor to commit, or who participate, or aid and abet, in the commission of terrorist acts;

c. persons or entities that act for, or on instructions of the persons or entities meant in a or b.

In connection herewith attention should also be drawn to Special Recommendation III of the Financial Action Task Force (FATF). Aruba is a member of the FATF via the
Kingdom of the Netherlands. This recommendation, which is aimed at freezing and confiscating terrorist assets, requests each country to implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organizations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts. Furthermore, each country should also adopt and implement measures, including legislative ones, which would enable the competent authorities to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organizations.

Obligation to freeze assets in Aruba

To achieve the above an adequate legal framework has been created in the form of the abovementioned Sanctions State Decree for implementation of article 2, paragraph 1, of the Sanctions State Ordinance.

The purpose of this Sanctions State Decree is the implementation of abovementioned UN resolutions and Special Recommendation III of the FATF. Its core is formed by the so-called freezing lists of persons and organizations of whom/which it was established that they are engaged in terrorism and/or the financing of terrorism. Being mentioned on a freezing list has as a consequence that funds or other assets of these persons or entities present in Aruba are frozen.

In the Sanctions State Decree the terms “funds or other assets” are defined as goods however acquired, in the sense of article 3.1 of the Civil Code of Aruba (goods is understood to mean financial assets, property of every kind, whether tangible or intangible, movable or immovable), any kind of documentation or information carrier which proves whole or partial property or entitlement to the funds or other assets in question, as well as income or value accruing generated by such funds or other assets. This definition matches the one used in UN Resolution 1267 (1999).

In the Sanctions State Decree the term freeze means to prohibit the transfer, conversion, disposition or movement of funds or other assets. This occurs on the basis of, and for the duration of the freezing mechanism.

There are two freezing lists. The first one is the Consolidated List of persons and entities that are associated with the terrorist organizations Al Qaeda and the Taliban. This list has been drawn up by the Sanctions Committee, which also updates this list in as far as necessary.

The second list is a list drawn up by the Minister of Justice, and consists of persons and entities, foreign and domestic, of whom it has been established that they are engaged in terrorist activities or the financing of terrorism. This list is different from the
abovementioned Consolidated List and is based on the UN resolution 1373 (2001) and refers to the following natural persons, legal persons and entities:

a. natural persons that are involved in the commission of one or more terrorist offenses or in offenses for the preparation or facilitation of one or more terrorist offense;

b. legal entities and other entities that directly or indirectly belong to, or are controlled by persons as meant under letter a;

c. natural persons, legal entities and other entities that act on behalf or on instructions of the persons, legal entities and other entities meant under the letters a and b.

For the sake of clarity please note that with regard to the persons mentioned under “a” this also relates to natural persons who attempted to commit one or more terrorist offenses or offenses for the preparation or facilitation of one or more terrorist offenses.

SUBJECT LIST IS UNDER PREPARATION AND WILL BE PUBLISHED SOON

Supervision of compliance with the Sanctions State Ordinance (AB 2007 no. 24) and the Sanctions State Decree (AB 2010 no. 27)

Pursuant to article 15 of Sanctions State Ordinance (AB 2007 no. 24) the civil servants or other persons designated by the Ministers will be charged with the supervision of the compliance with the provisions laid down by or pursuant to this State Ordinance. Such a designation will be published in the Official Gazette of Aruba (Landscourant van Aruba).

Pursuant to article 1, paragraph 2 of the Sanctions State Decree (AB 2010 no. 27) the Centrale Bank van Aruba (CBA) is entrusted with the oversight on the implementation by the service providers under its supervision and the Volkskredietbank, of the provisions in this Sanctions State Decree.

With regard to the other service providers, the Meldpunt Ongebruikelijke Transacties (Reporting Center for Unusual Transactions) (MOT) is entrusted with the oversight on the implementation by these other service providers of the provisions in this Sanctions State Decree.
Financial institutions' own responsibility

Pursuant to article 3, paragraph 3 of the Sanctions State Decree a service provider is required to continuously keep abreast of the content of the freezing lists and all the amendments to these lists.

Additionally, pursuant to article 5 of the Sanctions State Decree a service provider is required to take such measures that enables it to keep abreast at all times of the content of the freezing lists.

Pursuant to article 8 of the Sanctions State Decree a service provider is required to report each request for a service whereby a designated person (refers to natural persons, legal person and entities on one of the freezing lists) acts as counterparty or is involved in any way, to the MOT. In the event that the service provider is regulated by the CBA, it must also report the request in question to the CBA.

Note that institutions bear their own responsibility for correct observance of sanctions regulations. The CBA and the MOT can provide guidance regarding the aforementioned requirements.

Consolidated List of persons and entities that are associated with the terror organization Al Qaeda and the Taliban drawn up by the Sanctions Committee

The CBA will publish the Consolidated List on its website. However, please note that this list is constantly changing and that you are required pursuant to article 5 of the Sanctions State Decree to keep abreast of the content of this list.

All recent updates of the Consolidated List can be found on the following website:

www.un.org/sc/committees/1267/consolidatedlist.htm