

State Ordinance Foreign Exchange Commission

Title: State ordinance Foreign Exchange Commission

Source: AB 1990 no. GT 5

Amendments: AB 1997 34; AB 2002 124, AB 2003 33, AB 2005 76 (amended AB 2007 no. 112), AB 2014 no. 11

Chapter I, *definitions*

Article 1

For the purposes of the provisions of or pursuant to this State Ordinance the following is to be understood by:

residents:

- a. natural persons residing in Aruba and recorded in the population register, or those who actually have been living in Aruba for a period exceeding one year after the date of their arrival in Aruba, as soon as that year has lapsed;
- b. legal entities, partnerships, limited partnerships, and the Aruba Exempt Corporations domiciled in Aruba;
- c. branches, branch offices, enterprises, and agencies domiciled in Aruba, as far as not covered under b; and
- d. persons, legal entities, and other institutions designated by the Centrale Bank van Aruba, as far as not covered under a, b, and c.

nonresidents:

- a. natural persons, legal entities, corporations, partnerships, limited partnerships, branches, branch offices, businesses, and agencies not falling under the definition of residents;
- b. diplomatic and consular representations of foreign countries and international organizations in Aruba, and the enterprise that is considered to be a nonresident pursuant to article 19, first paragraph, of the State Ordinance Foreign Exchange Transactions;
- c. the diplomatic, salaried consular and administrative officers of foreign nationality, their spouses and children residing with them, connected with the representations referred to under b;
- d. the legal entities, corporations and other institutions designated by the Centrale Bank van Aruba as nonresidents, as far as not covered under a, b, and c.

instruments of payment:

coins (with the exception of gold coins), currency notes, banknotes and similar mediums of exchange.

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domestic instruments of payment:

all legal tenders in Aruba.

monetary instruments:

cheques, bills of exchange, promissory notes and similar papers of value, as well as travellers' letters of credit and credit cards with the exception of securities.

foreign monetary instruments:

papers of value denominated in a foreign currency.

claims:

outstanding debts expressed in money, as far as not embodied in valuable papers or securities.

securities:

- a. share certificates, bonds, mortgage-backed bonds, depositary receipts, certificates of participation, profit-sharing certificates, founders' shares, certificates of option, treasury notes, inscriptions in a register of debts or share register and similar papers of value and rights;
- b. certificates of the papers of value and rights referred to under a;
- c. provisional certificates of the papers of value referred to under a and b.

foreign securities:

securities other than those issued by or payable by public entities of Aruba, or private corporations, partnerships and limited partnerships domiciled in Aruba.

exchange office:

an institution which buys or sells foreign instruments of payment, cheques, traveller's letters of credit and claims from credit cards.

foreign exchange bank:

a bank which is authorized under Article 12 of the Central Bank Ordinance to be active as a foreign exchange bank.

florin:

the Aruban florin.

foreign countries:

the territory outside Aruba.

Bank:

the Centrale Bank van Aruba.

Chapter II, *foreign exchange commission***Article 2**

1. In respect of a payment to foreign countries, residents shall owe the Government a commission by the name of "foreign exchange commission".
2. Payments to foreign countries are considered to be:
 - a. payments with domestic instruments of payment or to the debit of an account denominated in Aruban florin, electronically or not;
 - b. payments with foreign instruments of payment or to the debit of a foreign currency account, electronically or not;
 - c. payments made to the debit of an account denominated in foreign currency held abroad, or to the debit of a current account with a person or company domiciled abroad, electronically or not;in as far as these payments are made within the framework of one or more of the following acts intended to have legal effect:
 - the purchase of foreign instruments of payment, foreign monetary instruments
 - the acquisition of the control of claims denominated in one or more foreign currencies, or;
 - the deposit in an account in the name of a nonresident held with a foreign exchange bank or with an institution abroad.

Article 3

The foreign exchange commission rate amounts to thirteen per thousand of the amount expressed in Aruban florin of the payment to foreign countries as meant in article 2.

Chapter III, *payment and collection***Article 4**

1. Residents have to pay the foreign exchange commission due by them to the Bank, either directly or through an institution designated by the Bank.
2. The payment of the foreign exchange commission takes place upon declaration, in accordance with the guidelines issued by the Bank.

Article 5

The Bank is entrusted with the levy and collection of the foreign exchange commission in accordance with the provisions in this State Ordinance.

Article 6

An institution as referred to in article 4, first paragraph, charges residents, including the institution itself, when making payments to foreign countries as referred to in article 2, the foreign exchange commission due in accordance with the provisions in this State Ordinance, and shall transfer said commission to the Bank.

Article 7

1. In the event that the amount of the foreign exchange commission has been calculated incorrectly by an institution as referred to in article 4, first paragraph, or by another resident, the Bank shall charge the institution or resident concerned the correct amount by means of an assessment.
2. In the event that an institution as meant in the first paragraph has calculated the foreign exchange commission due incorrectly, as the result of incorrect information provided by the resident concerning the transactions in respect of which foreign exchange commission is due, the Bank shall charge the resident the amount still due.
3. When determining the amount of the foreign exchange commission due, the Bank is authorized to make use of information that has become known to the Bank in the performance of its other legal duties. Article 4, first paragraph, shall apply by analogy.

Article 7a

1. In the event that the foreign exchange commission due has not, or not completely, been paid within a deadline determined by the Bank, the Bank shall proceed to collection by way of a writ of execution. Collection shall only take place after the debtor has been warned in writing to fulfill his obligations within a term to be stated in this warning of at least ten days.
2. The writ of execution shall be served for the account of the debtor concerned, and enforced in the manner prescribed in the Code of Civil Procedure of Aruba with regard to judgments and authentic deeds.
3. The debtor may institute objection against the enforcement of a writ of execution by invoking a request in the Court of law against the Bank. The objection does not stay the commencement of the enforcement, not withstanding the power of the debtor to obtain a provisionally enforceable decision from the Court.

Chapter IV, special provisions**Article 8**

In the event that a nonresident makes a payment to a foreign country, as meant in article 2, second paragraph, letter a, with domestic instruments of payment, he shall be deemed a resident, unless he proves to have acquired the domestic instruments of payment by conversion of one or more foreign currencies.

Article 9

1. In the event that a resident has receipts from foreign countries, and on the other hand makes, in the Bank's judgment, similar payments to foreign countries, the Bank may grant the resident concerned authorization to set off the receipts and payments against each other during a period stated in the authorization, and to pay foreign exchange commission on the balance, as far as this balance results in a payment to foreign countries as meant in article 2.

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2. A payment shall be deemed similar to a receipt in the sense of the first paragraph, if the nature of the transaction, on account of which the receipt and payment take place, in the Bank's judgment, may be deemed similar.

Article 10

1. Foreign exchange banks are allowed to credit the proceeds of the sale of foreign stocks, including stock dividends from the share premium reserve and claims, in favour of a resident in whatever currency on an E-account.
2. No foreign exchange commission shall be charged on payments to foreign countries as referred to in article 2, to the debit of an E-account.
3. An E-account may not show a debit balance.
4. Credit balances in an E-account shall not be transferred to an E-account in the name of a resident with the same or another foreign exchange bank.

Article 11

After consulting the Bank, certain institutions or groups of persons may be granted exemption from the obligation to pay foreign exchange commission as meant in article 4 by State Decree containing General Administrative Orders.

Chapter V, *supervisory and penal provisions*

Article 11a

1. The persons designated by State Decree, in agreement with the President of the Bank, shall be entrusted with the supervision over the compliance with the provisions by virtue of this State Ordinance. Such a State Decree shall be published in the Government Gazette of Aruba.
2. The designated persons, according to the first paragraph, shall be authorized, exclusively as far as this is necessary in reason for the performance of their duties:
 - a. to request all information;
 - b. to request inspection of all business records, documents, and other data carriers, and to make copies thereof, or to temporarily take these along for this purpose;
 - c. to enter all places, with the exception of dwelling houses without the occupant's explicit permission, accompanied by persons designated by them.
3. If necessary, access to a place as mentioned in the second paragraph, sub c, shall be gained with the aid of the strong arm of the law.
4. By State Decree containing General Administrative Orders, rules shall be laid down as regarding the way in which the persons designated by virtue of the first paragraph perform their duties.
5. Each and anyone is obligated to grant the persons designated by virtue of the first paragraph all the cooperation that is required pursuant to the second paragraph.

Article 12

1. Infringement of the provisions laid down by or by virtue of articles 4 and 7, third paragraph, shall be punished with imprisonment not exceeding six months or with a fine of the third category..

2. The acts penalized in the first paragraph shall be deemed as minor offenses.

**Articles 13 and 14
(repealed)**

Chapter VI, *final provision*

Article 15

This State Ordinance may be referred to as State Ordinance Foreign Exchange Commission.