

Unofficial and not binding translation

STATE DECREE containing General Administrative Orders for the Implementation of Article 2, first paragraph, of the Sanctions State Ordinance 2006 (AB 2007, No. 24) (Sanction Decree Combat Terrorism and Financing Terrorism)

IN THE NAME OF THE QUEEN!

THE GOVERNOR of Aruba,

Having taken into consideration:

that it is desirable for the fulfillment of the international obligations for combating terrorism and financing terrorism resting with Aruba, to provide for the Freezing of Funds and Other Assets possibly present in Aruba of persons and organizations, of which it has been established internationally that they are engaged in terrorist activities and the financing of terrorist activities;

Having regards to:

Article 2, first paragraph, of the Sanctions State Ordinance 2006 (AB 2007, No. 24)

Decided, having heard the Advisory Council:

§1 General provisions

Article 1

For the purposes of this State Decree the following shall be understood by:

Freezing: a prohibition on the transfer, conversion, moving or making available;
Freezing Lists: the consolidated lists of persons and entities as drawn up and kept up to date by the Sanction Committee and the list meant in Article 2, first paragraph;

UN-Sanction Committees: 1. the Committee as meant in United Nations Security Council Resolution 1267 (1999), as amended by resolution 1989 (2011);
 2. the Committee as meant in United Nations Security Council Resolution 1988 (2011);

Designated Person: a natural person, legal entity or entity mentioned in one of the Freezing Lists;

Funds or Other Assets: goods however acquired, in the sense of article 3.1 of the Civil Code of Aruba, 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.

Terrorist Offense: the offense meant in Article 85 of the Criminal Code of Aruba (AB 1991, no. GT 50);

Financing terrorism: the offense meant in Article 140a of the Criminal Code of Aruba;

Service: an activity relating to a Fund or Other Asset;

Service Provider: each person who renders a Service by virtue of his profession or business;

Minister: the Minister charged with judicial affairs;

Bank: the Centrale Bank van Aruba

Reporting Center: the Reporting Center Unusual Transactions, meant in Article 20, first paragraph, of the State Ordinance for the Prevention and Combating of Money Laundering and Terrorist Financing (AB 2011 no. 28);

National Sanction Committee: the committee meant in Article 10, first paragraph;

State Ordinance: the Sanction Ordinance (AB 2007, no. 24).

2. As regards the Service Providers under statutory supervision of the Bank, and of the Municipal Credit Bank (*Volkskredietbank*), the Bank shall see to the fulfillment by these Service Providers of the obligations in force for them under this State Decree, and shall take, if necessary, the measures provided for in this State Decree. As regards the other Service Providers the obligation described in the first sentence shall rest with the Reporting Center.

Article 2

1. Without prejudice to the resolutions of the Security Council of the United Nations, numbers 1267 (1999), 1988 (2011) and 1989 (2011), and the obligations arising from them for Aruba, there shall be a list of:

- a. natural persons who are involved in the commission of one or more Terrorist Offenses or in offenses for the preparation or facilitation of one or more Terrorist Offenses;

- b. legal entities and other entities belonging directly or indirectly to, or 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 person, legal entities and other entities meant under the letters a and b.

2. The Minister shall be charged with the control of the list meant in the first paragraph. The Minister may authorize the Bank to keep the list up to date in conformity with the provisions of this State Decree.

3. The natural persons, legal entities and other entities meant in the first paragraph, letters a through c, are described by means of the name, including all known aliases and fictitious names, the address, the place of residence or domicile, and other relevant data.

Article 3

1. The Bank shall be charged with the publication in a timely and digital manner of the Freezing Lists and of any and all changes in these lists.

2. The Bank, respectively the Reporting Center shall take care of information and, if necessary, assistance in individual cases as regards consultation of the Freezing Lists by these Service Providers, and the measures to be taken by them to ensure the Freezing of the Funds and assets of the Designated Persons.

3. (cancelled)

§2 The Freezing of Funds and Other Assets

Article 4

1. Funds or Other Assets present in Aruba that directly or indirectly belong to a Designated Person or to which a Designated Person is entitled otherwise, shall be frozen.

2. The Freezing meant in the first paragraph, shall apply mutatis mutandis to:

- a. Funds or Other Assets that directly or indirectly, entirely or in joint ownership with others, belong to or are administered by Designated Persons, persons that are suspected of one or more Terrorist Offenses or were convicted hereof, persons or organizations that finance terrorism, or terrorist organizations;
- b. Funds or Other Assets proceeding from or produced by Funds or Other Assets that belong to, or are administered by Designated Persons, persons suspected of one or more Terrorist Offenses or were convicted hereof, persons or organizations that finance terrorism, or terrorist organizations;

3. Service Providers shall not provide any Services and shall not perform any acts that lead to it, or may reasonably lead to it that a Designated Person will get the disposal in any way of the Funds or Other Assets frozen by virtue of the first and second paragraph.

4. Service Providers that have frozen Funds or Other Assets in their custody, shall promptly take such measures in consequence of which these Funds and assets cannot be transferred, converted, moved or placed at the disposal. Service Providers that have Funds or Other Assets in their possession, shall inform the Bank, respectively the Reporting Center hereof without delay.

5. In the event that in consequence of a change in a Freezing list, an existing freeze of Funds or Other Assets have to be lifted, or has to be lifted, the Bank, respectively the Reporting Center, shall promptly inform the Service Providers concerned, and they shall see to it that that this takes place.

Article 5

Service Providers shall take reasonable measures that enables them to keep abreast at all times of the Freezing Lists, including all the subsequent amendments made to these lists, and that they otherwise comply on a continuous basis with the regulations laid down by or pursuant to this State Decree.

Article 6

The Bank or the Reporting Center, respectively, may give a Service Provider directives as regards the application of the Articles 4, 5 and 8. The Service Provider concerned shall promptly comply with a directive.

Article 7

1. In the event a freeze concerns a registered property as meant in Article 10 of Book 3 of the Civil Code of Aruba, the keeper of the public register in question shall take care of it that an entry is made hereof in this public register.

2. Article 4, fifth paragraph, shall apply mutatis mutandis.

§3 The reporting of Services requested as regards frozen
Funds and Other Assets

Article 8

1. A Service Provider shall report each request for the rendering of a Service in which a Designated Person acts as the other party or is involved in another way, to the Reporting Center. If a Service Provider is an institution placed under the supervision of the Bank pursuant to State Ordinance, the Service Provider shall also report to the Bank.

2. A report as meant in the first paragraph, shall contain, in as far as possible, the following data:

- a. the identity of the person who requests the Service or on behalf of whom the Service was requested;
- b. the identity of the natural person or legal entity, group or entity for and for the benefit of whom the Service was requested;
- c. the magnitude and the origin of the Funds or Other Assets involved in the Service requested.

Article 9

1. The Reporting Center may ask for further information or data from the one who made a report as meant in Article 20, first paragraph, subparagraphs a and b, of the State Ordinance for the Prevention and Combating of Money Laundering and Terrorist Financing.

2. The person who was asked for additional data or information in conformity with the first paragraph, shall provide this in writing within a term to be fixed by the Reporting Center.

§4 The changing and lifting of Freezing measures

Article 10

1. There is a National Sanction Committee whose task it is to give advice and support to the Minister regarding the establishment of the list meant in Article 2, first paragraph, and all amendments of this list, as well as concerning all the related matters.

2. The National Sanction Committee comprises of:

- a. the Procurator General, who also is the chairman of the National Sanction Committee;
- b. a representative of the Ministry of the Minister;
- c. a representative of the Department of Foreign Affairs;
- d. a representative of the Aruban Intelligence Service.

3. The National Sanction Committee decides its own working procedure.

Article 11

If the Minister receives a request from another State for Freezing Funds or Assets of a natural person, legal entity or other entity who/which at the moment of the request is not stated on a list meant in Article 2, first paragraph, and if there is a reasonable suspicion that the natural person, legal entity or organization is involved in committing Terrorist Offenses or the Financing of Terrorism, he shall have this natural person, legal entity or other entity included in the list meant in Article 2, first paragraph, before proceeding to the application of the first sentence, the Minister shall consult with the National Sanction Committee.

Article 12

1. If in case of a request for rendering a Service as regards a frozen Fund or Other Asset it was established that the Fund or Other Asset belongs to a person or organization bearing the same or a similar name as the Designated Person who is mentioned as owner of the frozen Fund or Asset, the Service Provider concerned shall inform the Bank, respectively the Reporting Center hereof.

2. After receipt of a report as meant in the first paragraph, the Bank, respectively the Reporting Center shall inform the National Sanction Committee hereof without delay. The National Sanction Committee shall conduct an inquiry as soon as possible into the identity and background of the person or organization meant in the first paragraph, and shall inform the Minister of its findings. The Minister shall see to it that the Freezing of the Fund or Asset will be lifted promptly if the findings of the National Sanction Committee make this necessary.

Article 13

1. In deviation of Article 4, a Designated Person who is mentioned on a consolidated list of persons and entities as held by the United Nations Sanction Committees, may be granted access to his frozen Funds or Assets, exclusively if this is necessary for:

- a. making necessary payments for subsistence, medical treatment, fulfillment of long-term financial obligations, or the payment of rent, utility bills and insurance premiums;
- b. the payment of reasonable fees and compensations for legal assistance received;
- c. the receipt of refunded payments in connection with the provision of legal assistance;
- d. the payment of compensations for the preservation or maintenance of frozen Funds or Other Assets;
- e. payment of extraordinary expenses.

2. Access to the frozen Funds or Other Assets shall only be granted with the approval of the Minister. If the Minister intends to grant such approval, he will have the United Nations Sanction Committee informed hereof. With the exception of the case meant in the first paragraph, letter e, the Minister shall grant his approval if he did not receive a rejection of the United Nations Sanction Committee within 48 hours after the receipt by the Committee of the notification meant in the second sentence. In the case meant in the first paragraph, letter e, the Minister shall only grant his approval with the express consent of the United Nations Sanction Committee.

3. The first and second paragraph shall apply by analogy regarding natural persons, legal entities or other entity that is mentioned on a list as meant in Article 2, first paragraph, on the understanding that, in stead of “United Nations Sanction Committee” shall read: National Sanction Committee.

§5 Final provision

Article 14

1. This State Decree shall become effective as of the day after its placement in the Statute Publication Gazette of Aruba.

2. It may be cited as Sanction Decree Combat Terrorism and Financing of Terrorism.