

Unofficial and not binding translation

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State Ordinance containing regulations on taking
measures to comply with or implement international
obligations (Sanctions State Ordinance 2006)
(AB 2007 no. 24)
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§ 1. Definitions

Article 1

In this State Ordinance and the regulations based on it, the following terms have the following meanings:

international decree	: a decree of an international organization, or an international agreement for preserving or restoring peace and safety or ensuring or restoring international rule of law, or combating of terrorism;
sanction decree	: a State decree containing general enactments, as referred to in Section 2(1);
the Ministers	: the Minister of General Affairs and the minister or ministers charged with ensuring that the obligations included in a treaty or international decree are complied with;
the Minister	: the minister in charge of finance.

§ 2. Implementation

Article 2

1. In fulfilment of a treaty or international decree, which Aruba is obliged to comply with, rules will be laid down by State decree containing general rules, in so far as this compliance entails that rules must be laid down which apply or might apply in this country and which constitute a prohibition for the residents or impose an obligation on them.

2. In the event that an international decree obliges Aruba to implement it immediately, the Ministers may resolve to abstain from hearing the advice of the Advisory Council with regard to the State decree concerned. In that case, the words

‘having heard the advice of the Advisory Council’, as well as the comma before and after those words, will be deleted in the publication form of the State decree concerned, referred to in Section 6 of the State Ordinance on Publication and Entry into Force (*Landsverordening bekendmaking en inwerkingtreding*) (AB 1992 no. GT 2).

§ 3. Sanction decrees

Article 3

The rules laid down in a sanction decree may contain restrictions of the international services and financial transactions, shipping traffic, aviation traffic and post and telephone communications from and to Aruba; they may differ from rules laid down in State ordinances.

Article 4

The rules laid down in a sanction decree which in any way intend to violate any of the basic rights referred to in Sections I.3, I.8, I.16(1) and I.19(1) of the Constitution of Aruba (*Staatsregeling van Aruba*) (AB 1987 GT no. 1), will only be binding in so far as the individual natural and legal persons, groups or entities, in respect of which these rules have been laid down, are described or defined so clearly that their identity cannot be doubted.

Article 5

1. The Ministers designated by sanction decree may grant exemption from provisions in a sanction decree by ministerial regulation and, at a written request to that effect, grant dispensation from them by ministerial order.

2. The necessary provisions, conditions or restrictions to limit as much as possible the consequences of the infringement on the obligations imposed on Aruba, will be attached to a dispensation.

3. The ministers referred to in paragraph 1 will withdraw a dispensation if:

- a. the information provided for obtaining the exemption proves to be incorrect or incomplete to such an extent that a different decision would have been made on the request if the proper circumstances had been known in full at the time the request was assessed; or
- b. the provisions, conditions or restrictions attached to a dispensation have not been complied with by those involved.

4. The Ministers may withdraw a dispensation if this is necessitated by the general interest.

5. The resolution to grant or withdraw a dispensation will be passed in writing, stating the reasons.

6. The granting of dispensation will be announced in the Official Gazette of Aruba.

Article 6

1. The Minister may, with a view to a proper implementation and supervision of the compliance of a sanction decree concerning financial transactions, lay down further rules with regard to the manner in which the accounting procedures and internal audit of the following are conducted by:

- a. the companies, cooperative associations and foundations which, pursuant to the Commercial Register Ordinance (*Handelsregisterverordening*) (AB 1991 no. GT 15), the State Ordinance on Cooperative Associations (*Landsverordening op coöperatieve verenigingen*) (AB 1987 no. GT 8) and the State Ordinance on Foundations (*Landsverordening op stichtingen*) (AB 1999 no. GT 3), must be entered in the registers designated for that purpose;
- b. the associations recognized as corporate bodies, as referred to in Title 9 of Book 3 of the Aruban Civil Code (*Burgerlijk Wetboek van Aruba*) (AB 1989 no. GT 100).

Before the Minister proceeds to lay down such rules, the Central Bank of Aruba must be heard. In that case, the words 'having heard the President of the Central Bank of Aruba', as well as the comma before and after those words, will be inserted in the publication form of the State decree concerned, referred to in Section 6 of the State Ordinance on Publication and Entry into Force (*Landsverordening bekendmaking en inwerkingtreding*) (AB 1992 no. GT 2).

2. The Minister may grant exemption from the rules laid down pursuant to paragraph 1 by ministerial regulation or, at a written request to that effect, grant dispensation from them by ministerial order. Section 5 applies *mutatis mutandis*.

3. The decrees laid down pursuant to this article will be published in the Official Gazette of Aruba.

§ 4. Confidentiality

Article 7

1. Information concerning individual natural and legal persons, groups and entities which has been provided or obtained under or pursuant to this State Ordinance and such information received from an agency as referred to in Article 8 will not be published and is confidential.

2. Any person who performs any duty on account of the application of this State Ordinance or on account of resolutions passed pursuant to this State Ordinance is prohibited from further or otherwise using any information provided in accordance with the aforesaid articles or received from an agency as referred to in Article 8 or any information obtained while inspecting business information and documents or to give any further or other publicity to such information than is required for the performance of his task or in accordance with this State Ordinance.

3. The provisions of paragraph 2 will not affect the obligation of the person to whom they apply to give evidence at criminal proceedings, in accordance with the Code of Criminal Procedure of Aruba (*Wetboek van Strafvordering*) (AB 1996 no. 75),

concerning any information obtained in the performance of the task assigned pursuant to this State Ordinance. The aforesaid provisions will also not affect the obligation, in accordance with the Code of Civil Procedure of Aruba (*Wetboek van Burgerlijke Rechtsvordering*) and the Bankruptcy Ordinance (*Faillissementsverordening*), to give evidence as a witness, or while appearing as a party to or expert in civil matters, with regard to any information obtained in the performance of the task assigned pursuant to this State Ordinance, with the proviso that such an obligation will only exist in so far as this concerns a company or institution that has been declared insolvent or has been dissolved pursuant to a court decision, and that it will not apply to information that relates to companies or institutions that are or have been involved in an attempt to enable the relevant company or institution to continue its business or objects.

§ 5. Exchange of information

Article 8

Without prejudice to the relevant provisions in binding decisions of international institutions, the Minister will be authorized, contrary to the provisions of Article 7, to provide information, obtained in the performance of the task assigned to him in accordance with this State Ordinance, to Aruban or foreign government agencies, or to Aruban or foreign agencies designated by the government, charged with the supervision of the compliance or implementation of treaties or international decrees and the rules laid down for that purpose pursuant to that article, unless:

- a. the provision of the information is or could in all reasonableness be in conflict with the interests which this State Ordinance intends to protect;
- b. the purpose for which the information will be used has been insufficiently determined;
- c. it has been insufficiently guaranteed that the information will not be used for a purpose other than that for which it was provided;
- d. the confidentiality of the information is not sufficiently guaranteed; or
- e. the provision of the information were to be incompatible with Aruban law or public order.

§ 6. Administrative enforcement

Article 9

1. The Minister may impose a penalty charge order for the purpose of enforcing the rules laid down pursuant to Article 6.1.

2. The Minister shall determine the penalty charge as a lump sum, an amount for each time period in which the mandate was not executed or an amount for each breach of the mandate. The determined amount must be in reasonable proportion to the severity of the violated interest and the intended effect of the imposed penalty.

3. In the decision to impose a penalty, as referred to in this article, a period must be specified within which the offender may execute the mandate without forfeiting a penalty.

4. Forfeited penalties shall accrue to the State and recorded as funds of the Ministry of Finance.

Article 10

1. In the case of a violation of the rules laid down pursuant to Article 6.1, the Minister may impose a fine within six months of the violation having been discovered.

2. The amount of the fine shall be AWG 1,000 for each day that the offender is in default, with the proviso that the fine for each separate violation may not exceed AWG 100,000.

3. The Minister shall increase the fine by fifty per cent if, at the time of the violation, less than a year has passed since a previous fine on account of a violation of the provisions laid down by or pursuant to Article 6.1 has become irrevocable.

4. The Minister may moderate the amount of the fine if this amount has proved disproportionately high in a specific case based on special circumstances.

5. Paid fines will accrue to the State and will be recorded as funds of the Ministry of Finance.

Article 11

The person in respect of whom the Minister has performed an act from which he could in all reasonableness draw the conclusion that a fine, referred to in Article 10.1, will be imposed on him on account of a violation will not be obliged to make any statement in this respect. He shall be informed of this prior to being asked orally for information.

Article 12

1. If the Minister intends to impose a fine as referred to in Article 10.1, he shall inform the person involved, stating the grounds on which the intention is based.

2. The Minister shall give the person involved the opportunity to express his views in writing or orally, at the option of the person involved, prior to the penalty being imposed.

Article 13

1. The Minister shall impose the fine referred to in Article 10.1, stating the following:

a. the acts in respect of which the penalty has been imposed;

- b. the violated provisions;
- c. an indication of the place where and time when the violation was discovered;
- d. the manner in which the amount of the fine has been determined;
- e. the period in which, the place where and the manner in which the fine must be paid.

2. A fine as referred to in paragraph 1 will be collectable with effect from the expiry of the period in which the offender is able to object pursuant to the State Ordinance on Administrative Procedures (*Landsverordening administratieve rechtspraak*) (AB 1993 no. 45).

§ 7. Collection of administrative enforcement

Article 14

1. If a forfeited penalty charge or fine has not been paid within the period stipulated by the Minister, he shall as yet demand in writing within two weeks that the offender pay the penalty charge or fine, plus the costs involved in demanding this payment.

2. In the event that the offender fails to pay, the Minister may, by writ, collect the amount and the costs referred to in paragraph 1 from the offender, plus the collection charges; the writ will be issued by the Collector of taxes and is exempt from stamp duty.

3. The Collector of taxes will, in issuing a writ as referred to in paragraph 2, act in accordance with the instructions included in Chapter I of the State Ordinance regulating the collection of taxes, contributions and fees by means of writs, as well as the administration of justice with regard to taxes, contributions and fees (*Landsverordening houdende regeling van de invordering van belastingen, bijdragen en vergoedingen d.m.v. dwangschriften, alsmede van de rechtspleging inzake van belastingen, bijdragen en vergoedingen*) (AB 1988 no. GT 12).

4. A writ as referred to in paragraph 2 is an order within the meaning of the State Ordinance on Administrative Procedures (AB 1993 no. 45); contrary to Sections 9(4) and 23(4) of that State Ordinance, the execution of the order will be postponed if an objection or appeal is lodged against the writ.

§ 8. Supervision

Article 15

1. The civil servants or other persons designated by the Ministers shall 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.

2. The persons designated pursuant to paragraph 1 shall be authorized, solely in so far as this is reasonably necessary for the performance of their task:

- a. to request all information;

- b. to inspect all business books, documents and other information carriers and to make copies of them or take them away in good time for that purpose;
- c. to investigate and inspect goods and take them away in good time for that purpose;
- d. to enter all areas, with the exception of dwellings, without the occupant's explicit permission, accompanied by persons designated by them.

3. If necessary, they will gain access to an area as referred to in paragraph 2(d) with the assistance of the police.

4. The State Ordinance on General Provisions for the Exercise of Regulatory Powers (*Landsbesluit algemene bepalingen toezichtuitoefening*) (AB 1998 no. 70) applies to the performance of their task by the persons referred to in paragraph 1.

5. Any person involved in the acts referred to in a sanction decree shall render every assistance to the supervisors appointed pursuant to paragraph 1 and provide all the information required by them to perform the task assigned to them pursuant to this State Ordinance.

Article 16

1. Without prejudice to the provisions of Article 15, the Minister may request the president of the Central Bank of Aruba to designate the supervisors who will be charged with the supervision of the compliance of the provisions laid down by or pursuant to this paragraph with regard to financial transactions by:

- a. the credit institutions referred to in Section 1(1) of the State Ordinance on the Supervision of the Credit System (*Landsverordening toezicht kredietwezen*) (AB 1998 no. 16), and
- b. the insurance companies referred to in Section 1 of the State Ordinance on the Supervision of the Insurance Business (*Landsverordening toezicht verzekeringsbedrijf*) (AB 2000 no. 82),
and authorize him to take receipt of the information gathered by the persons designated by him in connection with the supervision.

2. If the president of the Central Bank agrees to the request and has been authorized to take receipt of the information referred to in paragraph 1, he shall as soon as possible submit a report to the Minister on the implementation of the sanction decree, the compliance of which is supervised. If the president agrees but has not been authorized, he shall only submit a report to the Minister on the supervisors designated by him; in that case, the supervisors designated by him will report directly to the Minister.

3. Article 7 and Articles 15.1, second sentence and 15.5 will remain in force.

§ 9. Penalty provisions

Article 17

1. Any person who intentionally acts in contravention of a sanction decree shall be punished with imprisonment for a term not exceeding six years or with a fine not exceeding AWG 250,000, or with both the imprisonment and the fine.

2. Any person who does not intentionally act in contravention of a sanction decree shall be punished with imprisonment for a term not exceeding one year or with a fine not exceeding AWG 50,000, or with both the imprisonment and the fine.

3. Any person who acts in contravention of the provisions attached to an exemption or dispensation, as referred to in Article 5.2 or who acts in contravention of Article 15.5 shall be punished with imprisonment for a term not exceeding one year or with a fine not exceeding AWG 25,000, or with both the imprisonment and the fine.#

Article 18

1. The punishable act referred to in Article 17.1 is a crime.
2. The punishable acts referred to in Article 17.2 are summary offences.

Article 19

The criminal statutes of Aruba apply to a resident of Aruba who commits a punishable offence under or pursuant to this State Decree outside Aruba.

Article 20

1. The Sanction Ordinance (*Sanctieverordening*) (AB 1997 no. 64) is to be revoked.
2. This State Ordinance will come into force with effect from the day after the date on which it is published in the Official Bulletin of Aruba.
3. It may be cited as the Sanctions State Ordinance 2006.