

Unofficial and not binding translation

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State Ordinance containing regulations on the supervision of the credit system
(State Ordinance on the Supervision of the Credit System) (AB 1998 no. 16)
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CHAPTER I

General provisions

Article 1

1. For the purposes of this State Ordinance and the provisions stipulated by virtue of this State Ordinance, the following terms shall be defined as stated below:

The Bank: The Central Bank of Aruba;

Credit institution: an enterprise or institution whose business is to receive funds from the public, whether or not repayable in the future, and to grant credit for its own account;

electronic money institution: the party, not being a credit institution, whose business is to receive funds, in exchange for which electronic money is issued, which can be used to make payments to others than the party issuing the electronic money;

electronic money: a monetary instrument stored on an electronic carrier or stored from a distance in a central account administration;

Establishment: the location where a credit institution by virtue of its articles of incorporation, has its registered office, agency, branch, or any other permanent presence from which the business of a credit institution is pursued;

Branch: one or more legally dependent parts of a credit institution;

Representative organisation: an organisation which, in respect of the implementation of this State Ordinance, has been designated by State Decree, having consulted the

Bank, as representative organisation for a group of designated enterprises and institutions;

Minister: the Minister of Finance;

Qualifying holding: a direct or indirect holding of more than 10 per cent of the issued share capital of an enterprise or institution or the ability to exercise directly or indirectly more than 10 per cent of the voting rights in an enterprise or institution, or the ability to exercise directly or indirectly a comparable degree of control in an enterprise or institution;

Court: Court of First Instance;

Auditor: an auditor, who is not employed by a credit institution, and who is listed in the register of the Netherlands Institute of Chartered Accountants as referred to in Article 55(1) of the Registered Accountants Act (Bulletin of Acts, Orders and Decrees 1962, 258) or is listed elsewhere at a similar institute as the Netherlands Institute of Chartered Accountants and is subject, in the opinion of the Bank, to a similar regime of rules of conduct, professional code and discipline.

Supervisory authority: an agency charged in any country with the supervision of the credit system by virtue of an act or in pursuance of an act or a similar generally binding regulation;

Register: the register as referred to in Article 28(1);

Money laundering: a crime as referred to in Articles 2:404, 2:405 and 2:406 of the Criminal Code of Aruba;

Terrorist financing: the crime referred to in Article 2:55 of the Criminal Code of Aruba;

2. By State Decree, containing General Administrative Measures, having consulted the Bank, it may be ordered that enterprises or institutions which fit the description of the concept of credit institution, and which form part of a particular group of enterprises or institutions, shall not be regarded as credit institutions within the meaning of this State Ordinance, if this is justified by the nature of the business of these enterprises or institutions.

3. As regards the conduct of the business of an electronic money institution, this State Ordinance shall not apply to electronic money institutions that issue electronic money with a maximum monetary value of Afl. 350.- per electronic carrier, if:

- a. the combined value of the financial obligations related to the issue of electronic money never exceeds Afl. 5,000,000.-;
- b. the electronic money is only accepted by an enterprise belonging to the group to which the electronic money institution belongs;
- c. the electronic money is only accepted by a limited number of easily distinguishable enterprises that either share the same building, premises, or another actually confined location, or have close financial or commercial ties with the electronic money institution; or
- d. other situations arise, to be described by State Decree containing General Administrative Orders.

4. On a credit institution as referred to in the first paragraph, the Establishment of Business Ordinance (AB 1990 no. GT 55) shall not apply.

Article 2

1. The Bank shall exercise supervision of the credit institutions and electronic money institutions domiciled in Aruba and of the branch offices in Aruba of credit institutions and electronic money institutions domiciled outside Aruba.

2. The Bank may set restrictions on and attach regulations and conditions to licenses, permissions, or exemptions granted by it within the framework of this State Ordinance, if so required by facts or circumstances relating to the person or the institution to whom/which the license, permission, or exemption will apply, and this with a view to the interests this State Ordinance intends to protect.

Article 3

1. With respect to an enterprise or institution established outside Aruba, which pursues the business of a credit institution or electronic money institution in Aruba through a branch, the provisions of this State Ordinance shall only apply to its business, pursued in or from Aruba.

2. When supervising a branch of a credit institution or electronic money institution established outside Aruba, the Bank shall be authorised to consult and cooperate with the supervisory authority concerned.

CHAPTER II

Credit institutions and electronic money institutions established in Aruba

FIRST DIVISION

Taking up the business of a credit institution and electronic money institutions

Section I. General

Article 4

No enterprise or institution established in Aruba shall pursue the business of a credit institution or electronic money institutions unless it has obtained authorisation to that end from the Bank.

Article 5

1. The application for authorisation as referred to in Article 4, shall at least contain information about:

- a. the identity, background, and a certificate of good conduct, as well as other data to be determined by the Bank, based on which the Bank can ascertain the integrity and suitability of the directors and other persons who determine or co-determine the policy of the enterprise or institution;
- b. the identity, background, and a certificate of good conduct, as well as other data to be determined by the Bank, based on which the Bank can ascertain the integrity and suitability of the members of the board of supervisory directors or of the body of the enterprise or institution that has a task similar to that of the board of supervisory directors;
- c. the identity, background, and a certificate of good conduct, as well as other data to be determined by the Bank, based on which the Bank can ascertain the integrity of those who hold a qualifying holding in the enterprise or institution and, if the holder of a qualifying holding is a legal entity, of the persons who determine or co-determine the policy of this legal entity, as well as the extent of the qualifying holding in question;
- d. annual accounts or an opening balance sheet which shall be provided with an auditor's report, signed by an auditor;
- e. a programme of operations which the enterprise or institution intends to carry on;
- f. the envisaged administrative organization and management controls, including the financial accounting system and internal control;
- g. the deed of incorporation of the enterprise and institution.

2. The Bank may request the applicant to furnish additional information regarding the application for authorization or the type of business to be pursued.

3. The Bank shall decide on the application within thirteen weeks of the date of receipt of the application. If the Bank has applied paragraph (2), the period, referred to in the first sentence, shall start commencing the date of receipt of the additional information.

4. Exceeding the period, referred to in paragraph (3), shall be similar to a refusal for granting authorisation.

Section 2. The authorisation

Article 6

1. The Bank shall grant the authorisation as referred to in Article 4, unless:
 - a. the enterprise or institution does not fulfil the requirements provided for in or under Articles 7 and 8;
 - b. the Bank is of the opinion that the integrity of one or more persons, referred to in Article 5, first paragraph, subparagraphs a and b, is not beyond doubt;
 - c. the Bank is of the opinion that the suitability of one or more persons, referred to in Article 5, first paragraph, subparagraphs a and b, is insufficient, individually or jointly, in connection with the conduct of the business of a credit institution or an electronic money institution, or the performance of the duties in question at the credit institution or the electronic money institution;
 - d. the Bank is of the opinion, without prejudice to Article 17, that the integrity of a holder of a qualifying holding in the enterprise or institution, or, if the holder of a qualifying holding is a legal entity, of the persons who determine or co-determine the policy of this legal entity is not beyond doubt, or that there is or could be question, otherwise, of undesirable influence on the policy of the enterprise or institution as a result of a qualifying holding in the enterprise or institution;
 - e. the report referred to in Article 5(1), under d, is a report to the effect other than that the annual accounts or opening balance sheet give a true and fair view of the financial position of the enterprise or institution;
 - f. the Bank is of the opinion, based on the data as referred to in Article 5, first paragraph, subparagraphs d, e, or f, that the enterprise or institution will not be able to carry out its intentions or to comply with its obligations pursuant to this or other state ordinances applicable to credit institutions or electronic money institutions; or
 - g. the Bank is of the opinion that granting authorisation would or could lead to an undesirable development of the credit system.

2. The Bank may decide not to grant authorisation if it has reason to assume that the enterprise or institution has applied for authorisation in order to evade regulations pertaining to the supervision of the credit system in another country.

3. No license shall be granted to an enterprise or institution that is not able to prove to the satisfaction of the Bank that it actually intends to be active as a credit institution or an electronic money institution in Aruba.

Article 7

1. The day-to-day policy of a credit institution and an electronic money institution shall be determined by at least two persons.

2. A credit institution and an electronic money institution which is a “naamloze vennootschap” (limited liability company) or “vennootschap met beperkte aansprakelijkheid” (VBA) (a new type of limited liability company) shall have a supervisory board, consisting of at least three natural persons.

3. A credit institution and an electronic money institution which is not a “naamloze vennootschap” or “vennootschap met beperkte aansprakelijkheid” (VBA) (a new type of limited liability company) shall have an independent body, consisting of at least three persons, having a task comparable with that of a supervisory board.

4. The Bank may grant a credit institution and an electronic money institution full or partial dispensation from the provisions contained in paragraphs (2) and (3).

Article 8

1. A credit institution and an electronic money institution shall have a minimum amount of own funds.

2. The concept of own funds as well as the level of the amount, referred to in the first paragraph, shall, having consulted the Bank, be determined by State Decree, containing General Administrative Measures.

3. In special cases, the Bank may grant a credit institution and an electronic money institution, for a period to be determined by the Bank, full or partial dispensation from the stipulation as referred to in the first paragraph.

Section 3. Special measures

Article 9

A credit institution or an electronic money institution shall not appoint persons to a position as referred to in Article 5(1), under (a) or (b), and shall not adjust its own funds, prior to having requested permission from the Bank.

Article 10

1. The Bank may, if
 - a. the credit institution or electronic money institution does not meet the provisions of or under Articles 7, 8, 19a, 22(1) or (2), or 23(1), or
 - b. a circumstance as referred to in Article 6(1), under b, or c or Article 9 occurs at the credit institution or an electronic money institution, or
 - c. the report as referred to in Article 23(1), is a report to the effect other than that the annual accounts, referred to in Article 22(1), give a true and fair view of the financial position of the credit institution or an electronic money institution and of the results for the relevant financial year,give the competent bodies of the credit institution or an electronic money institution a direction to the effect that, in respect of a number of points to be specified, a certain course of action shall be pursued in order to achieve that, within a period to be specified by the Bank, the provisions of or under a shall be met, the circumstance as referred to under b shall no longer occur at the credit institution or an electronic money institution, or the report referred to under c, shall be to the effect that the annual accounts give a true and fair view of the financial position of the credit institution or electronic money institution and of the results for that financial year, respectively.
2. If a circumstance as referred to in Article 6, first paragraph, under d, arises, the Bank may give the holder of a qualifying holding an instruction to follow a certain course of action with regard to specified issues, in order to accomplish that this circumstance or the possibility of such a circumstance arising is ended within a period to be determined by the Bank.

Article 11

1. The Bank may withdraw authorization, granted in pursuance of Article 6, if:
 - a. the credit institution or electronic money institutions so requests by registered letter;
 - b. the enterprise or institution to which authorization has been granted has ceased to pursue the business of a credit institution or electronic money institution;

- c. the credit institution or electronic money institutions does not meet the provisions of or under Articles 2(2), 7, 8, 19a, 22(1) or (2), or 23(1);
- d. a circumstance as referred to in Article 6(1), under b, c, or d, occurs at the credit institution or electronic money institutions;
- e. the report as referred to in Article 23(1), is a report to the effect other than that the annual accounts as referred to in Article 22(1), give a true and fair view of the financial position of the credit institution or electronic money institutions and of the results for the relevant financial year;
- f. the information or documents submitted to obtain the authorization or obtained pursuant to Article 3(2) prove to be incorrect or incomplete to such an extent that the decision made in respect of the application for authorization would have been different if, at the time of that decision, the correct circumstances would have been known in full;
- g. the Bank is of the opinion that the credit institution or the electronic money institution does not or not sufficiently comply with the rules laid down by or pursuant to the State Ordinance on the Prevention and Combating of Money Laundering and Terrorist Financing (AB 2011 No. 28) or any other statutory regulation on the prevention and combating of money laundering and terrorist financing.

2. A decision to withdraw authorization on one of more of the grounds as referred to in the first paragraph, shall not become effective until it has become irrevocable. The decision shall be published by the Bank in the Government Gazette of Aruba and in one or more local newspapers, as soon as it has become irrevocable.

3. As from the date on which a decision to withdraw authorization has become irrevocable, the prohibition as referred to in Article 48(1), shall become applicable to the enterprise or institution.

4. As from the date as referred to in paragraph (3), the enterprise or institution shall as soon as possible give notice of termination of all agreements regarding funds repayable obtained from the public in the course of its business and shall wind up these agreements within a period to be specified by the Bank. The Bank may extend this period.

5. Without prejudice to paragraphs (3) and (4), the enterprise or institution shall, for the purposes of this Ordinance, be equated, during the period of winding-up, with a credit institution which has obtained authorization as referred to in Article 4.

6. Contrary to the second paragraph, a decision to withdraw authorization pursuant to the first paragraph, under c or d, shall become effective without notice, if, in the opinion of the Bank, an immediate withdrawal is necessary, in respect of the development of the credit system or the financial sector.

7. The Bank shall decide within thirteen weeks of the date of receipt of a request as referred to in the first paragraph, subparagraph a.

8. Exceeding of the period as referred to in paragraph 7 shall be equal to a refusal to withdraw authorization.

SECOND DIVISION

Supervision of the pursuit of the business of a credit institution and electronic money institution

Section 1. Monetary supervision

Article 12

1. In implementation of the task imposed upon it by Article 10(1) of the Central Bank Ordinance (AB 1991 no. GT 32), the Bank may, having consulted the representative organisations, give the credit institutions directives containing general provisions regarding the conduct of their business.

2. The directives, referred to in the first paragraph, shall be announced in a manner to be determined by the Bank.

3. In special cases, the Bank may grant one or more credit institutions full or partial dispensation from the general provisions for a specific period.

Section 2. Solvency supervision

Article 13

1. the Bank may, whether or not on a consolidated basis, in the interests of their solvency, give the credit institutions and electronic money institutions directives for the conduct of their business. In that case, Article 12(2) shall apply.

2. The directives as referred to in the first paragraph, shall only be given or amended after consultation with the representative organisations involved. The consultations about amendment of the directives can be initiated by the Bank or by a representative organization involved.

3. The directives may only contain provisions regarding:

a. the minimum amount of own funds which must be held in proportion to:

1°. the risk-weighted loans, investments and other assets;

2°. the risk-weighted off-balance-sheet engagements;

3°. the interest rate risk, foreign exchange risk and other market risks;

4°. the holdings in other enterprises or institutions;

5°. the individual items included in 1°, 2°, 3° or 4° to the extent that they exceed a certain percentage of own funds;

6°. the operational risks;

- b. a prohibition on, a restricting of or the imposing of stipulations on:
 - 1°. the loans, investments and other assets;
 - 2°. the off-balance-sheet engagements;
 - 3°. the interest rate risk, foreign exchange risk and other market risks;
 - 4°. the holdings in other enterprises or institutions;
- c. the amount, whether or not in proportion to own funds, of:
 - 1°. the loans, investments and other assets;
 - 2°. the off-balance-sheet engagements;
 - 3°. the interest rate risk, foreign exchange risk and other market risks;
 - 4°. the holdings in other enterprises or institutions;
- d. the scope of consolidation.

4. The Bank may grant a credit institution or electronic money institution full or partial exemption from the directives, provided the solvency of that credit institution or electronic money institution is sufficiently guaranteed otherwise in the opinion of the Bank.

5. If it deems so necessary with a view to the interests this State Ordinance intends to protect, the Bank may impose higher solvency requirements on individual credit institutions and electronic money institutions.

Section 3. Liquidity supervision

Article 14

1. The Bank may, in the interests of their liquidity, give the credit institutions and electronic money institutions directives for the conduct of their business. In that case, Article 12(2) shall apply.

2. The directives as referred to in the first paragraph , shall only be given or amended after consultation with the representative organisations involved. The consultations about amendment of the directives can be initiated by the Bank or by a representative organization involved.

3. The directives may only contain provisions regarding the minimum amount of liquid assets or parts thereof in proportion to:

- a. the funds received or certain parts thereof;
- b. the funds received from each individual creditor or funds received from several creditors whom, for the application of this paragraph, shall be considered by the Bank as one creditor, to the extent that these funds exceed a certain percentage of the total funds received;

4. The Bank may grant a credit institution or electronic money institutions full or partial dispensation from the directives, provided that, in the opinion of the Bank, the

liquidity of that credit institution or electronic money institution is adequately safeguarded by other means.

5. If it deems so necessary with a view to the interests this State Ordinance intends to protect, the Bank may impose higher liquidity requirements on individual credit institutions and electronic money institutions.

Section 4. Supervision of the administrative organization and management controls

Article 15

1. The Bank may, regarding their administrative organization and management controls, including the financial accounting system and internal control, give the credit institutions and electronic money institutions recommendations or directives for the conduct of their business.

2. The directives as referred to in the first paragraph, shall only be given or amended after consultation with the representative organisations involved. In that case, Article 12(2) shall apply. The consultations about amendment of the directives can be initiated by the Bank or by a representative organization involved.

3. In special cases, the Bank may grant a credit institution or electronic money institution full or partial dispensation from the directives.

Section 5. Structural supervision

Article 16

1. Unless it has obtained prior written permission of the Bank, a credit institution is prohibited from:

- a. reducing its own funds by repayment of capital or distribution of reserves;
- b. holding, acquiring or increasing a qualifying holding in another enterprise or institution;
- c. taking over all, or a considerable part of, the assets and liabilities of another enterprise or institution;
- d. merging with another enterprise or institution;
- e. proceeding to financial or corporate reorganisation;
- f. allowing a managing partner to join the credit institution;
- g. opening a branch;
- h. to amend the articles of incorporation.

2. Permission as referred to in the first paragraph shall be granted by the Bank, unless it is of the opinion that this:

- a. would or could conflict with the directives as referred to in Article 13(3), under a, 4° and 5°, under b, 4°, and under c, 4°, applicable to the credit institution;
- b. would or could conflict with sound banking policy in any other way;
- c. would or could lead to an undesirable development of the credit system or the financial sector.

3. If an act as referred to in the first paragraph has been performed by a credit institution without permission having been obtained for that act or without the restrictions attaching to a granted permission having been observed, that credit institution shall rescind the act or yet duly observe the restrictions, respectively, within a period to be specified by the Bank. This obligation shall cease to exist at the time when and to the extent that permission is subsequently granted for the act concerned or the unobserved restrictions are withdrawn, respectively.

4. If a credit institution does not comply with the stipulations or conditions attaching to a granted permission, the Bank may specify a period within which that credit institution shall yet comply with the unfulfilled stipulations or conditions.

Article 17

1. Unless he or it have obtained prior written permission of the Bank, any natural person or legal entity is prohibited from:

- a. holding, acquiring or increasing a qualifying holding in a credit institution or electronic money institution or
- b. from exercising any control attaching to a qualifying holding in a credit institution or electronic money institution.

2. The Bank grants permission requested for as referred to in the first paragraph (1), unless the Bank is of the opinion that the integrity of the applicant or, if the applicant is a legal entity, of the persons who determine or co-determine the policy of this legal entity, is not beyond doubt, or that there is or could be question, otherwise, of undesirable influence on the policy of the enterprise or institution as a result of a qualifying holding in the enterprise or institution.

3. If the holding, acquiring or increasing of a qualifying holding in a credit institution or electronic money institution has been effected without permission having been obtained for that act or without the restrictions attaching to the permission having been observed, the offending natural person or legal entity shall rescind the act or shall yet observe the restrictions, respectively, within a period to be specified by the Bank. This obligation shall cease to exist at the time when and to the extent that permission is subsequently granted for the act concerned or the unobserved restrictions are withdrawn, respectively.

4. If any control attaching to a qualifying holding in a credit institution or electronic money institution has been exercised without permission having been

obtained or without the restrictions attaching to the permission having been observed, a resolution adopted owing in part to the control exercised shall be liable to nullification by the Court on the petition of the Bank, if, but for the exercise of the control concerned, the resolution would have been different or would not have been adopted, unless, before the time judgement is given, permission is yet granted or the unobserved restrictions are withdrawn, respectively. The Court shall, to the extent necessary, make arrangements for the consequences of the nullification.

5. If a natural person or legal entity does not comply with all the stipulations or conditions attaching to a permission, the Bank may specify a period within which that natural person or legal entity must yet comply with the unfulfilled stipulations or conditions.

Article 18

1. Article 5(2), (3), and (4) shall apply with the necessary modifications to an application for permission as referred to in Articles 16(1) under b, c, or d and 17(1).

2. The granting of a permission as referred to in Articles 16(1) and 17(1) shall be announced in the Government Gazette of Aruba, and in one or more local newspapers to be decided by the Bank, except if the Bank is of the opinion that publication would or could lead to a disproportionate advantage or disadvantage for those to whom the decision relates or for third parties.

3. A permission may be changed or in whole or in part withdrawn by the Bank:

- a. at the written request of the holder;
- b. if the information or documents furnished to obtain permission prove to be incorrect or incomplete to such an extent that the decision on the application would have been different if, at the time of the decision, the correct circumstances would have been fully known;
- c. in case of failure to comply with all the stipulations or conditions attaching to the permission within the period as referred to in Articles 16(4) or Article 17(5);
- d. if the holder of a qualifying holding in a credit institution or an electronic money institution did not comply with an instruction as referred to in Article 10(2)

In that case, paragraph two shall apply with the necessary modifications.

Article 19

1. Any natural person or legal entity whose qualifying holding in a credit institution or electronic money institution changes to such an extent that the size of the holding falls below 10, 20, 33 or 50 per cent shall inform the Bank in writing accordingly.

2. In July of each year, a credit institution or electronic money institution shall inform the Bank in writing, to the extent that it knows the relevant data, of the names of any natural person who or legal entity which has a qualifying holding in the credit institution or electronic money institution. Moreover, as soon as that becomes known to it, a credit institution or electronic money institution shall inform the Bank in writing of any acquisition of, disposal of or change in a qualifying holding in that credit institution or electronic money institution causing the size of the holding to exceed or fall below 10, 20, 33 or 50 per cent.

Section 6. Integrity Supervision

Article 19a

1. A credit institution or an electronic money institution shall pursue adequate policy for an ethical conduct of its business and shall set up its operational management in such a way that the ethical conduct of its business is safeguarded.

2. At any rate, the policy and the operational management, referred to in the first paragraph, shall be aimed at:

- a. the countering of conflicts of interests;
- b. the suppression of money laundering and terrorist financing;
- c. the compliance with rules laid down by or pursuant to the State Ordinance on the Prevention and Combating of Money Laundering and Terrorist Financing or any other statutory regulation on the prevention and combating of money laundering and terrorist financing;
- d. the prevention of punishable offenses or other violations of the law by the credit institution or electronic money institution or its employees, which could prejudice the confidence in the enterprise or in the financial markets;
- e. the countering of relationships with clients or other business relationships, which could prejudice the confidence in the enterprise or in the financial markets;
- f. the countering of other acts by the credit institution or electronic money institution or its employees, which are in conflict with generally accepted standards according to unwritten law to such an extent, that this could prejudice the confidence in the enterprise or in the financial markets.

3. The Bank may give credit institutions or electronic money institutions directives with regard to:

- a. the ethical conduct of the business;
- b. the way in which it is determined whether the integrity of a person, referred to in Article 5, first paragraph, subparagraphs a, b, or c, is beyond doubt, and

whether such person is suitable, and which facts and circumstances are to be taken into consideration for that purpose.

4. The directives, referred to in the third paragraph, may be related to the implementation of the regulations of other state ordinances. They shall only be given or modified after consulting the representative organization involved.

Article 19b

A credit institution or an electronic money institution shall not be associated through persons or legal entities in a formal or factual control structure:

- a. that is so intransparent that it constitutes or can constitute an obstacle to the adequate exercise of supervision of that enterprise;
- b. if foreign law applies to these persons or legal entities, and this foreign law constitutes or can constitute an obstacle to the adequate exercise of supervision of the credit institution or electronic money institution.

Section 7. Special measures

Article 20

1. If the Bank establishes that a credit institution or an electronic money institution does not or not sufficiently comply with a directive as referred to in Articles 13, 14, or 15 of this State Ordinance, a directive as referred to in Article 48, first paragraph, first sentence, of the State Ordinance on the Prevention and Combating of Money Laundering and Terrorist Financing, or Articles 19a and 19b of this State Ordinance, or sees other signs of a development that, in its opinion, jeopardizes or could jeopardize the solvency, liquidity, or integrity of the credit institution or electronic money institution, it shall bring this to the attention of that credit institution or electronic money institution in writing.

2. If necessary, the Bank shall, in addition to the notification referred to in the first paragraph, give a direction on the course of action to be pursued in respect of a number of points to be specified.

3. If, within two weeks after the date of its direction, the Bank has not received an answer from the credit institution or electronic money institution which it regards as satisfactory or if, in its opinion, its direction has not or has insufficiently been complied with, the Bank may:

- a. give the credit institution or electronic money institution written notification that, as from a certain date, all or certain bodies of the credit institution or electronic money institution may only exercise their powers after approval has been obtained from one or more persons appointed by the Bank and with due observance of the instructions given by these persons which notification shall take immediate effect;
- b. give the credit institution or electronic money institution written notification that, on a date to be determined by the Bank, it will publish the direction referred to in paragraph (2), in the Government Gazette of Aruba and in one or more local newspapers to be determined by the Bank which publication shall, if so requested by the credit institution or electronic money institution, also comprise the correspondence between the Bank and the credit institution or electronic money institution concerning the direction;
- c. enter into consultation on this matter with the chairman of the representative organization of the group of credit institutions of which the credit institution or electronic money institution forms part, if the Bank considers this in the interests of creditors, the Bank shall notify the credit institution or electronic money institution of this consultation.

4. If the Bank perceives signs at a credit institution or electronic money institution of a development which, in its opinion, endangers the solvency, liquidity or integrity of the credit institution or electronic money institution and which necessitates immediate action, it may, without applying the first and second paragraphs, exercise its powers, referred in the third paragraph , under a and c forthwith, after it has given the credit institution or electronic money institution the opportunity to present its views about this immediate exercising.

Article 21

1. In case of a notification as referred to in Article 20(3), under a, the bodies of the credit institution or electronic money institution shall co-operate with the persons appointed by the Bank if requested so.

2. The Bank may allow the bodies of the credit institution or electronic money institution after a notification as referred to in Article 20(3), under a, has been given to perform certain acts without approval.

3. the persons appointed by the Bank shall exercise their powers for a period of at most two years after the date of the notification, without prejudice to the Bank's power to extend this period by at most one year on each occasion. Any such extension shall take immediate effect. The Bank may at any time replace the persons appointed by it with others.

4. For losses resulting from acts performed in contravention of a notification as referred to in Article 20(3), under a, those who form part of the body of the credit institution or electronic money institution which performed these acts shall be personally liable towards the credit institution or electronic money institution. The credit institution or electronic money institution may plead nullity of these acts if the counterparty knew, or could not have been unaware, that the necessary approval was lacking.

5. As soon as the Bank is of the opinion that the solvency, liquidity or integrity of the credit institution or electronic money institution are no longer endangered, it shall withdraw its notification, referred to in Article 20(3), under a.

6. If the credit institution or electronic money institution complies with the direction after its publication as referred to in Article 20(3), sub b, or if the Bank withdraws a direction, this shall be published by the Bank in the Government Gazette of Aruba and in one or more local newspapers.

Article 21a

1. If the Bank is of the opinion that an auditor does not provide or no longer provides the necessary guarantees that he can fulfil his task properly in relation to a credit institution, the Bank may decide with respect to this auditor that he is no longer authorized to sign the reports referred to in this State Ordinance in relation to that credit institution.

2. The Bank shall notify the credit institution in question immediately of a decision as meant in the first paragraph.

Section 8. Annual accounts

Article 22

1. After consulting the representative organizations, the Bank shall determine the principles of the financial statements to be applied by a credit institution or electronic money institution.

2. Each year within six months after the end of the financial year, credit institutions and electronic money institutions shall submit their financial statements to the Bank.

3. The Bank may grant a credit institution and an electronic money institution full or partial exemption from the obligation referred to in the second paragraph.

Article 23

1. The annual accounts of a credit institution and electronic money institution shall be provided with an auditor's report, signed by an auditor.

2. When granting the auditor the assignment to audit the annual accounts, the credit institution and electronic money institution shall instruct its auditor in writing to:

- a. after consultation with the credit institution or electronic money institution that granted the assignment, provide the Bank forthwith with a copy of the auditor's report to the supervisory board, of the letters of the managing board and of the correspondence that relates directly to the auditor's report, in so far as these documents are considered to be necessary in reason for the proper fulfilment of the Bank's task referred to in Article 2(1);
- b. after consultation with the credit institution or electronic money institution, inform the Bank in writing forthwith of circumstances that could hinder the issue of a auditor's report stating that the annual accounts give a true and fair view of the financial position of the credit institution or electronic money institution.
- c. after consultation with the credit institution or electronic money institution that granted the assignment, inform the Bank in writing forthwith of circumstances which could endanger the continuity of the credit institution or electronic money institution, or from which it appears that there is a serious suspicion of an extensive fraud.
- d. furnish to the bank, if required, additional information on the documents referred to under a and on the circumstances referred to under b and c.

3. In a case as referred to in paragraph (2), under a, b or c, the auditor will forward to the credit institution or electronic money institution that granted the assignment, a copy of all the documents sent by him to the Bank.

4. If the credit institution or electronic money institution that granted the assignment explicitly so requests, itself shall be given the opportunity by the auditor to forward to the Bank forthwith copies of the documents referred to in paragraph (2), under a, and to inform the Bank in writing forthwith of the circumstances referred to in paragraph (2), under b and c, respectively; in that case, the Bank shall inform the auditor forthwith about its received documents from that credit institution or electronic money institution.

5. If the Bank requests the auditor to give, in a verbal meeting, additional information as referred to in paragraph (2) , under d, the credit institution or electronic money institution shall be given the opportunity to be present in this meeting.

6. The instruction referred to in paragraph (2), can only be withdrawn by the credit institution or electronic money institution, after it has obtained prior written permission of the Bank.

CHAPTER III

Credit institutions and electronic money institutions established outside Aruba

Article 24

1. No enterprise or institution established outside Aruba shall pursue the business of a credit institution or an electronic money institution through a branch in Aruba, unless it has obtained authorization from the Bank to do so.

2. Articles 5, 6,7(1) and (2), and 8 through 11 and 19a shall apply with the necessary modifications to a branch in Aruba of a credit institution or an electronic money institution established outside Aruba.

3. Without prejudice to Articles 6 and 11, the Bank shall refuse authorization requested by an enterprise or institution established outside Aruba or shall withdraw a granted authorization as referred to in the first paragraph (1), if the enterprise or institution in the country where it is established or the actual business of a credit institution or an electronic money institution is pursued, does not possess the authorization necessary for the pursuit of the business of a credit institution or an electronic money institution.

Article 25

1. Articles 12 through 16, 18, 19a, 20, 21 and 21a shall apply with the necessary modifications to a branch in Aruba of a credit institution or an electronic money institution established outside Aruba which has obtained authorization as referred to in Article 24(1).

2. A branch in Aruba of a credit institution or an electronic money institution established outside Aruba which has obtained authorization as referred to in Article 24(1), shall, in respect of its business in Aruba, keep at least such accounts as will enable the Bank to perform the task imposed upon it by State Ordinance.

3. Articles 22 and 23 shall apply with the necessary modifications to a branch in Aruba of a credit institution or an electronic money institution established outside Aruba.

CHAPTER IV

Special enterprises and institutions

Article 26

1. By State Decree, containing General Administrative Measures, after having consulted the Bank, it may be ordered that the Bank shall supervise enterprises or institutions, not being credit institutions or electronic money institutions, which, measured by criteria to be determined, make it also their business to receive funds, repayable daily or subject to one or less than one years' notice being given. In that case, Articles 3, 12, 19a, 25(2), 30 to 34, 49, 51, and 52 shall apply with the necessary modifications.
2. If in the opinion of the Minister no organisation qualifies to be designated as the representative organization for the enterprises and institutions referred to in the first paragraph, he, on the recommendation of the Bank, may designate persons from the private sector to act jointly in that capacity.

Article 27

1. When a State Decree as referred to in Article 26(1) has become effective, the enterprises and institutions referred to in that State Decree shall be obliged to report to the Bank in that capacity, forthwith.
2. The executing of supervision referred to in Article 26(1), shall commence four weeks after the day on which the Bank has notified the enterprise or institution to that effect.
3. An enterprise or institution which has been placed under supervision pursuant to paragraph 1, may request the Bank to declare that the supervision no longer applies to it.
4. Article 15(3) shall apply with the necessary modifications.

CHAPTER V

Register

Article 28

1. There shall be a register of credit institutions and electronic money institutions kept by the Bank; the register shall be set up in a manner to be decided by the Bank.

2. In the register each credit institution and electronic money institution shall be entered:

- a. which has obtained authorization as referred to in Article 4;
- b. which has obtained authorization as referred to in Article 24.

3. The Bank shall ensure the removal from the register of each credit institution and electronic money institution:

- a. whose authorization as referred to in Article 4 has been withdrawn;
- b. whose authorization as referred to in Article 24 has been withdrawn.

Article 29

1. The entry in or the removal from the register shall be published by the Bank in the Government Gazette of Aruba and in one or more local newspapers within two weeks of the date on which the entry or removal were made.

2. In January of each year, a copy of the register, showing the position as at 31 December of the preceding year, shall be published by the Bank in the Government Gazette of Aruba or in one or more local newspapers.

3. A copy of the register shall be available for free inspection by anyone at the office of the Bank.

CHAPTER VI

Collection of information, secrecy and exchange of information

Section 1. Collection of information

Article 30

1. A credit institution which has been registered pursuant to Article 28(2), shall submit to the Bank periodically, within the periods determined for that purpose,

statements regarding its business which the Bank has considered necessary for the proper performance of the tasks imposed upon it by this State Ordinance.

2. The statements referred to in the first paragraph of the last month of the financial year, shall be accompanied by an auditor's report, signed by an auditor. Contrary to the first sentence, in special cases, the Bank may decide that a credit institution shall furnish the statements with an auditor's report at an other date to be decided by the Bank. When giving the audit instruction, the credit institution shall authorise the auditor in writing to furnish to the Bank, on request, any and all information which may in reason be deemed necessary for the proper performance of the task imposed upon the Bank by this Ordinance; in that case, Article 23(5) shall apply with the necessary modifications.

Article 31

The form in which the statements referred to in Article 30(1) shall be drawn up, whether or not also on a consolidated basis, the names and the descriptions of the items which they shall contain, the successive dates to which they shall relate, the periods within which they shall be submitted and the bases to be used for the valuation of the items shall be determined by the Bank and may differ for different groups of credit institutions.

Article 32

If the Bank considers this necessary in the interests of effective supervision, it may order a credit institution to submit to the Bank statements as referred to in Article 30(1) relating to dates at shorter intervals, or to submit said statements within shorter periods, than those fixed pursuant to Article 31.

Article 33

The Bank may grant a credit institution which has been granted dispensation as referred to in Articles 13(4) or 14(4), dispensation of the stipulations as referred to in Articles 30(1), 31 and 32.

Section 2. Secrecy and exchange of information

Article 34

1. Anyone who performs or performed any duty for the purposes of this State Ordinance or a decision made pursuant to this State Ordinance is not allowed to use

data or information provided or obtained pursuant to this State Ordinance or received from a foreign body as referred to in Article 34a, further or differently or to make it known further or differently than required for the performance of his duty or by this State Ordinance.

2. Notwithstanding the first paragraph, the Bank shall be authorized to make statements by using data or information obtained in the performance of its duty pursuant to this State Ordinance, provided these data or that information cannot be traced back to separate persons or institutions.

3. The first paragraph shall not affect the obligation to make a statement, in accordance with the Code of Criminal Procedure of Aruba (AB 1996 No. 75), as a witness in criminal cases with regard to data or information obtained in the performance of the duty assigned to him pursuant to this State Ordinance. Likewise, it shall not affect the obligation to make a statement, in accordance with the Code of Civil Procedure of Aruba (AB 2005 No. 34), as a witness or a party in a personal appearance of parties in civil cases with regard to data or information obtained in the performance of the duty assigned to him pursuant to this State Ordinance, and this on the understanding that such an obligation shall only apply, insofar as it concerns a credit institution or an electronic money institution that has been declared bankrupt or that has been dissolved by court decision, and that it does not apply to data or information related to enterprises or institutions that are or were involved in an attempt to enable the credit institution or electronic money institution in question to continue its business.

Article 34a

1. Notwithstanding Article 34, first paragraph, the Bank shall be authorized to exchange data and/or information obtained in the performance of the duties assigned to it pursuant to this State Ordinance with bodies designated by foreign public authorities, which are charged with:

- a. the supervision of persons and institutions that are active in the financial markets, or
- b. the supervision of the compliance with legislation and regulations concerning the prevention and suppression of money laundering and terrorist financing.

2. The power, referred to in the first paragraph, shall not be exercised, if:

- a. the purpose for which the data or information will be used has not been sufficiently specified;
- b. the contemplated use of the data or information is not in line with the supervision of financial markets or persons working in these markets;

- c. provision of the data or information is contrary to public order or the laws of Aruba;
 - d. the secrecy of the data or information has not been sufficiently guaranteed;
 - e. provision of the data or information is or could be contrary in reason to the interests this State Ordinance intends to protect;
 - f. it has not been sufficiently guaranteed that the data or information will not be used for a purpose other than for which they are provided.
3. Insofar as the data or information, referred to in the first paragraph, have been obtained from a foreign supervisory body, the Bank shall not provide them to another foreign supervisory body, unless the body from which the data or information have been obtained approved the provision of the data and information and, if applicable, approved the use for a purpose other than for which the data or information have been provided.
4. If a foreign supervisory body requests the Bank to use data or information, which the Bank provided pursuant to the first or second paragraph, for a purpose other than for which they have been provided, the Bank shall only comply with that request, if:
- a. the contemplated use is not contrary to the first or second paragraph; or
 - b. the supervisory body concerned could obtain these data or information from Aruba, for that other purpose, in a way other than provided for in this State Ordinance, with due observance of the applicable legal procedures.

Article 34b

1. The Bank shall be authorized to consult the registers of and to ask all information from the Chamber of Commerce and Industry, the Department of Land Surveying and Real Estate Registration, the Civil Registry, as well as other bodies to be designated by State Decree containing General Administrative Orders.
2. The bodies mentioned in the first paragraph shall give the Bank all cooperation free of charge and within the reasonable period set by it, as requested pursuant to the first paragraph.
3. Notwithstanding Article 34, first paragraph, the Bank shall be authorized to provide data or information obtained in the performance of the duties assigned to it pursuant to this State Ordinance to persons and bodies charged with the exercise of criminal-law powers pursuant to the Code of Criminal Procedure of Aruba.

Article 35

1. For the performance of its duty pursuant to this paragraph, the Bank may demand data or information from anyone, if this is necessary for the performance of

the duty of a body referred to in Article 34a, first paragraph. Article 52, third through sixth paragraph, shall be equally applicable.

2. At the request of a body as referred to in the first paragraph, the Bank may ask data and information from or conduct an investigation or cause same to be conducted at a credit institution, an electronic money institution, a holder of an exemption as referred to in Article 48, third paragraph, an enterprise or institution as referred to in Article 26, first paragraph, or at anyone who can be suspected in reason of disposing of data or information that may be important to the requesting body.

3. The person who has been asked for data or information as referred to in the second paragraph shall provide same within a reasonable period to be set by the Bank.

4. The person at whom an investigation as referred to in the second paragraph is conducted shall give all cooperation necessary for the proper conduct of that investigation. Article 52, third and fourth paragraph, shall be equally applicable.

5. The Bank may allow that an officer of a body as referred to in Article 34a, first paragraph, participates in the implementation of a request as referred to in the second paragraph. The officer referred to in the first sentence shall comply with the instructions of the employee of the Bank, charged with the implementation of the request. The order referred to in the fourth paragraph shall also apply to the officer referred to in the first sentence.

CHAPTER VIa

Administrative sanctions

Article 35a

1. For the violation of the provisions laid down by or pursuant to Articles 2, second paragraph, 4, 7, 8, first paragraph, 9, 10, 11, fourth paragraph, 12, first paragraph, 13, first paragraph, 14, first paragraph, 15, first paragraph, 16, first, third, and fourth paragraph, 17, first, third, fourth, and fifth paragraph, 19, 19a, 19b, 20, second and third paragraph, subparagraph a, 21, first paragraph, 21a, 22, second and third paragraph, 23, first, second, and sixth paragraph, 24, first and second paragraph, 25, 26, first paragraph, 27, first paragraph, 30 through 33, 35, third through sixth paragraph, 36, 39, second paragraph, 48, first and third paragraph, 49,

first and third paragraph, or 52, sixth paragraph, the Bank may impose a penalty charge order.

2. For the offenses referred to in the first paragraph, the Bank may also impose an administrative fine not exceeding Afl. 1,000,000.- per separate violation.

3. Violations as referred to in the first and second paragraph can be committed by natural persons and legal entities. Article 1:127, second and third paragraph, of the Criminal Code of Aruba shall be equally applicable.

4. The Bank shall adopt guidelines for the exercise of the powers, referred to in the first and second paragraph, and shall record them in a policy document. The policy document shall at any rate contain a description of the procedures to be followed when exercising the powers, referred to in the first and second paragraph. The policy document, referred to in the first sentence, as well as all modifications to be introduced to same afterwards shall be published in advance in a manner to be determined by the Bank.

5. By State Decree containing General Administrative Orders, rules shall be laid down with regard to the principles for the determination of the amount of the penalty charge order and the administrative fine per violation. The violations shall be classified into categories based on the severity of the violation, with the corresponding basic amounts, minimum amounts, and maximum amounts.

6. Forfeited penalties and administrative fines shall accrue to the Bank.

Article 35b

1. If, at the time of committing a violation, a period of five years has not yet expired since an administrative fine was imposed on the violator for a similar violation, the amount of the administrative fine, referred to in Article 35a, second paragraph, shall be doubled for each separate violation.

2. Notwithstanding Article 35a, second paragraph, the Bank may set the amount of the administrative fine at a maximum of twice the amount of the benefit obtained by the violator as a result of the violation, if his benefit exceeds Afl. 1,000,000.-.

Article 35c

1. If the Bank intends to impose an administrative fine, it shall notify the person concerned thereof, stating the grounds on which the intention is based.

2. The Bank shall give the person concerned the opportunity to express his view, either in writing or orally, within a reasonable period, before imposing the administrative fine by decision.

3. If, after the person concerned has expressed his view, the Bank decides that no administrative fine will be imposed for the violation, the person concerned shall be informed hereof in writing.

Article 35d

1. At the request of the violator, the Bank may cancel a penalty charge order, suspend the duration thereof for a specific period, or reduce the penalty, in case the violator is permanently or temporarily unable in whole or in part to comply with his obligations.

2. Furthermore, at the request of a violator, the Bank may cancel a penalty charge order, if the decision has been effective one year without having forfeited the penalty.

Article 35e

Anyone in respect of whom the Bank has performed an act from which he could reasonably infer that an administrative fine shall be imposed on him for violation of the provisions laid down by or pursuant to this State Ordinance will not be required to make any statement in that regard. He must be notified to this effect before being asked to provide information.

Article 35f

1. The administrative fine is due within six weeks after the date of the decision by which it was imposed.

2. Statutory interest will be added to the fine, to be counted from the day after the six weeks have elapsed since the notification of the decision.

Article 35g

1. The power to impose an administrative fine will lapse:
 - a. if criminal prosecution has been instituted for the infringement, and the court hearings has started, or if the right to prosecute has ceased to exist pursuant to Article 1:149 of the Criminal Code of Aruba ;
 - b. three years after the day the non-compliance with the rule is discovered.

2. The period meant in the first paragraph, sub b. shall be interrupted by a notification of the order by which the administrative fine is imposed.

Article 35h

1. The Bank is authorized, for the purpose of protection of the financial system and preventing money laundering and terrorist financing, to publish the offence for which the order subject to a penalty or the administrative fine was imposed, the infringed rule, as well as the name, address and city or town of the person on whom the administrative fine was imposed.

2. The Minister may lay down rules on the exercise of the authority meant in the first paragraph.

3. The order to publish shall take effect on the day on which the offence is made public, without suspension of its effect for the duration of the period for appeal or, if appeal has been brought, of the appeal, if address of the person concerned is not known and the address cannot be obtained either with reasonable efforts.

Article 35i

The Bank shall keep record of the acts carried out in the context of an investigation prior to the imposition of an administrative fine, stating the persons who carried out those acts.

Article 35j

1. If a forfeited penalty or fine that has become due is not paid within the period set by the Bank, a demand shall be made to the infringer to pay the amount of the penalty or fine, plus the costs of the demand, within two weeks.

2. In the absence of payment, the amount and the costs, referred to in the first paragraph, shall be augmented by the collection costs, collected by the Bank by writ of execution.

3. The writ of execution shall be published by serving a process as referred to in the Code of Civil Procedure of Aruba and shall constitute entitlement to enforcement, which may be enforced while applying the provisions of this Code.

4. The writ of execution shall at any rate state:

- a. the words 'writ of execution' in the heading;

- b. the amount of the collectable principal sum, augmented by the statutory interest due;
- c. the order or the statutory provision from which the amount due arises;
- d. the costs of the demand and of the writ of execution;
- e. that it may be enforced for the account of the violator.

5. For a period of six weeks after the date of service, an objection may be lodged against the writ of execution. Objection shall be lodged against the Bank with the Court and in the manner stipulated for filing claims. Provided it has been lodged in a timely fashion and in the prescribed manner, the objection shall suspend the enforcement.

CHAPTER VII

Liquidation

Article 36

A registered credit institution which decides to liquidate its business in full or in part or to dissolve shall, at least thirteen weeks before the decision is implemented, inform the Bank of the manner in which the liquidation or dissolution will take place.

CHAPTER VIII

Emergency regulations

Article 37

1. No decision shall be made on a petition or action for bankruptcy of a registered credit institution or electronic money institution, including its own petition, until the Court has given the Bank the opportunity to express its opinion on the matter.

2. The “Faillissementsverordening” (Bankruptcy Ordinance) shall not apply to a credit institutions and electronic money institutions unless otherwise provided in this Chapter.

Article 38

1. In the event that the solvency or the liquidity of a registered credit institution or electronic money institution shows signs of a dangerous development and no improvement in that development may in reason be expected, the Court may, on the petition of the Bank, declare the credit institution or electronic money institution to be in a position requiring special measures in the interests of the combined creditors.

2. In the event that, in the opinion of the Bank, the solvency or the liquidity of a credit institution or electronic money institution to which the prohibition contained in Article 4 or 24 applies is such that it is to be expected that the credit institution will be unable to honour all or part of its obligations in respect of the funds received by it, the Court may, on the petition of the Bank, declare the credit institution or electronic money institution to be in a position requiring special measures in the interests of the combined creditors.

3. The Bank shall send a copy of its petition to the credit institution or electronic money institution involved.

4. The Court shall hear the petition with the utmost despatch.

5. The Court has power to inspect, or have inspected on its behalf by experts appointed by it to that end, books, documents or other data carriers of the credit institution or electronic money institution involved. In this respect, Article 52(2) to (5) shall apply with the necessary modifications.

6. The Court shall not give a decision until the credit institution or electronic money institution and the Bank have been heard or at least properly summoned.

7. If the petition is granted, the decision of the Court shall include the appointment of one or more receivers; the Bank may put forward nominations for the appointment.

8. If the petition is granted, the decision shall be pronounced in open court and an abstract thereof shall be published forthwith by the receivers in the Government Gazette of Aruba and in one or more local newspapers to be named by the Court. The abstract shall state the name and domicile of the credit institution or electronic money institution, the domicile or the office of the receivers as well as the date of the decision. The decision shall be immediately enforceable, retroactive to the beginning of the day on which it is pronounced, without regard to any form of appeal.

9. If the petition of the Bank as referred to in the first paragraph, is pending before the Court simultaneously with a petition or action for bankruptcy, including the credit institution's own petition, the hearing of the petition or action for bankruptcy shall be adjourned until a decision has been given on the former petition. If the Court makes a declaration as referred to in the first paragraph, the petition or action for bankruptcy shall become void *ipso jure*.

10. The period of validity of a declaration as referred to in the first paragraph, is fixed by the Court, but shall be eighteen months at most. Before expiration of the period of validity, the Bank may present a petition for extension of the period of validity, in each case, by eighteen months at most; the petition shall be heard in the same manner as a petition for giving the declaration. For as long as, upon expiration of the period of validity of the declaration, no decision has been given on a petition for extension, the declaration shall remain in full force and effect. If the petition for extension is granted, in paragraph seven shall apply.

Article 39

1. The receivers alone shall exercise all powers of the bodies of the credit institution or electronic money institution and shall safeguard the interests of the combined creditors.

2. The bodies of the credit institution or electronic money institution shall provide all assistance requested by the receivers.

3. If more than one receiver has been appointed, their acts, to be valid, shall require the consent of the majority or, in the event of a tie, a decision of the Court. The receiver who has, in the decision as referred to in Article 38(7), been assigned a particular range of duties shall have power to act independently within the limits of said range.

4. The Court may at any time, after having heard or at any rate properly summoned him and the Bank, remove a receiver or appoint another receiver in his place or appoint one or more associate receivers, all this at his own request, at the request of the other receivers, of the Bank or of one or more creditors or *ex officio*.

5. During the exercise of their powers, the receivers shall, at the end of every three months and after cessation of their activities, present as soon as possible a report on their activities to the Court.

6. The fees of the experts appointed pursuant to Article 38(5) as well as the fees and the outlays of the receivers shall be determined by the Court and shall constitute a debt of the estate.

Article 40

1. When or after making a declaration as referred to in Article 38(1) or (2), the Court has the power to make, at the request of the Bank or at the request of the receivers or of one or more creditors or *ex officio*, having consulted the Bank, any such arrangements as it deems necessary to safeguard the interests of the creditors of the credit institution or electronic money institution.

2. At the request of the receivers, the Court shall appoint one of its judges to act as Examining Magistrate supervising the winding-up pursuant to Article 43. On the decisions of the Examining Magistrate taken with respect to that, Articles 62 and 63(1) of the Bankruptcy Ordinance shall apply with the necessary modifications; the second paragraph of Article 63 of that Ordinance shall apply with the necessary modifications to the extent that the Articles listed therein have been declared applicable with the necessary modifications in Article 43. The provisions contained in Articles 62 and 63 of the Bankruptcy Ordinance with respect to the liquidator and the bankrupt shall apply to the receivers and the credit institution or electronic money institution, respectively.

Article 41

1. A declaration as referred to in Article 38(1) or (2) shall have as a consequence that the credit institution or electronic money institution cannot be forced to fulfil its obligations; measures of enforcement which have been initiated shall be suspended and attachments which have been made shall become void. Article 32 of the Bankruptcy Ordinance shall apply to the requirements meant in the first sentence with the necessary modifications.

2. Without prejudice to Article 43, the first paragraph shall not apply in respect of claims resulting from acts performed with the credit institution or electronic money institution after the declaration has been made, nor shall they apply to claims as referred to in Article 222 of the Bankruptcy Ordinance, to the extent that this is the case.

3. Articles 224 to 231a of the Bankruptcy Ordinance shall apply with the necessary modifications.

Article 42

1. The Court may authorize the administrators to proceed to full or partial transfer of the obligations of the credit institution or electronic money institution, which they assumed in the conduct of their business, or to full or partial liquidation of the business of the credit institution or electronic money institution.

2. If, in the transfer of obligations as referred to in the first paragraph, the conditions in the agreements underlying these obligations are changed, the receivers shall require special authorization from the Court to that end, with the proviso that the conditions in the agreements underlying claims as referred to in Article 41(2) cannot be changed. Any change in the conditions shall be without prejudice to the payments made pursuant to Article 43 before the day of submission of the request for authorization as referred to in the first paragraph.

3. In respect of the decisions as referred to in the first and second paragraphs, Article 38(6) and (8), first and second sentences, shall apply with the necessary modifications.

4. As soon as transfer of obligations has been effected, the transfer and, if the conditions in the agreements have been changed, the changes therein, shall be published by the receivers in the Government Gazette of Aruba and in at least three local newspapers to be named by the Court.

5. The transfer and the changes in the conditions in the agreements shall take effect for all interested parties as from the day following the date of the Government Gazette of Aruba containing the publication.

6. If the Court decides to liquidate, the Court shall, as and when necessary, make arrangements for the details and consequences of the liquidation, including the shortening of the period of validity of current agreements, after having consulted the receivers and the Bank on this subject.

7. As soon as liquidation has been completed, the receivers shall publish this in the Government Gazette of Aruba and in one or more local newspapers to be named by the Court.

Article 43

1. The receivers may make payments in respect of the claims to which Article 41(2) is applicable, to the extent that they deem this justified considering the liquidity position of the credit institution or electronic money institution, and provided that the provisions of the paragraphs (2) to (10) are observed.

2. The receivers shall draw up a list showing the nature and the amount of the assets and liabilities of the credit institution or electronic money institution, the names and domiciles of the creditors and the amount of the claims of each creditor. A copy of this list, certified by the receivers, shall be deposited at the office of the clerk of the Court for free inspection by anyone.

3. At the request of the receivers, the Examining Magistrate shall fix the day on which the claims shall be presented at the latest and, furthermore, the day, hour and place of the meeting for verification of the claims. The receivers shall forthwith give all known creditors written notification of these decisions and shall announce these decisions in one or more local newspapers to be named by the Examining Magistrate. As from the date of this announcement, the claims involving preferential rights either to specific property of the credit institution or electronic money institution or to all its property shall be subject to Article 41(1); Articles 105 to 108 of the Bankruptcy Ordinance shall apply with the necessary modifications, with the proviso that the provisions relating to the liquidator and the bankrupt shall apply to the receivers and the credit institution or electronic money institution, respectively.

4. A copy of the list of provisionally recognised claims and of the list of disputed claims shall be deposited by the receivers at the office of the Clerk of the Court and shall be available there for free inspection by anyone for a period of fourteen days prior to the meeting for verification of the claims. Before the commencement of this period, the receivers shall give all known creditors written notification of this depositing, adding an invitation to the meeting for verification of the claims. Furthermore, the receivers shall announce this depositing in one or more local newspapers to be named by the Examining Magistrate.

5. With respect to the verification of claims, Articles 55, 114 to 117, 119 to 123, 125, 127 to 132, 249(1), 250 and 251(1) and (3) of the Bankruptcy Ordinance shall apply with the necessary modifications. In this respect, the provisions relating to the liquidator and the bankrupt shall apply to the receivers and the credit institution or electronic money institution, respectively. Notwithstanding the period mentioned in Article 123(1) of the Bankruptcy Ordinance, the period for presenting claims as fixed pursuant to paragraph (3) of the present Article shall apply. The claims which become due and demandable on or after the date of the decision as referred to in Article 38(1) or (2) shall be verified at the amount which they represent at the time when these claims become due and demandable, with the proviso that, in respect of claims which are subject to Article 42(1), this shall be applicable only to the extent that said provision has not already been applied to these claims.

6. The directors of the credit institution or electronic money institution shall attend the meeting for verification of the claims in order to furnish there any and all information about the causes of the position referred to in Article 38(1) or (2) and the position of the estate which the Examining Magistrate asks them to give. The creditors may request the Examining Magistrate to ask the directors for information in respect of certain points to be specified by them. The questions asked of the directors and the answers given by them shall be recorded in the minutes. Notwithstanding the provisions of Article 116(4) of the Bankruptcy Ordinance, the minutes of the meeting for verification of the claims shall, in respect of the obligations of the credit institution or electronic money institution which are transferred pursuant to Article 42, only be final and conclusive to the extent that the relevant conditions are not changed.

7. After the verification of the claims, the receivers shall draw up a list of dividends which they shall present to the Examining Magistrate for his approval. The list shall contain a statement of receipts and expenditure, including the fees of the receivers, the names of the creditors, and furthermore the verified amount of each creditor's claim and the dividend to be received in respect of that claim. Articles 172(2), 173, 174(1) of the Bankruptcy Ordinance shall apply with the necessary modifications; without prejudice to the provisions of paragraph ten, Article 223 of that State Ordinance, except for the last phrase, shall also apply with the necessary modifications.

8. When the list of dividends is drawn up, an amount of liquid assets shall be segregated in respect of the claims which are disputed or the preferential nature of which is disputed or which have been verified conditionally which amount shall be at least equal to the total of the amounts which, upon application of this Article, may be paid in respect of these claims or, alternatively, these dividends shall be secured in another manner.

9. The list of dividends approved by the Examining Magistrate shall be deposited by the receivers at the office of the Clerk of the Court and shall be available there for free inspection by the creditors for a period of fourteen days. The receivers shall announce this depositing in one or more local newspapers to be named by the Examining Magistrate and shall notify the depositing in writing to each of the recognised and conditionally admitted creditors, stating the amount reserved for him. Articles 176 to 178, 179, 181 and 183 of the Bankruptcy Ordinance shall apply with the necessary modifications, with the proviso that the provisions relating to the liquidator shall apply to the receivers and that, notwithstanding the period referred to in Article 176, the period mentioned in the first sentence of this paragraph shall apply. If, consequent on objections raised pursuant to Article 176 or Article 178, a verification dispute arises, paragraph (8) of this Article shall apply with the necessary modifications in respect of the claims to which such objections relate, and subsequently, after the amounts of the other dividends contained in the list deposited for inspection have also been changed accordingly to the extent necessary, the dividends may be paid with due observance of the other provisions of this Article. If the objections raised do not lead to a verification dispute, the dividends may be paid, with due observance of the provisions of the decision made in respect of the objections, as soon as that decision has become final.

10. Notwithstanding the last sentence of paragraph (7), dividends may only be paid in respect of verified claims which become due and demandable on or after the date of the decision as referred to in Article 38(1) or (2) when these claims have become due and demandable, to the extent that Article 42(1) has not already been applied to these claims. Until that time, an amount of liquid assets shall be segregated which shall be at least equal to the total of the amounts which, upon application of this Article, may be paid in respect of these claims or, alternatively, these dividends shall be secured in another manner.

Article 44

Notwithstanding the provisions of Article 1 of the Bankruptcy Ordinance, the Court, after having made, or extended the period of validity of, a declaration as referred to in Article 38(1) or (2), may only adjudicate a credit institution or electronic money institution bankrupt if, in a balance sheet of the credit institution drawn up in

accordance with normal prudent practices, the amount of the liabilities exceeds that of the assets, regardless of whether the credit institution or electronic money institution has actually ceased paying its due debts. The adjudication in bankruptcy is made, after the Bank has been consulted, on the petition of the receivers, at the instance of the Public Prosecutor or *ex officio* with the declaration as referred to in the first sentence being revoked. In that case, and if the adjudication in bankruptcy is made within one month of the revocation of the declaration, the following provisions shall apply:

- a. the commencement of the periods mentioned in Articles 39 and 42 of the Bankruptcy Ordinance shall be calculated as from the date on which the declaration referred to in Article 38(1) or (2) is made;
- b. debts of the estate arising after the declaration has been made shall also be deemed debts of the estate in bankruptcy;
- c. the revocation of the declaration and the adjudication in bankruptcy shall be published by the receivers in the Government Gazette of Aruba and in one or more local newspapers to be named by the Court,

For the rest, to the extent that it has not already been implemented in full pursuant to Article 42, Title I of the Bankruptcy Ordinance shall apply.

Article 45

The Court may, on the petition of the receivers or *ex officio*, revoke the declaration referred to in Article 38(1) or (2). In that case, Article 38(6) and (8) shall apply with the necessary modifications.

Article 46

By virtue of the publication referred to in Article 42(4) or (7), Article 44, under c, or Article 45, the powers conferred upon the receivers pursuant to the declaration referred to in Article 38(1) or (2) shall cease to exist *ipso jure*.

Article 47

Appeal against decisions of the Court as referred to in Articles 38(1) or (2) and 42(1) and (2), has no suspensive effect.

CHAPTER IX

Special provisions

Article 48

1. It is not allowed for anyone:
 - a. to raise, receive, or dispose of funds from the public, repayable in the future or not, which, either in total or per occasion of raising same, are less than an amount to be determined by regulation of the Minister, or
 - b. to grant credit or other forms of financing to the public, or to mediate in the activities referred to in subparagraphs a and b on a commercial basis in any way.
2. The prohibition referred to in subsection (1) shall not apply to:
 - a. the country of Aruba;
 - b. the Bank;
 - c. institutions under international public law in which the Kingdom of the Netherlands participates.
 - d. enterprises and institutions which have been registered.
3. The Bank may, on a to that effect written and reasoned request, grant dispensation from the prohibition contained in the first paragraph if, in its opinion, the interests which this State Ordinance seeks to protect have been adequately safeguarded by other means.

Article 49

1. Enterprises and institutions not entered in the register as a credit institution are prohibited from using the word 'bank' or translations or forms thereof in their name or in the pursuit of their business, unless this is done in a context which clearly shows that the enterprise or institution concerned is not active in financial markets.
2. The prohibition referred to in the first paragraph shall not apply to a representative organization.
3. Article 48(3) shall apply.

Article 50

Each year, before the 1st of July of the following year, the Bank shall present a report to the Minister on the implementation of this State Ordinance and of the decisions taken in pursuance thereof.

Article 51

By State Decree, containing General Administrative Measures, having consulted the Bank and the representative organization, costs incurred in the implementation of this State Ordinance may be recovered in full or in part from specific groups of enterprises and institutions concerned.

Article 52

1. The persons employed by the Bank and designated for this purpose by the President of the Bank shall be charged with supervising the compliance with the provisions laid down by or pursuant to this State Ordinance. Such State Decree shall be announced in the Official Gazette of Aruba.

2. The persons designated pursuant to the first paragraph may exercise the supervision in a risk-oriented manner. They shall report on the exercise of the powers mentioned in the third paragraph to the President of the Bank or to the executives within the Bank to be designated in writing by the President.

3. The employees of the Bank, designated pursuant to the first paragraph, shall be authorised, exclusively as far this is necessary in reason for the fulfilment of their task:

- a. to request all information;
- b. to demand inspection of all books, records, and other data carriers and to make transcripts thereof or copies thereof or to take these with them temporary;
- c. to enter all places, accompanied by persons designated by them, with the exception of houses without specific authorisation of the occupant;

4. If necessary, access to a place as referred to in paragraph (3), under c, shall be gained with the aid of the police.

5. By State Decree, containing General Administrative Orders, rules may be laid down regarding the way of fulfilment of the tasks by the employees of the Bank designated pursuant to the first paragraph.

6. Any natural person or legal entity gives his or its co-operation, as requested pursuant to paragraph (3), to the employees of the Bank, designated pursuant to the first paragraph.

CHAPTER X

Penal provision

Article 53

1. The person who intentionally violates the regulation, condition, or limitation laid down by or pursuant to Articles 2, second paragraph, 4, 7, 8, first paragraph, 9, 10, 11, fourth paragraph, 12, first paragraph, 13, first paragraph, 14, first paragraph, 15, first paragraph, 16, first, third, and fourth paragraph, 17, first, third, fourth, and fifth paragraph, 19, 19a, 19b, 20, second and third paragraph, subparagraph a, 21, first paragraph, 21a, 22, second and third paragraph, 23, first, second, and sixth paragraph, 24, first and second paragraph, 25, 26, first paragraph, 27, first paragraph, 30 through 33, 35, third through sixth paragraph, 36, 39, second paragraph, 48, first and third paragraph, 49, first and third paragraph, or 52, sixth paragraph, shall be punished with imprisonment not exceeding six years, or with a fine of the sixth category.

2. The person who does not intentionally violate a regulation, condition, or limitation laid down by or pursuant to the Articles mentioned in the first paragraph shall be punished with imprisonment not exceeding one year, or with a fine of the fourth category.

3. The offenses referred to in the first paragraph are crimes; the offenses referred to in the second paragraph are violations.

CHAPTER XI

Final provision

Article 54

1. This State Ordinance shall enter into force on a date to be determined by State Ordinance.

2. It can be cited as the State Ordinance on the Supervision of the Credit System.