

Unofficial and not binding translation

EXPLANATORY MEMORANDUM

General explanation

Because of the nuclear activities (nuclear tests) of the Democratic People's Republic of Korea (hereinafter: North Korea), sanctions against that country apply since 2007. In *inter alia* Resolution 1695 (2006) and Resolution 1718 (2006), the Security Council of the United Nations condemns the launch of ballistic missiles and the nuclear test of October 9, 2006 respectively, by North Korea. On March 2, 2016, following the nuclear test of North Korea on January 6 and the launch on February 7, 2016, the Security Council of the United Nations adopted Resolution 2270 (2016). In it, it expresses serious concern about aforementioned nuclear test and launch and, furthermore, that a clear threat to international peace and safety in the region and beyond continues to exist. By means of the subsequent UN Security Resolutions, including the unanimously adopted UN Security Council Resolution 2270 (2016) and UN Security Council Resolution 2356 (2017) adopted on June 3, 2017, the sanctions package against North Korea has been extended further. This last Resolution is a response to North Korea's ongoing missile launches and the threat that these activities pose to peace and stability in the region.

Following Resolution 1718 (2006), the Council of the European Union also called North Korea on October 17, 2006 to abandon all nuclear weapons and existing nuclear programs and to comply with the obligations under the Non-Proliferation Treaty (or the Treaty on the Non-Proliferation of Nuclear Weapons "Trb." [*Treaty Series*] 1968, 126), and the European Union decided to take sanctions against that country. The restrictive measures are included in *inter alia* Regulation (EU) No. 329/2007 of the Council of the European Union of March 27, 2007 and Decision 2016/849/CFSP of December 27, 2016. The restrictive measures consist of a weapons embargo, travel restrictions, the freezing of funds and other assets of persons and entities responsible for or contributing to North Korea's nuclear program, financial trade restrictions, a prohibition on the provision of financial services, including the prohibition to open bank accounts and to maintain banking relationships, a prohibition on the sale and supply to the central bank of North Korea of banknotes and coins, a prohibition on participation in certain investments therein, as well as

additional restrictions on the transfer of funds and the provision of financial services.

This State Decree containing General Administrative Orders implements a number of UN Security Resolutions, and in particular the consolidated list of persons, undertakings and institutions contributing to North Korea's nuclear program. This consolidated list has been adopted by Sanctions Committee 1718 referred to in paragraph 12 of Resolution 1718 (2006) and is subject to periodic review by means of relevant UN Security Resolutions. In the context of the common foreign and security policy of the Kingdom and with a view to protecting the integrity and reputation of Aruba and its financial sector, the Government has also decided to take restrictive measures against North Korea, having regard to EU Regulation No. 329/2007 and Decision (CFSP) 2016/849, while applying Articles 2 and 2a of the Sanctions Ordinance 2006.

This State Decree concerns the freezing measures against natural persons, legal persons, entities and bodies mentioned in § 2. § 3 contains a prohibition on the financing of the proliferation of weapons of mass destruction and military activities, § 4 contains restrictions on the transfer of capital and on financial services and § 5 contains restrictive measures with regard to aviation and shipping as also included in Regulation (EU) No. 329/2007 and Decision 2016/849.

Explanatory notes on individual articles

Article 1

This Article contains a number of necessary definitions. In order to promote a clear conceptual framework, the Government considers it desirable to define *inter alia* the terms “weapons of mass destruction” and “proliferation” more precisely in this State Decree. The term “weapons of mass destruction” is defined as chemical weapons, biological weapons and nuclear weapons. A definition of the term “proliferation” has also been added. This term is related to the prevention of the proliferation of weapons of mass destruction. The “Common Military List of the European Union” has also been included in Article 1. This is to prevent goods and technology falling under the EU Common List of Military Equipment pursuant to the EU Regulation, including the financing for use in or on behalf of North Korea, from being prohibited. The term “consolidated list” is used in Article 1. This term is defined as the list adopted by the Sanctions Committee referred to in paragraph 12 of Resolution 1718 (2006). Given the frequency with which the consolidated list and the Annexes to “EU Regulation No. 329/2007” and “Decision 2016/849” are adapted, these definitions have been dynamically described, meaning that the most recent versions should always be relied on in order to ensure that possible amendments to the consolidated list and the various Annexes extend directly to this State Decree. On May 27, 2016, the Council adopted Decision (CFSP) 2016/849 concerning restrictive measures against the Democratic People's Republic of Korea, repealing Decision (CFSP) 2013/183.

Article 2

Based on this Article, the funds and other assets of the persons listed in the consolidated list of persons, undertakings or institutions and Annexes IV, V and Va of Regulation No. 329/2007 and Annexes I, II and III to Decision 2016/849, respectively, are frozen. Annex IV to Regulation No. 329/2007 and Annex I to Decision 2016/849 list the persons and entities designated by the Sanctions Committee of the Security Council of the United Nations in accordance with paragraph 8, subparagraph d, of Resolution 1718 (2006) or paragraph 8 of Resolution 2094 (2013) of the UN Security Council, and who or which are involved in or support North Korea's nuclear programs related to nuclear weapons, other weapons of mass destruction or ballistic missiles. Annex V to Regulation No. 329/2007 and Annex II to Decision 2016/849, respectively, include persons, entities and bodies not listed in Annex IV to Regulation No. 329/2007 and Annex I to Decision 2016/849, respectively, but who or which have been designated by the Council of the European Union, and who or which are subject to the freezing of funds and other assets. Annex Va to Regulation No. 329/2007 and Annex III to Decision 2016/849 include the persons and entities not covered by Annexes IV and V to Regulation No. 329/2007 and Annexes I and II to Decision 2016/849, respectively, and who or which work on behalf or on the instructions of a person or entity listed in Annexes IV or V to Regulation No. 329/2007 and Annexes I and II to Decision 2016/849, respectively, and persons who aid in the evasion of sanctions of Regulation No. 329/2007 and Decision 2016/849.

Article 3

Article 3 entrusts the Central Bank of Aruba (the Bank) with the digital and timely publication through the Bank's website www.cbaruba.org. This will ensure that the proposed freezing measures can be implemented efficiently and effectively. The consolidated list (*1718 Sanctions List*) can also be consulted on the website of the United Nations (<http://www.un.org>).

Article 4

This Article requires the service providers not to provide services and not to perform acts that result or could reasonably result in a natural person, legal person or other entity listed in the consolidated list and the Annexes to the EU Regulation or EU Decision, respectively, gaining access in any way to the funds or other assets frozen pursuant to Article 2. This includes not only services within the meaning of Article 1 of this State Decree, but also any *de facto* act resulting in a fund or asset being brought under the control of a designated person.

Article 5

The restrictive measures in this Article concern the freezing of *inter alia* funds of the designated persons, entities and bodies. Within the framework of the financing of the proliferation of weapons of mass destruction, an additional obligation is included in the fourth paragraph for financial service providers, when they suspect or have reasonable grounds for suspecting that money flows are being used to finance proliferation, to report this without delay to the Unusual Transactions Reporting Center to prevent the financing of the proliferation of weapons of mass destruction (see Article 11a of EU Regulation No. 329/2007).

Article 6

A freezing measure may also be related to registered property, as such property may also be an asset within the meaning of this State Decree. Article 3.10 of the Civil Code of Aruba describes registered property as property for the transfer or creation of which registration in the relevant public registers is necessary. Essentially, it concerns real estate, aircraft and vessels and the limited rights that may be established on such property. Given that freezing such an asset results in the party entitled no longer being able to dispose of it, it is desirable to record this in the public registers. This will make it clear to everyone that this registered property has been frozen. This applies in particular to service providers that, by reason of their position, are involved in legal transactions involving registered property (especially civil-law notaries), and who have to rely on the register for that purpose.

In connection with the above, this Article imposes a duty of care on the respective keepers of the public registers - the registrar of mortgages for real estate and the limited rights to be established on same, whereas for aircraft and vessels this is the registrar of the vessel register and aircraft register, respectively - to record the freezing in the public register in question. The duty of care means that the keepers of the public register must verify themselves whether registered property has been frozen as a result of the listing of the party entitled in one of the freezing lists. The best course of action is to consult these lists.

The second paragraph refers specifically to the vessels listed in Annex IVa to the EU Regulation. It concerns the vessels designated by the Sanctions Committee pursuant to paragraph 12 of Resolution 2321 (2016).

Article 7

This Article provides for the prohibition on the financing of the provision of any financial services for contributing to North Korea's prohibited activities, such as nuclear weapons programs, weapons of mass destruction or ballistic missiles, as well as the financing related to military activities. Annex I includes all items, materials, equipment, goods and technologies, including computer software, which are dual-use goods and technologies, as referred to in Regulation (EC) No. 428/2009. Annex Ia includes other items, materials, equipment, goods and technologies that could contribute to North Korea's programs related to

nuclear weapons, other weapons of mass destruction or ballistic missiles. Annex Ib contains certain important components for the ballistic missile sector. Military goods are goods to which Common Position 2008/944/CFSP of the Council of the European Union establishing common rules governing the control of exports of military equipment and technology applies. It concerns weapons, weapon systems, technology and software or material specifically made for military purposes. Annex Ig contains accessories of weapons of mass destruction, materials and goods and technology as described in *inter alia* Resolutions 2270 (2016) and 2321 (2016).

Article 8

The first paragraph of this Article provides for a prohibition on the financing of activities that may contribute to North Korea's nuclear programs, which are also prohibited under Resolution numbers 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2017) or 2356 (2017), or activities prohibited by the Security Council of the United Nations and subsequent resolutions. The second paragraph provides for the prohibition on the financing of certain undertakings, such as the chemical, mining or refining industry and related services (see Annex Part A), as well as the provision of certain IT services (Annex VIII Part B).

Article 9

Article 9, first paragraph, subparagraph a, provides for the prohibition to grant financing for the lists set out in Annex Ic, Annex Id, Annex Ie and Annex If (see Article 2, first paragraph and fourth paragraph, of the EU Regulation). Annex Ic includes gold, titanium ore, vanadium ore and rare earths. Annex Id includes coal, iron and iron ore. Annex Ie includes aviation fuel and Annex If includes petroleum products. Article 9, first paragraph, subparagraph b, concerns a prohibition on the financing of the luxury goods (including alcoholic beverages and cosmetics) listed in Appendix III, and the Annex IIIa containing images, Annex IIIb, helicopters and vessels, and finally Annex VII a list of gold, precious metals and diamonds.

Article 10

Article 10 provides for the prohibition to supply printed or minted banknotes and coins to the Central Bank of North Korea and corresponds to Article 4b of the EU Regulation. The second paragraph contains an obligation for the Central Bank of Aruba.

Article 11

Article 11 (see Article 5a of the EU Regulation) provides for a prohibition for service providers to open a new bank account with a North Korean credit institution or financial institution. It is also prohibited to enter into a new correspondent banking relationship with a North Korean credit institution or financial institution, to open a new office in North Korea, to establish a new joint venture with a North Korean credit institution or financial institution, to acquire or extend a participation or shares. For

“North Korean credit institution”, reference can be made to the definition of “credit institution”, as referred to in Article 1, first paragraph, of the State Ordinance on the Supervision of the Credit System (AB 1998 No. 16), while also referring to the explanatory notes on this term. For the purposes of this State Decree, the Central Bank of North Korea also falls under the term credit institution, as well as branch offices and subsidiaries of credit institutions or financial institutions domiciled in North Korea. A “financial institution” is understood to be an undertaking other than a credit institution, such as insurance companies and insurers. Reference is made to the definition of “financial service provider” as referred to in Article 1, first paragraph, of the State Ordinance on the Prevention and Combating of Money Laundering and Terrorist Financing (AB 2011 No. 28). The second paragraph provides for an instruction to all financial service providers to maintain banking relationships and correspondent banking relationships or to end any joint venture, representative office or any ownership interest or participation. The fourth paragraph also provides for the prohibition on circumventing these sanctions - directly or indirectly.

Article 12

Article 12 provides for a prohibition on the sale or purchase of North Korean government bonds or government-guaranteed bonds or financial institutions, natural and legal persons, entities or bodies domiciled in North Korea. The prohibition also applies to brokering services and assistance for aforementioned activities.

Article 13

Article 13 contains the restrictive measures with respect to aviation and shipping.

Article 14

Article 14 provides for the prohibition to provide bunkering and other services to North Korean vessels or vessels flying the North Korean flag.

Article 15

This Article provides for a prohibition on the provision of certain services to vessels or aircraft. Reference is made to *inter alia* paragraph 19 of UN Security Council Resolution 2270.

As regards the embargoes (importation and exportation) listed in EU Regulation No. 329/2007, a draft state decree containing general administrative orders will be adopted, which will be based on Article 4 of the State Ordinance on Importation and Exportation (AB 1989 No. GT 102).

Finally, it should be noted that, since the State Decree is intended to implement a number of international decisions without delay and in order to ensure the effectiveness, the Government has decided not to hear the Advisory Council. The possibility to do so is offered by Article 2, second paragraph, of the Sanctions Regulation 2006.

The Minister of Finance and Government Organization,
[was signed]

The acting Minister of Justice,
[was signed]

The Minister of General Affairs, Science, Innovation and Sustainable
Development,
[was signed]

The Minister of Tourism, Transportation, Primary Sector and Culture,
[was signed]