

**Unofficial and not binding translation
2013 No. 31**

**STATUTE PUBLICATION GAZETTE
OF
ARUBA**

STATE DECREE containing General Administrative Orders of May 17, 2013 for the implementation of Article 35a, paragraph 5, of the State Ordinance on the Supervision of the Credit System (AB 1998 No. 16), Article 16, paragraph 5, of the State Ordinance on the Supervision of Insurance Business (AB 2000 No. 82), Article 23, paragraph 5, of the State Ordinance on the Supervision of Money Transfer Companies (AB 2003 No. 60), Article 11, paragraph 5, of the State Ordinance on the Supervision of Trust Service Providers (AB 2009 No. 13), and Article 26a, paragraph 4, of the State Ordinance Company Pension Funds (AB 1998 No. GT 17). (State Decree regarding the principles for administrative enforcement sectoral state ordinances).

Issued May 24, 2013

The Minister of Justice and Education,

A.L. Dowers

IN THE NAME OF THE QUEEN!

THE GOVERNOR of Aruba,

Having considered:

that, for reasons of the effective application of the penalty order and the administrative fine to enforce the State Ordinance on the Supervision of the Credit System (AB 1998 No. 16), the State Ordinance on the Supervision of Insurance Business (AB 2000 No. 82), the State Ordinance on the Supervision of Money Transfer Companies (AB 2003 No. 60), the State Ordinance on the Supervision of Trust Service Providers (AB 2009 No. 13), and the State Ordinance Company Pension Funds (AB 1998 No. GT 17), it is necessary to lay down rules relating to the basis for the determination of the amount of the penalty charge order and the administrative fine per violation;

Having regard to:

- Article 35a, paragraph 5, of the State Ordinance on the Supervision of the Credit System (AB 1998 No. 16);
- Article 16, paragraph 5, of the State Ordinance on the Supervision of Insurance Business (AB 2000 No. 82);
- Article 23, paragraph 5, of the State Ordinance on the Supervision of Money Transfer Companies (AB 2003 No. 60);
- Article 11, paragraph 5, of the State Ordinance on the Supervision of Trust Service Providers (AB 2009 No. 13);
- Article 26a, paragraph 4, of the State Ordinance Company Pension Funds (AB 1998 No. GT 17);

After hearing the Advisory Council, has decided:

§1. General

Article 1

In this State Decree, the following terms shall mean:

Penalty Charge Order: the penalty charge order, referred to in Article 35a, paragraph 1, of the State Ordinance on the Supervision of the Credit System (AB 1998 No. 16), Article 16, paragraph 1, of the State Ordinance on the Supervision of Insurance Business (AB 2000 No. 82), Article 23, paragraph 1, of the State Ordinance on the Supervision of Money Transfer

Companies (AB 2003 No. 60), Article 11, paragraph 5, of the State Ordinance on the Supervision of Trust Service Providers (AB 2009 No. 13), and Article 26a, paragraph 1, of the State Ordinance Company Pension Funds (AB 1998 No. GT 17);

Administrative Fine: the administrative fine, Article 35a, paragraph 2, of the State Ordinance on the Supervision of the Credit System (AB 1998 No. 16), Article 16, paragraph 2, of the State Ordinance on the Supervision of Insurance Business (AB 2000 No. 82), Article 23, paragraph 2, of the State Ordinance on the Supervision of Money Transfer Companies (AB 2003 No. 60), Article 11, paragraph 2, of the State Ordinance on the Supervision of Trust Service Providers (AB 2009 No. 13), and Article 26a, paragraph 2, of the State Ordinance Company Pension Funds (AB 1998 No. GT 17).

Article 2

For the purposes of imposing a penalty charge order and an administrative fine, the following classification into categories shall apply:

<i>State Ordinance on the Supervision of the Credit System</i>	
Article	Category
2, second paragraph	2
4	2
7	2
8, first paragraph	2
9	2
10	2
11, fourth paragraph	2
12, first paragraph	2
13, first paragraph	2
14, first paragraph	2
15, first paragraph	2
16, first, third and fourth paragraph	2
17, first, third, fourth and fifth paragraph	2
19	1
19a	2
19b	2
20, second and third paragraph, subsection a	2
21, first paragraph	2
21a	1
22, second and third paragraph	1
23, first paragraph	2
23, second and sixth paragraph	1
24, first and second paragraph	2
25	2
26, first paragraph	As mentioned in the respective provisions
27, first paragraph	2
30	1
31	1
32	2
33	1
35, third, fourth, fifth and sixth paragraph	2
36	2
39, second paragraph	2
48, first and third paragraph	2
49, first and third paragraph	1
52, sixth paragraph	2

<i>State Ordinance on the Supervision of the Insurance Business</i>	
Article	Category
4	2
5, first paragraph	2
9, second paragraph	2
10	2
11	1
12	1
13	2
14	2
14a	2
14b	2
14c	1
14d	2
14e	2
15	2
15a	1
15b	2
17	2
22, first and third paragraph	2
24b, third, fourth and fifth paragraph	2
25, sixth paragraph	2
27a, first paragraph	2
27b	2

<i>State Ordinance on the Supervision of Money Transfer Companies</i>	
Article	Category
2, first paragraph	2
3, fourth paragraph	2
5, second, third and fourth paragraph	2
6	2
6a	2
7, fourth paragraph	2
10, first paragraph, second sentence	2
12, sixth paragraph	2
14	2
15	1
16	2

17	2
21, third and fourth paragraph	2
22, third sentence	2

State Ordinance on the Supervision of Trust Service Providers

Article	Category
2, first paragraph	2
4, second and third paragraph	2
5	2
5a	2
6	2
7	1
8	2
9	2
10	2
17	2
19	2
25, third, fourth and fifth paragraph	2
26	2
28, sixth paragraph	2

State Ordinance Company Pension Funds

Article	Category
1, third paragraph	2
2	1
3	2
4	2
6	2
7, second paragraph	2
8	1
17	1
18	2

§2. The penalty charge order

Article 3

1. The Bank shall set a penalty charge order at either an amount per time unit during which the order was not complied with, or a lump sum, or per violation of the order.

2. The Bank shall also determine an amount beyond which no penalty shall be forfeited anymore.

3. The minimum amounts for all categories shall always be Afl. 0.-.

4. The basic amounts for all categories shall amount to half the maximum amounts, mentioned in the fifth through sixth paragraph.

5. The following classification shall apply to the maximum amount per time unit:

Category	Maximum amount per calender day	
	<i>State Ordinance on the Supervision of the Credit System, the State Ordinance on the Supervision of Insurance Business, the State Ordinance on the Supervision of Money Transfer Companies, the State Ordinance on the Supervision of Trust Service Providers</i>	<i>State Ordinance Company Pension Funds</i>
1	Afl. 10,000.-	Afl. 2,500
2	Afl. 100,000.-	Afl. 25,000

6. As regards the maximum amount per violation of the order and the lump sum, the following classification shall apply:

Category	Maximum amount per individual violation	
	<i>State Ordinance on the Supervision of the Credit System, the State Ordinance on the Supervision of Insurance Business, the State Ordinance on the Supervision of Money Transfer Companies, the State Ordinance on the Supervision of Trust Service Providers</i>	<i>State Ordinance Company Pension Funds</i>
1	Afl. 100,000.-	Afl. 25,000
2	Afl. 1,000,000.-	Afl. 250,000

7. The Bank shall set a penalty at the basic amount.

8. The Bank shall decrease or increase the basic amount, referred to in the fourth paragraph, by at most 100%, if such a decrease or increase is justified by the severity of the violated interest and the contemplated effect of the penalty.

9. If the benefit acquired as a result of the violation or the benefit to be acquired as a result of not complying with the order exceeds the amounts mentioned in the fifth through seventh paragraph, the Bank may set the amount of the penalty at double these amounts at most.

§3. The administrative fine

Article 4

As regards the basic amounts, minimum amounts, and maximum amounts for the administrative fine, the following classification shall apply:

<i>State Ordinance on the Supervision of the Credit System, the State Ordinance on the Supervision of Insurance Business, the State Ordinance on the Supervision of Money Transfer Companies, the State Ordinance on the Supervision of Trust Service Providers</i>			
Category	Basic amount	Minimum amount	Maximum amount
1	Afl. 50,000.-	Afl. 0.-	Afl. 100,000.-
2	Afl. 500,000.-	Afl. 0.-	Afl. 1.000,000.-

State Ordinance Company Pension Funds			
<i>Administrative fine to impose on a company pension fund</i>			
Category	Basic amount	Minimum amount	Maximum amount
1	Afl. 12,500.-	Afl. 0.-	Afl. 25,000.-
2	Afl. 125,000.-	Afl. 0.-	Afl. 250,000.-
<i>Administrative fine to impose on the directors of a company pension fund as a whole</i>			
1	Afl. 5,000.-	Afl. 0.-	Afl. 10,000.-
2	Afl. 12,500.-	Afl. 0.-	Afl. 25,000.-

Article 5

1. The Bank shall set an administrative fine at the basic amount.
2. The Bank shall decrease or increase the basic amount, referred to in the first paragraph, by at most 100%, if such a decrease or increase is justified by:
 - a. the severity or duration of the violation, or
 - b. the degree to which blame can be attributed to the violator.
3. When determining the administrative fine, the Bank shall take into account the financial capacity of the violator. Within this framework, the Bank may decrease the administrative fine to be imposed by at most 100%.

§ 4. Final provision

Article 6

1. This State Decree shall enter into force as of the first day of the first month following its publication in the Statute Publication Gazette of Aruba.

2. It may be cited as State Decree regarding the principles for administrative enforcement sectoral state ordinances.

Given in Oranjestad, May 17, 2013
F.J. Refunjol

The Minister of Finance, Communication,
Public Utilities, and Energy,
M.E. de Meza

The Minister of Justice and Education,
A.L. Dowers