
Unofficial and not binding translation of
the State Ordinance containing regulations
on the supervision of the insurance business
(State Ordinance Supervision Insurance Business)
(AB 2000 No. 82)

CHAPTER I

General Provisions

§ 1. Definitions

Article 1

For the purposes of this State Ordinance and the provisions based there upon, the following terms shall be defined as stated below:

life insurance contract : an insurance contract concerning the payment of cash benefits related to the life or death of a person;

general insurance contract : an insurance contract, other than a life insurance contract;

life insurance business : the business of concluding and settlement of life insurance contracts for own account irrespective of whether the project is to make a profit;

general insurance business : the business of concluding and settlement of general insurance contracts for own account, irrespective of whether the object is to make a profit;

insurance business : the life insurance business or the general insurance business;

insurer : anyone engaged in the insurance business;

qualifying holding : a direct or indirect holding of more than ten percent of the issued share capital of an insurer or the ability to exercise directly

or indirectly more than ten percent of the voting rights in an insurer or the ability to exercise directly or indirectly a comparable degree of control;

money laundering : an offence as meant in Articles 2:404, 2:405 and 2:406 of the Criminal Code of Aruba;

terrorist financing : the criminal offense, meant in Article 2:55 of the Criminal Code of Aruba;

auditor : a natural person who is not employed by an insurer, and who is listed either in the register of the Netherlands Institute of Certified Public Accountants, as referred to in Article 55 first paragraph, of the Certified Public Accountants Act (Statute Publication Gazette of the Netherlands 1962, 258), or is listed elsewhere with a similar institute as the Netherlands Institute of Certified Public Accountants, and who is subject to a, in the opinion of the Bank, similar regime of code of conduct, professional code and discipline;

establishment : registered office, agency or branch, as well as any other permanent presence of an insurer on the territory of a state in the form of an organization, managed by the insurer's own personnel or by an independent person who is authorized to engage in the insurance business on behalf of the insurer;

branch : part of an insurer, not being a separate legal entity;

the Bank : the Central Bank of Aruba;

Court : the Court of First Instance of Aruba;

Minister : the Minister of Finance.

§ 2 Scope

Article 2

1. The Bank supervises insurers incorporated under the Aruban law and the branches and agencies in Aruba of insurers incorporated outside Aruba.

2. An insurer incorporated under the Aruban law shall have the legal status of a public limited company ("naamloze vennootschap"), a limited liability company ("vennootschap met beperkte aansprakelijkheid"), an Aruba exempt corporation, or a mutual insurance company.

3. The Bank shall decide whether an action or a combination of actions does or does not constitute as being engaged in the life insurance business or the general insurance business, and whether an action or a combination of actions does or does not constitute as being engaged in the insurance business from an establishment in Aruba.

4. By State Decree containing General Administrative Measures, having heard the Bank, categories of insurers may be designated, for which this State Ordinance shall not be applicable in part or in whole.

5. The Establishment of Business Ordinance (AB 1990, no. GT 55) shall not be applicable for insurers.

Article 3

1. The general insurance business shall be divided into five indemnity lines, viz.:

- a. accident and health insurance;
- b. motor vehicle insurance;
- c. maritime, transport, and aviation insurance;
- d. fire insurance and other property insurance;
- e. other indemnity insurances.

2. In the event that the nature of a general insurance contract plays a part or may play a part in a dispute, the Bank shall decide on

request of the interested party, to which of the indemnity lines listed in the first paragraph a general insurance contract belongs.

Article 4

1. The Bank may impose restrictions and attach stipulations and conditions to licenses, permissions or exemptions issued by it within the framework of the execution of this State Ordinance.

2. The Bank may grant exemption from regulations laid down by, or by virtue of, this State Ordinance, provided that in the Bank's opinion this is not in conflict with the interests of the insurant, the insured or other persons entitled to payment.

CHAPTER II

Admission to the insurance business

§ 1. In general

Article 5

1. Without a license from the Bank it is prohibited to approach the public in or from Aruba regarding the direct or indirect engagement in the insurance business.

2. A license is granted either to engage in the life insurance business or the general insurance business. A license to engage in the general insurance business shall be granted per line of insurance.

§ 2. Application for a license

Article 6

1. The application for a license as referred to in Article 5, first paragraph, shall be addressed to the Bank and shall at least contain information on:

- 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:

1. the directors and other persons who determine or co-determine the policy of the applicant;
 2. the members of the board of supervisory directors or of the body of the applicant that has a task similar to that of the board of supervisory directors;
- 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 of those who hold a qualifying holding in the applicant 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;
 - c. annual financial statements or an opening balance sheet, which shall be accompanied by a declaration that the information presents a true and fair view, signed by an auditor;
 - d. a program of activities which the applicant intends to conduct;
 - e. the envisaged management controls and administrative organization, including the financial accounting system and the internal controls;
 - f. the applicant's Deed of Incorporation, Articles of Incorporation, and By-laws.

2. In the event that the applicant constitutes part of a group, the data on the formal and factual control structures within the group and a list of names of the persons who determine or co-determine the group's policy shall also be provided.

3. An applicant who intends to conclude contracts covering liabilities resulting from the use of motor vehicles, shall include with its application a statement signed by it stating that its insurance terms comply with the stipulations laid down in the State Ordinance Motor Vehicles Liability Insurance (AB 1999, no. GT 12).

4. The Bank shall decide on the application within thirteen weeks after the date of receipt thereof. If further information related to the application have been requested by the Bank, this period shall start on the date of receipt of the additional information.

5. Exceeding the period referred to in the fourth paragraph shall be similar to a refusal for granting the license.

§ 3 Licensing conditions

Article 7

The Bank shall grant a license, as meant in Article 5, first paragraph, provided it is evident to it that the following conditions are met:

- a. the applicant's day-to-day management is determined by at least one natural person;
- b. in so far it concerns a legal entity, the applicant has a Supervisory Board or a similar body, consisting of at least three natural persons;
- c. the Bank is of the opinion that the integrity of one or more persons, referred to in Article 6, first paragraph, subparagraph a, is not beyond doubt;
- d. the Bank is of the opinion that the suitability of one or more persons, referred to in Article 6, first paragraph, subparagraph a, is insufficient, individually or jointly, in connection with the conduct of the insurance business, or the performance of the duties in question at the insurer;
- e. the Bank is of the opinion that the integrity of a holder of a qualifying holding in the applicant, or, if the holder of a qualifying holding is a legal entity, of the persons who determine or also 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 applicant as a result of a qualifying holding in the applicant;
- f. the declaration, mentioned in Article 6, first paragraph, sub c. implies that the annual financial statements or opening balance sheet present a true and fair view of the size and composition of the capital of the applicant;
- g. in view of the data as mentioned in Article 6, first paragraph, sub d and e, the applicant is able to realize its intentions, or meet the requirements to be imposed on it in connection with the supervision;

- h. the granting of a license to the applicant does not lead to an undesirable development of the insurance sector, or to a circumstance that could bring this about;
- i. the applicant has a minimum solvency margin as mentioned in Article 14, third paragraph.

Chapter III

Revocation of the license

Article 8

1. The Bank shall revoke a license as mentioned in Article 5, first paragraph, if the insurer:

- a. so requests;
- b. has ceased to operate in the life insurance business or the concerned indemnity line.

2. The Bank may revoke a license as mentioned in Article 5, first paragraph, if the insurer:

- a. no longer meets the regulations for obtaining the license laid down by, or by virtue of, this State Ordinance;
- b. in the opinion of the Bank fails to comply with statutory regulations in force in Aruba or abroad concerning the engagement in the insurance business;
- c. fails to comply with a directive as mentioned in Article 15, first paragraph;
- d. has not commenced the business operations within six months after the day the license was granted;
- e. does not or not sufficiently comply with the regulations 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 suppression of money laundering and terrorist financing in the opinion of the Bank.

Article 9

1. The revocation, mentioned in Article 8, shall only become effective, after the pertinent decision has become irrevocable. As

soon as the revocation has become effective, the Bank shall publish the decision in the Government Gazette of Aruba.

2. The insurer shall wind up the part of its business, for which the license was granted, within a term to be determined by the Bank. During this term, for the purposes of this State Ordinance, the insurer shall be put on a par with an insurer who has a license as mentioned in Article 5, first paragraph.

CHAPTER IV

Supervision of the engagement in the insurance business

§ 1. Management controls and administrative organization

Article 10

1. The Bank may give insurers directives with regard to the administrative organization and internal operational management, including the financial accounts and internal control.

2. The directives meant in the first paragraph may relate to the implementation of rules in other State Ordinances.

3. The Bank may give an insurance company instructions on the way in which directives as meant in the first paragraph are to be implemented.

§ 2. Statements

Article 11

1. Within six months after the end of each financial year the insurer shall send the Bank statements, which provide a clear picture of the management carried out by the insurer and of its financial position.

2. The insurer shall submit the statements accompanied by an auditor's declaration stating that they present a true and fair view. As evidence that the statements have been audited by him or, if the statements as mentioned in the third paragraph were included in his audit, the auditor shall certify the statements. When giving the audit assignment, the insurer shall authorize the auditor in writing to

provide the Bank all information that may be reasonably considered necessary to carry out the duty imposed on the Bank by, or by virtue of, this State Ordinance.

3. In so far applicable one of the statements shall consist of the actuarial report, which shall be provided with an actuarial certification. With his certification the actuary shall confirm that he has ascertained that the provisions stated in the actuarial report have been assessed correctly. He shall be authorized to amplify his certification or to make reservations on any point.

4. The Bank shall determine the models of the statements mentioned in the first paragraph.

§ 3. Annual report

Article 12

1. Each year, within six months after the end of the financial year, an insurer shall submit its annual financial statements and annual report to the Bank. The annual report shall present a true and fair view of the position on the balance sheet date and of the business transactions during the financial year.

2. The annual financial statements and annual report of an insurer domiciled outside Aruba shall concern the entire business.

§ 4. Technical provisions

Article 13

1. An insurer shall maintain adequate technical provisions which are fully covered by assets. The Bank may raise objections against the nature and valuation of these assets, which objections shall be promptly met by the insurer.

2. The Bank may provide general guidelines with regards to the contents and the magnitude of the technical provisions, mentioned in the first paragraph.

§ 5. Solvency margin

Article 14

1. An insurer engaged in the life insurance business must have a solvency margin amounting to eight percent of the provision for insurance obligations at the end of the preceding financial year, without taking the reinsurance of these obligations into account.

2. An insurer engaged in the general insurance business must have a solvency margin equal to the highest outcome of one of the following calculations:

- a. fifteen percent of the gross premiums booked in the preceding financial year, or
- b. fifteen percent of the average gross claims booked in the past three financial years.

3. The Bank may give general guidelines with regards to the solvency margin, in which among other things may be indicated, what amount of solvency margin must at least be maintained.

4. By State Decree, containing General Administrative Orders, special solvency margins may be prescribed for certain categories of insurers.

§ 6. Structural supervision

Article 14a

1. Without the permission from the Bank, a natural person or a legal entity is not allowed:

- a. to hold, acquire, or increase a qualifying holding in an insurer;
- b. to exercise any control associated with a qualifying holding in an insurer.

2. The Bank shall grant permission requested as referred to in the first paragraph, 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 also 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 a qualifying holding in an insurer is held, acquired, or increased without having obtained permission for this act, or without having observed the restrictions imposed when granting the permission, the infringing natural person or legal entity shall reverse the act performed within a period to be determined by the Bank or shall observe the restrictions as yet. This obligation shall cease to apply, if permission is given for the act in question as yet, or the restrictions not observed are withdrawn.

4. If the exercise of any control, associated with a qualifying holding in an insurer, takes place without having obtained permission for this act, or without having observed the restrictions or conditions imposed when granting the permission, a decision made also based on the control exercised can be annulled by the Court, on the demand of the Bank, if the decision would have been different or would not have been made, if the control in question had not been exercised, unless permission is granted as yet, or the restrictions or conditions not observed are observed as yet. Insofar as necessary, the Court shall provide for the consequences of the annulment.

5. If a natural person or a legal entity does not comply with all regulations or conditions attaching to the permission as referred to in the first paragraph, the Bank may set a period within which that natural person or legal entity shall comply with the regulations or conditions not complied with as yet.

Article 14b

1. Article 6, first paragraph, subparagraphs a, b, f, and second, fourth, and fifth paragraph shall be equally applicable to an application for permission as referred to in Article 14 a, first paragraph.

2. The issue of the permission as referred to in Article 14a, first paragraph, shall be announced in the Official Gazette of Aruba, as well as in one or more newspapers to be determined by the Bank, unless the Bank is of the opinion that the announcement thereof would or could lead to disproportionate favoring of, or prejudice to parties involved in the decision or third parties.

3. The Bank may modify or revoke the permission as referred to in Article 14a, first paragraph, in whole or in part:

- a. at the written request of the holder;
- b. if the data or documents provided for obtaining the declaration have turned out to be incorrect or incomplete to such an extent that a different decision would have been made on the application, if, at the time of assessing the application, the correct circumstances had been fully known;
- c. if not all regulations or conditions laid down in the declaration are complied with within the period referred to in Article 14a, fifth paragraph;
- d. if the holder does not comply with an instruction as referred to in 15b.

In that case, the second paragraph shall be equally applicable.

Article 14c

1. A natural person or legal entity whose qualify holding in an insurer changes in such a way that the extent of this holding falls below 10, 20, 33, or 50 percent, shall notify the Bank thereof in writing.

2. Each year in the month of July, an insurer shall notify the Bank in writing of the identity of each natural person or legal entity holding a qualifying holding in that institution, insofar as these data are known to it. As soon as this becomes known to it, an insurer shall also notify the Bank in writing of each acquisition or disposal of, or change to a qualifying holding in that institution, by which the extent of the holding exceeds or falls below 10, 20, 33, or 50 percent.

§ 7. Integrity supervision

Article 14d

1. An insurer 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 Suppression of Money Laundering and Terrorist Financing and other statutory regulations 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 insurer 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 insurer 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 insurers directives with regard to:

- a. the ethical conduct of the insurance business;
- b. the way in which it is determined whether the integrity of a person, referred to in Article 5, first paragraph, subparagraph a, 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 14e

1. An insurer shall not be associated through persons or legal entities in a formal or factual control structure:

- a. that is intransparent to such an extent 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 that enterprise.

CHAPTER V

Special measures

§ 1. Right to give directives

Article 15

1. If an insurer does not meet the regulations for obtaining the license laid down by, or by virtue of, this State Ordinance, or if the Bank establishes that an insurer does not comply with the provisions laid down by, or by virtue of, Articles 10 through 14, 14c, second paragraph, 14d and 14e, or if the Bank perceives other signs, that in its opinion endanger or might endanger an insurer's solvency, it can give this insurer a directive to comply again, within a term to be determined by the Bank, with these regulations or with the provisions laid down by, or by virtue of, Articles 10 through 14, 14c, second paragraph, 14d and 14e, or to ensure that the solvency is brought again to a level to be determined by the Bank.

2. If within two weeks after the date of the directive the Bank has not received an answer from the insurer which it regards as satisfactory, or if in its opinion the directive has not or not adequately been complied with, it may, without prejudice to its authorization for revocation of a license pursuant to Article 8, to impose a penalty charge order pursuant to Article 16, first paragraph, and to impose an administrative fine pursuant to Article 16, second paragraph:

- a. notify the insurer in writing that as from a certain date all or certain of its bodies may only exercise their powers after approval by one or more persons appointed by the Bank, which notification shall take immediate effect;
- b. notify the insurer in writing that the Bank will proceed to publication of the directive in the Government Gazette of Aruba.

3. If the cases mentioned in the first paragraph require immediate intervention, the Bank may without applying the first paragraph, immediately implement the second paragraph, sub a, after it

has given the insurer the opportunity to present its views about the immediate enforcement.

4. The bodies, mentioned in the second paragraph, sub a, shall give the persons appointed by the Bank full cooperation. For losses resulting from acts performed in contravention of a notification as mentioned in the second paragraph, sub a, the persons who perform these acts as a body of the insurer shall be personally liable towards the insurer.

5. The decision to publish a directive shall only become effective after it has become irrevocable. If after the publication the insurer complies with the directive as yet, or if the Bank withdraws the directive, this shall be published by the Bank in the Government Gazette of Aruba.

Article 15a

1. If the Bank is of the opinion that an auditor or actuary does not provide or no longer provides the necessary guarantees that he can fulfill his task properly in relation to an insurance company, the Bank may decide that this auditor or actuary is no longer authorized to sign the reports meant in this State Ordinance in relation to that insurance company.

2. The Bank will notify the insurance company in question immediately of a decision as meant in the first paragraph.

Article 15b

The Bank may give the holder of a qualifying holding in an insurer, as regards to whom the condition of Article 7, subparagraph e, is no longer fulfilled in its opinion, an instruction to take a certain course of action with regard to specified issues.

§2. Administrative sanctions

Article 16

1. For the violation of the provisions laid down by or pursuant to Articles 4, 5, first paragraph, 9, second paragraph, 10, 11 through 15b, 17, 22, first and third paragraph, 24b, third, fourth, and fifth

paragraph, 25, sixth paragraph, and 27a, first paragraph, 27b, 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 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 announced 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 16a

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 16, second paragraph, shall be doubled for each separate violation.

2. Notwithstanding Article 16, 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 16b

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 16c

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 16d

Anyone in respect of whom the Bank has performed an act from which he could reasonably infer that an administrative fine will 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 shall be notified to this effect before being asked to provide information.

Article 16e

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 16f

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 was discovered.

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

Article 16g

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 domicile 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 the effect for the duration of the period for appeal or, if appeal has been brought, of the appeal, if the address of the person concerned is not known and it cannot be obtained either with reasonable efforts.

Article 16h

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 16i

1. If a forfeited penalty or fine is not paid within the period set by the Bank, a demand will 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.

§ 3. Appointment of certain positions

Article 17

An insurer shall not appoint persons to positions as referred to in Article 7, sub a and b, prior to having obtained the approval thereof from the Bank.

CHAPTER VI

The register

Article 18

1. The Bank shall keep a register in which all insurers are entered, which have obtained a license as mentioned in Article 5, first paragraph. The register shall be organized in a way to be determined by the Bank and shall be available for everyone for inspection at the Bank's office, free of charge.

2. The Bank shall ensure the removal from the register of every insurer whose license as mentioned in Article 5, first paragraph, is revoked.

Article 19

1. The entry in or removal from the register shall be published by the Bank in the Government Gazette of Aruba and in two local newspapers within two weeks after the day on which it took place.

2. Each year in the month of January, a transcript of the register showing the position as per December 31 of the preceding year shall be published by the Bank in the Government Gazette of Aruba and in two local newspapers.

CHAPTER VII

Emergency regulation and bankruptcy

§ 1. Emergency regulation

Article 20

1. In the event that the solvency of an insurer entered in the register shows signs of a dangerous development or there are otherwise signs, that threaten the continued existence of an insurer, and no

improvement in this development may be expected in reason, the Court may, on petition of the Bank declare that the insurer is in a position that in the interests of the combined creditors requires a special measure.

2. In case of a declaration as mentioned in the first paragraph, the Court shall appoint on the Bank's recommendation one or more administrators, who shall be authorized to liquidate all or part of the insurance agreements concluded by the insurer as well as to proceed to transfer all or part of its rights and obligations under or by virtue of insurance agreements.

3. By State Decree, containing General Administrative Orders, regulations may be laid down concerning the way of performing the duties, mentioned in the second paragraph. By this decree, one or more provisions of the Bankruptcy Ordinance may be declared applicable and may be deviated from regulations of that state ordinance.

§ 2. Bankruptcy and liquidation

Article 21

1. The Bank may file a petition at the Court to adjudicate an insurer bankrupt, if it appears to it that the insurer has a negative proprietors' equity capital and either the purpose to be achieved by the measure, described in Article 20, can not or no longer be realized, or, if this measure was not previously requested, there is no longer a reasonable prospect that the purpose to be achieved by this measure may be realized as yet.

2. In deviation from Article 1 of the Bankruptcy Ordinance the bankruptcy shall be adjudicated, irrespective of whether the insurer is in a position of having ceased to make payments.

3. If a petition to adjudicate bankrupt is filed by another than the Bank, including an insurer's own petition, this shall not be decided on until after the Court has given the Bank the opportunity to express its opinion on this matter.

4. An insurer entered in the register that has decided to liquidate its business in whole or in part, or to dissolve it, shall notify the Bank at least thirteen weeks before the decision will be executed of the way in which the liquidation, respectively the dissolution, will take place.

CHAPTER VIII

Special provisions

§ 1. Transfer of rights and obligations

Article 22

1. An insurer shall only transfer its rights and obligations from all or part of the insurance agreements without the permission of the persons who can derive rights from these agreements to another insurer by written agreement and with written permission of the Bank.

2. In deviation from the first paragraph, an insurer shall be authorized to transfer its rights and obligations from an individual insurance agreement at the insurant's written request.

3. The Bank may give general guidelines with regards to the transfer of rights and obligations from insurance agreements.

2. Secrecy

Article 23

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 24, first paragraph, 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 an insurer 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 insurer in question to continue its business.

§ 3. Exchange of data

Article 24

1. Notwithstanding Article 23, 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 24a

Notwithstanding Article 23, 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 24b

1. For the performance of its duty pursuant to this paragraph, the Bank may demand information from anyone, if this is necessary for the performance of the duty of a body referred to in Article 24, first paragraph. Article 25, 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 an insurer 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 25, third and fourth paragraph, shall be equally applicable.

5. The Bank may allow that an officer of a body as referred to in Article 24, 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.

Article 24c

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.

§ 4. Supervision

Article 25

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 by virtue of the first paragraph, shall be authorized, exclusively in as far as this is necessary in reason for the performance of their duties:

- a. to request all information;
- b. to demand inspection of all books, documents, and other information carriers concerning the business and to make transcripts thereof or copies thereof or to take these along temporarily for this purpose;
- c. to enter all places, except for dwelling houses without specific permission of the occupant, accompanied by persons to be designated by them.

4. If necessary, access to a place as mentioned in the third\ paragraph, sub c, shall be gained with the assistance of the police.

5. By State Decree, containing General Administrative Orders, rules shall be laid down regarding the way in which the employees of the Bank, designated by virtue of the first paragraph, perform their duties.

6. Everyone shall give the persons, designated by virtue of the first paragraph, the cooperation required pursuant to the third paragraph.

CHAPTER IX

Penal provision

Article 26

1. The person who violates a regulation, condition, or limitation laid down by or pursuant to Articles 4, 5, first paragraph, 9, second paragraph, 10, 11 through 15b, 17, 22, first and third paragraph, 24b, third, fourth, and fifth paragraph, 25, sixth

paragraph, and 27a, first paragraph, 27b, shall be punished with imprisonment not exceeding one year, or with a fine of the fourth category.

2. Acting intentionally in violation of any provision, laid down in or in pursuance of the Articles, mentioned in the first paragraph, shall be punished with imprisonment not exceeding six years or a fine of the sixth category.

3. The punishable acts, mentioned in the first paragraph are punishable offenses; the punishable acts, mentioned in the second paragraph are criminal offenses.

CHAPTER X

Final provisions

Article 27

This State Ordinance is not applicable for institutions that are established by state ordinance and that conduct activities similar or almost similar to the engagement in the insurance business.

Article 27a

1. By State Decree containing General Administrative Orders, funeral insurance companies with in-kind benefits, reinsurers, and insurance agents may be placed under the supervision of the Bank in accordance with rules to be laid down by this State Decree. One or more Articles of this State Ordinance may then be declared equally applicable.

2. A funeral insurance company with in-kind benefits shall be understood to be anyone, not being a life insurer, whose business is to conclude funeral insurances with in-kind benefits for own account and to complete these funeral insurances with in-kind benefits. Funeral insurance with in-kind benefits shall be understood to be insurance in connection with the funeral arrangements of a natural person, while the insurer undertakes to deliver a performance that does not also imply paying a financial benefit.

3. A reinsurer shall be understood to be anyone whose business is to conclude reinsurances for own account and to complete these

reinsurances. Reinsurance shall be understood to be insurance under which risks are accepted that are transferred by an insurer.

4. An insurance agent shall be understood to be anyone who, other than on account of an employment contract, acts as an intermediary in the conclusion, surrender, or payment of a life insurance contract or a nonlife insurance contract.

Article 27b

1. It is not allowed for anyone to act as an intermediary in the conclusion, surrender, or payment of a life insurance contract or a nonlife insurance contract with an enterprise or institution domiciled in or outside Aruba, which does not dispose of a license as referred to in Article 5 for the conduct of the insurance business.

2. Without prejudice to Article 4, second paragraph, the Bank may grant an exemption from the prohibition referred to in the first paragraph, on a request to that effect, if the Bank is of the opinion that this is not contrary to the interests this State Ordinance intends to protect.

Article 28

Each year, before July 1, the Bank shall report to the Minister on the enforcement of this State Ordinance, with due observance of Article 23.

Article 29

By Ministerial Regulation an organization may be designated, that represents a thereby indicated group of insurers with regard to the enforcement of this State Ordinance.

Article 30

Costs related to the enforcement of this State Ordinance, by Ministerial Decree, having heard the Bank and the organization as mentioned in Article 29, may be fully or partially charged to certain groups of insurers.

Article 31

By State Decree, containing General Administrative Orders, having heard the Bank, further rules may be laid down for the enforcement of this State Ordinance.

Article 32

1. This State Ordinance shall become effective on a date to be determined by or by virtue of a state ordinance.
2. It may be cited as State Ordinance Supervision Insurance Business.