

2011 no. 85

[coat of arms]

PROMULGATION PAPER
OF ARUBA

NATIONAL ORDINANCE of December 30, 2011, holding provisions concerning a general pension system (National ordinance general pension)

Issued, December 31, 2011

The minister of Justice and Education

A.L. Dowers

IN NAME OF THE QUEEN!

THE LIEUTENANT GOVERNOR of Aruba

Having taken into consideration:

- that representatives of the government, employers en employee organizations have signed a protocol in the scope of the 'Social Dialogue' on August 27, 2010;
- that therewith was recognized that two-thirds of the citizens working under an employment agreement upon reaching the pensionable age can only count on the basic pension payment of the general pension insurance;
- that the government of Aruba has amended the National ordinance general pension insurance beginning January 1, 2011, anticipating the development of a long term vision in regard of maintaining the provision regulated therein, also in consideration of the growing ageing of the Aruban population;
- that the government in view thereof -with due regard to the agreements laid down in the protocol of September 8, 2011- wishes to introduce an obligatory pension scheme for citizens in paid employment, which will provide that citizens after terminating their employment as a result of their pensionable age will be able to enjoy an income that together with the basic pension payment will be more in accordance with the income they enjoyed during their employment;

Having heard the Advisory Council, in consultation with the Parliament, decreed the following national ordinance:

§1. Definitions

Article 1

1. In this national ordinance and the provisions based thereon is understood under:

Minister : the minister in charge of Finance
employee : he whom:
a. has reached the age of 18, but not yet the pensionable age, and
b. whose personal list is kept in the Registry Office, and

		c. has entered into an employment agreement with an in Aruba resident, respectively incorporated natural or legal body, and
		d. has completed his probationary period;
employer	:	the in Aruba resident, respectively incorporated natural or legal body that has the employee in service;
institution	:	a life insurance company to which a license is granted as referred to in article 5 of the National ordinance supervision insurance business (AB 2000 no. 82);
annuity	:	a payment as referred to article 11, second paragraph;
pensionable age	:	the age of 60
associate	:	the one who entered into an insurance agreement with an institution and who is also the beneficiary of that agreement;
private pension fund	:	a fund as referred to in the National ordinance pension funds (AB 1998 no. GT 17);
participant	:	the one who is described as such in article 1 of the National ordinance private pension funds;
pension rendering wages	:	the wages that are stipulated in the premium agreement or in the regulations of the private pension fund as basis for the pension build-up, but which is minimally equal to 12 times the monthly gross salary, or, if the employee receives a variable monthly salary, minimally 12 times the fixed gross monthly salary increased with at least half of the average variable wages enjoyed in the last 3 years;
premium	:	a. the by an associate due amount for the benefit of the build-up of the pension capital; b. the for the participant due contribution to the build-up of a pension claim;
pension capital	:	the capital that is available when reaching the pensionable age and is used to buy an annuity;
administration costs	:	the at the cost of the premium sum all one-time and continuous costs that an institution or a private pension fund has during the term of an insurance agreement, respectively the build-up of a pension claim;
partner	:	a. the spouse of an associate or participant; b. the unwed person who shares a household with the (former) associate respectively participant, which appears from:

1. a notary partnership contract that is legally valid, and was entered into at least a year earlier, and
 2. being registered in the Registry administration at the same address as the unwed person as associate or participant, and
 3. registration as such of the associate or participant and the unwed person at an institution with which the person in question has an insurance agreement as referred to in article 2, second paragraph, or the private pension fund in which the person in question is participant.
2. By state decree, holding general provisions, other companies can be considered an institution in the sense of this national ordinance if the lack of competition between the institutions referred to in the first paragraph make such advisable.

§2. General provisions

Article 2

1. In the scope of the implementation of this national ordinance the business of an employer is associated to a private pension fund or, in other words, the employer has entered into a premium agreement with an institution, holding provisions with regard to the insurance agreement of his employees.
2. In the scope of the implementation of this national ordinance an insurance agreement is entered into between an employee who is not a participant and an institution, which includes a life insurance agreement for the benefit of the build-up of capital for the purchase of an annuity. The employee can also insure the surviving relatives' risk and the disability risk.
3. A life insurance agreement as referred to in the second paragraph, insures in any case the capital that is the total of the premiums, with interest.

Article 3

1. Every employer whose business is not associated to a private pension fund has a 5-year term premium agreement with an institution.
2. A premium agreement regulates at least the following subjects:
 - the pension yielding wages;
 - a premium percentage;
 - the administration costs;
 - the way in which those administration costs are ascribed to the employer and the associates; and

- the standard conditions of the insurance agreement of the associates, including a clear statement of the return that is acquired by the associates during the build-up of the pension capital.
- 3. A premium agreement does not diminish the right of an employee to maintain a prior by him entered into insurance agreement in the sense of this national ordinance, either or not premium free.
- 4. The premium agreement is available for perusal for each employee at the residence or office of the employer.
- 5. The insertion in the premium agreement of quantum deductions on administration costs of the insurance agreements is allowed if the deduction is solely related to the number of employees that have an insurance agreement with the institution with which the employer has entered into a premium agreement. The deduction will, however, never amount to more than 75% of the administration costs for each separate insurance agreement.
- 6. The employer that after termination of the term of his premium agreement wishes to enter into a premium agreement with another institution or a private pension fund, or wishes to associate with an existing private pension fund, does this only after it is apparent to him that at least two-third of his employees agree thereto.
- 7. When a premium agreement lapses the employees have the right to propose to their employer to enter into a premium agreement with another institution or incorporate a private pension fund or associate with an existing private pension fund if a third of them support this idea. If the employer rejects the proposition, he will make this clear in a substantiated letter directed to the employees.

Article 4

1. Every employee has an insurance agreement with the institution with which the employer entered into a premium agreement, unless he is an associate.
2. An insurance agreement insures the pension against payment of a premium, on the grounds of which the right to an annuity payment exists upon reaching the pensionable age.
3. The person who:
 - a. at the time of employment with an employer has not yet entered into an insurance agreement, or
 - b. during the term of his employment agreement becomes employee in the sense of this national ordinance, enters into an insurance agreement at the latest three months after that time, respectively after reaching this status.

4. If the employee does not comply with the regulation as referred to in the third paragraph, the employer enters into an insurance agreement with the institution with which he has entered into a premium agreement for the benefit of the employee in question.

Article 5

1. The premium of an associate, respectively a participant amounts to at least 6% of his yearly pension yielding salary.
2. Undiminished the first paragraph, if a premium amounts to at least 10%, the annual pension yielding salary can be decreased with Afl. 12,336.-.
3. As regards an associate respectively a participant the premium amounts to such a sum that an annual pension commitment of at least 1.0% of his pension yielding salary, decreased with Afl. 17,616.- can be made.
4. By state decree, holding general provisions, the sums, referred to in the second and third paragraph, can be adjusted to amendments made in other concerning regulations.

Article 6

1. The pension capital of the reserve value of a pension claim up to reaching the pensionable age of the associate or the participant is not eligible for redemption, transfer, alienation, pledging, attachment or pawning to third parties, nor can it be involved in the bankruptcy of the associate or participant.
2. The pension capital or the reserve value of a pension claim up to reaching the pensionable age is not taken into consideration in the judgment of a by the associate or participant in accordance with the regulations by virtue of the National ordinance social welfare (AB 1989 no. GT 27) submitted request for social security.

§3. The rights of the associate respectively the participant

Article 7

1. An employee who changes jobs has the right to cancel the insurance agreement valid for his former employment agreement. If the employee enters the service of an employer who has a premium agreement with another institution, this employee enters into a new insurance agreement with this institution. He can then order the institution with which he already had an insurance agreement to transfer the reserve value of the

pension capital to the institution with which he entered into a new insurance agreement. The transfer takes place after annulment and acceptance by the receiving institution, after which the sum has to be transferred within four weeks to the other institution. The first, third and fourth sentence are applicable if the employee changes jobs, and enters service of an employer who has associated his company to a private pension fund.

2. To an employee who is participant in a private pension fund to which for his benefit for at least ten years premiums have been paid, the first paragraph is equally applicable, in the understanding that the reserve value is at least equal to the total of premiums with the acquired interest, except for risk premiums. The employee for whose benefit at least ten years of premiums have been paid, till reaching the pensionable age is entitled to a premium free pension claim, unless he becomes participant again in that private pension fund. The first and second sentence are equally applicable if the employee enters service of an employer whose company is associated with another private pension fund.
3. For the calculation of the in the first or second sentence referred to reserve value, the institution of the private pension fund may charge a maximum amount of Afl. 250.- in fees. By state decree, holding general provisions, the amount, referred to in the first sentence, may be adjusted.
4. The associate who not immediately after terminating a prior employment enters the service of another employer, is entitled to postpone premium payment of a current insurance agreement during a period of three months at the most before moving on to premium release.

Article 8

1. An associate has the right to deposit higher premiums than the amount of the premium mentioned in the for him applicable insurance agreement.
2. An associate respectively a participant, in the event of a shortage in the last five years on the total premium as referred to in article 5 first respectively second paragraph, has the right to deposit an additional premium with his institution or private pension fund.
3. An associate respectively a participant, in the event of a shortage in the last five years in the build-up of the pension claim as referred to in article 5, third paragraph, has the right to deposit an additional premium in the private pension fund or deposit an additional single premium pension for the purchase of an annuity in accordance with an insurance agreement as referred to in article 2, second paragraph.
4. The additional deposits, as referred to in the first, second and third paragraph, are limited to the in article 9 sixth paragraph of the National ordinance income tax mentioned maximum amount.

§4. The premium

Article 9

1. The by an employee due premium upon reaching the pensionable age is partly for the cost of the employee and partly for the cost of his employer.
2. The in article 5 first, second and third paragraph referred to minimal premiums at the latest upon reaching the pensionable age of the employee, are for at least half for the cost of the employer, in the understanding that the division of the premium is equal for all employees.

Article 10

1. The employer monthly withholds for the account of the employee part of the premium due on his wages and pays this together with his part of the premium to the institution with which the employer has the insurance agreement, or to the private pension fund with which his company is associated.
2. From the in the first paragraph referred to requirement of the monthly payment can be deviated if the premium is paid in advance.

§5. The pension

Article 11

1. An associate uses the pension capital after reaching the pensionable age completely or in part for purchasing an annuity with the same or a different institution.
2. The annuity has the form of a lifelong monthly payment to:
 - a. the associate, or
 - b. the associate and his or her partner.
3. An associate who has presented a partner to the institution buys an annuity as referred to in the second paragraph, sub b. If the associate has a partner who is also an associate or participant, the associate can buy an annuity as referred to in the second paragraph, sub a, if his or her partner files a statement of his or her approval thereto with the institution of the associate.
4. In choosing an annuity as referred to in the second paragraph, sub b, the surviving partner, upon death of the associate or his or her partner, receives a sum of at least 70% of the prior by them enjoyed or expected payment.
5. The purchase of an annuity takes place against either a fixed interest or a variable interest with a yearly increase of 2% at the most.

6. In deviation of the first paragraph an associate upon reaching the pensionable age and at the most ten years after that date, has the right to once a year postpone the existence of the right to purchase an annuity with a whole or part of a year; in which case the pension capital is actuarially recalculated based on the new entry date. If the associate uses his pension capital in part, the insurance agreement remains intact as regards the remaining capital.

Article 12

1. The pension regulations of a private pension fund stipulates that the right to pension payment exists upon reaching the pensionable age.
2. Undiminished the first paragraph, the pension regulations of a private pension fund stipulate that participants upon reaching the pensionable age and at the most ten years after that date, have the right to once a year postpone the payment of the pension with another year and the pension claim is actuarially recalculated based on the new entry date.

§7. The obligations of the institution

Article 13

1. The institution mentions in the announcement, ads or an example of the by her presented premium agreement, as well as in the premium agreement itself, the premium build-up that arises from the parts of the premium, the administration costs, and, if for coverage of those risks is chosen, the premiums for disability and death.
2. An institution and a with an institution associated middleman do not advertise with comparisons between by the institution offered premiums or insurance agreements and those of other institutions, nor will they be making comparisons between the by the institution and other institutions offered premiums or insurance agreements during consultations with an employer or employee.
3. An institution and a with the institution associated middleman make no other prognoses of the pension capital and annuities than the guaranteed pension capital, unless the prognosis with regard to the dividends or interest is based on the interest that the Central Bank of Aruba prescribes to institutions.
4. An institution and a with the institution associated middleman offer no combinations of a premium or insurance agreement with other by the institution offered financial products or services, nor does the institution obligate the employer or his employees to purchase other financial products or services from the institution.

5. An institution makes no price agreements with other institutions as regards the by them offered premiums or insurance agreements or the in the first paragraph mentioned parts thereof.

Article 14

In July of every year the institution sends the associate:

- a. an overview of the built-up capital by the associate, and
- b. a statement that the with him entered into insurance agreement and the in that scope made deposits meet the regulations referred to in articles 4 second paragraph, 5, 7, and 8 first paragraph of this national ordinance and the regulations concerning the application of the National ordinance income tax.

Article 15

The institution informs an associate in writing of the fact that arrears in payment of more than 3 months have occurred. The notification is made within thirty days after these arrears have occurred.

Article 16

An institution fulfills the obligations resulting from article 15a of Book 3 of the Civil Code of Aruba.

Article 17

1. Six months before the associate reaches the pensionable age and at the latest nine years afterwards, the institution sends an overview of the pension capital and a letter notifying him that he can convert the pension capital in whole or in part into annuities before that date.
2. If an associate during those nine years has not used his pension capital in whole or in part to buy an annuity, half a year before the tenth year after reaching the pensionable age ends the institution sends him the notification that the associate has to convert the pension capital into an annuity before that date.
3. If the associate does not comply with the second paragraph, the institution converts the capital in a to the respective associate to be awarded annuity as referred to in article 11 second paragraph, sub b, unless the associate has not registered any partner with the institution, in which case for the associate an annuity as referred to in article 11 second paragraph, sub a, is purchased. In both cases the purchase takes place by applying the in article 11, fifth paragraph, referred to fixed interest.

Article 18

At the request of the associate the institution handles a from another institution or pension fund transferred sum due to changing employment as a contribution over past employment years and converts this in an increase of the pension capital. Article 7, third paragraph is equally applicable.

Article 19

1. an institution can only annul a premium agreement as referred to in article 2, first paragraph, or an insurance agreement as referred to in article 2 second paragraph, if in all fairness they cannot be asked to uphold the premium agreement, respectively the insurance agreement.
2. An institution does not annul an insurance agreement of an associate who is no longer an employee.

§8. The executive pension body

Article 20

This national ordinance is not applicable to the employee who is building up his own pension in an executive pension body as referred to in article 15a of the National ordinance income tax (AB 1991 no. GT 51), with the exception of articles 5, 8 through 12, 21 first and second paragraph, and 23, which are equally applicable, and article 26, which is applicable.

§9. Unusual provisions

Article 21

1. If an associate divorces or separates, or ends his enduring joint household before the capital is converted into an annuity, his or her former partner acquires a claim on half of the between the time of the wedding or the time of existence of the enduring joint household and the time of divorce or the time of terminating the enduring joint household built-up capital.
2. The first paragraph is not applicable if the former partners in a notary deed have agreed otherwise, or the judge at their joint request decided otherwise in the divorce pronouncement.
3. The institution with which an associate as referred to in the first paragraph has an insurance agreement, pursuant to the first paragraph transfers the capital due to the former partner to an institution with which the former partner has entered into an insurance agreement, unless the former partner proves to already dispose of an insurance agreement, in which case the sum will be transferred by the institution to the institution with which that insurance agreement was entered into. Article 7, third paragraph is equally applicable.

Article 22

1. If a participant divorces or separates, or ends his enduring joint household, before the pension claim is realized, his or her former partner has a premium free claim on half of the pension claim that between the time of the wedding or the time of existence of the enduring joint household and the time of divorce or the time of terminating the enduring joint household existed. The private pension fund at request issues a statement of the existence of this claim. Article 21, second paragraph is applicable,
2. If the participant and his or her former partner agree to a different coverage of the pension risk, they file a statement of the private pension fund stating that the fund is willing to cover the agreed pension risk.

Article 23

A claim on partner pension cannot be reduced by agreement between the associate and the institution or private pension fund, or the associate respectively the participant and the employer without permission of the partner involved. Each stipulation in violation with the former sentence is null and void.

Article 25

1. The person who has been associate but of whom the updating of the personal list in the Registry has been suspended because he left Aruba, has the right to redeem his insurance agreement only three years after he left.
2. The institution that received a request as referred to in the first paragraph, verifies with the Registrar whether the updating of his personal list is suspended and with the Tax Department whether the person involved has tax or social premiums debts. If there are debts these will be deducted from the amount to be transferred by the institution and paid to the State.
3. Subject to the application of the second paragraph the institution pays the value within six weeks after the request and deposits it on an account to be given by the person involved, under deduction of costs. Article 7, third paragraph, is equally applicable.
4. The participant who has a similar position as the associate as referred to in the first paragraph has the right to demand:
 - a. if he has been a participant for ten years: the value of the total savings premiums, and
 - b. if he has been a participant for less than ten years: the value of the premium free claim.

The second and third paragraph are equally applicable.

Article 25

The associate or participant who upon reaching the pensionable age receives a pension payment of less than Afl. 50.- per month, has the right to:

- a. redeem the pension capital in an annuity against the actuarial value of the pension capital;
- b. buy an annuity in the form of a lifelong payment that is by choice paid every six or twelve months.

§10. Supervision

Article 26

1. With the supervision of the compliance of the provisions by virtue of this national ordinance are charged the thereto by state decree appointed persons. Said state decree is published in the National gazette of Aruba.
2. The by virtue of the first paragraph appointed persons, solely for as far as this is reasonably necessary for the fulfillment of their duties, are authorized:
 - a. to ask for all information;
 - b. to demand perusal of all company books, documents and other data carriers and make copies thereof or take them with them temporarily;
 - c. to enter all locations, with the exception of residences without the specific approval of the resident, accompanied by a person appointed by them;
 - d. to enter residences without the specific approval of the resident who they suspect to be an employer, accompanied by persons appointed by them.
3. If necessary the access to a location or residence as referred to in the second paragraph, sub c respectively d, is gained with the help of the police.
4. Before applying this competence, referred to in the second paragraph sub d, the supervisor presents a picture I.D. and asks, if possible in a language that the person involved understands, under notification as to why they are there, the resident for permission to let them enter the house; if permission is not given, the supervisor presents a power of attorney from the magistrate which power of attorney mentions the home address and if possible the name of the resident, and provides the resident with a copy thereof.

5. By state decree, holding general provisions, regulations are laid down with regard to as to how the persons appointed by virtue of the first paragraph have to do their job.
6. Everyone gives the persons appointed by virtue of the first paragraph the cooperation that is required on the grounds of the second paragraph.

§11. Administrative enforcement

Article 27

1. The Minister can impose a charge under penalty as regards the infringement of regulations laid down by virtue of articles 3, 4 fourth paragraph, 5, 7, 9, 10 first paragraph, 12 first paragraph, 13 through 17, 21 third paragraph, 24 second and third paragraph, and 26 sixth paragraph. The Minister withdraws the charge if the violation can no longer be undone.
2. As regards the facts referred to in the first paragraph the Minister can impose an administrative fine to an amount of two hundred and fifty thousand florins per separate violation.
3. The Minister lays down rules as regards the procedures of practicing the competencies referred to in the first and second paragraph.
4. By state decree, holding general provisions, regulations are laid down with regard to the principles for assessing the height of the charge under penalty and the administrative fine per infringement. The infringements are categorized by seriousness of the violation with the pertaining basic sums, minimum sums and maximum sums.
5. Forfeited penalties and administrative fines belong to the State.

Article 28

He who the Minister acted against, to whom in all fairness the conclusion could be drawn that he would be imposed an administrative fine due to a violation by virtue of this national ordinance, is not obligated to make any statements thereto. He will be notified thereof before he is asked for information.

Article 29

1. The administrative fine is due within six weeks after the date of the decision by which it was imposed.
2. The administrative fine is increased with the statutory interest, to be counted from the day on which six weeks have passed since the notification of the decision.

Article 30

1. The competency to impose an administrative fine expires:
 - a. if as concerns the violation criminal proceedings are instituted and the on trial investigation has started, or the right to criminal proceedings has expired pursuant to article 76 of the Criminal Code of Aruba (AB 1991 no. GT 50);
 - b. three years after the day on which the non-compliance of the regulation was established.
2. The term referred to in the first paragraph sub b, is interrupted by a notification of the decision in which the administrative fine was imposed.

Article 31

1. The Minister is competent, in view of the fact to which regard the charge under penalty or the administrative fine is imposed, to publicize the infringed regulation, as well as the name, address and domicile of the person on whom the administrative fine is imposed.
2. The Minister can lay down rules concerning the enforcement of the competency referred to in the first paragraph.
3. The decision for publication takes effect on the day on which the fact is publicized, without the effect for the duration of the term of appeal, or, if appeal was instituted, of the appeal, being suspended, if the person involved has no known address and the address cannot be acquired with reasonable effort.

Article 32

The Minister keeps record of the acts that in the scope of an investigation prior to imposing an administrative fine have taken place, with mention of the persons who performed those acts.

Article 33

1. If a forfeited penalty or fine is not paid within the term stipulated by the Minister, the violators are summoned in writing to pay the amount of the penalty or fine within two weeks, increased with the cost of the summons.
2. In default of payment the Minister can collect the sum and the costs as referred to in the first paragraph, increased with the collection costs, from the violator by means of a warrant.
3. The publication of the warrant occurs by means of serving a writ as referred to in the Code of Civil Procedure of Aruba and renders an executorial title, which can be enforced by applying the regulations of that code.

4. The warrant mentions in any case:
 - a. in the heading the word warrant;
 - b. the sum of the recoverable principal, increased with the statutory interest;
 - c. the legal regulation from which the money due results;
 - d. the cost of the summons and of the warrant;
 - e. that it can be enforced at the cost of the violator.
5. For six weeks after the date of serving the writ the warrant can be objected against. Objection is instituted against the Minister at the court of first instance and in the manner stipulated. The objection, if timely and correctly instituted, suspends the enforcement of the warrant.

§12. Transitional and final provisions

Article 34

1. In deviation of article 5 first respectively second paragraph, the minimum percentage is:
 - a. as of January 1, 2012 through December 31, 2012: 2%, respectively 3.33%;
 - b. as of January 1, 2013 through December 31, 2013: 4%, respectively 6.67%.
2. In deviation of article 5 third paragraph, the minimum build-up percentage is:
 - a. as of January 1, 2012 through December 31, 2012: 0.33%;
 - b. as of January 1, 2013 through December 31, 2013: 0.67%.
3. By state decree, holding general provisions, having heard the Social Economic Council, can be stipulated that the increase of the minimum percentage of the premium, referred to in the first paragraph sub b, and the second paragraph sub b, takes effect on January 1, 2014.

Article 35

1. This national ordinance takes effect on January 1, 2012, with the exception of article 4 fourth paragraph, which takes effect on January 1, 2013.
2. She can be referred to as national ordinance general pension.

Given in Oranjestad, December 30, 2011
F.J. Refunjol

The minister of General Affairs,
M.G. Eman

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

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