

## EXECUTIVE BRANCH - NATIONAL DECREE LAW NO. 9

### THE BANKING ACT<sup>1</sup>

(February 26, 1998)

*"Whereby the banking system is reformed and the Banking Superintendence is created"*

#### *The President of the Republic*

Exercising his constitutional powers and especially those conferred upon him by Numeral No. 1 of Law No. 1 of January 2, 1998, upon receiving the favourable opinion of the Cabinet Council.

#### **DECREES:**

### HEADING I - GENERAL RULES AND DEFINITIONS

**Article 1. Scope of Application.** This Act shall apply to those natural and legal persons that perform Banking Business in or from Panama and to the Representative Offices.

**Article 2. Undertaking of Banking Business.** Only those persons that have obtained the corresponding license may undertake Banking Business in or from Panama. Likewise, those Public Persons authorised by laws to do so, may undertake Banking Business in Panama.

**Article 3. Definitions.** For the effects of this Act, the following terms shall have the meaning attributed to them as follows:

1. Productive Assets: Such loans and investments which regularly generate income, independently of where they are located, as provided by the Banking Superintendence.
2. Local Productive Assets: Such productive assets financially located in the Republic of Panama
3. Bank: Every person that performs Banking Business or that acts as a Representative Office.

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<sup>1</sup> This Act is actually a Decree Law, adopted by the President and Cabinet Council, rather than by the National Assembly. Nevertheless, for the purposes of this translation, we have translated it throughout the text as "Act".

4. Foreign Banks: Branches or Subsidiaries of banks whose headquarters are located outside of the Republic of Panama.
5. Panamanian Banks: Such Banks whose headquarters are located in the Republic of Panama.
6. Official Banks: Such of those where the State is majority owner.
7. Assigned Capital: Such part of the paid equity capital of a Foreign Bank which is destined or assigned to Banking Business effected in or from Panama, through its branches.
8. Foreign Supervisory Body: The official entity which is responsible for banking supervision in such countries in which the headquarters of the Foreign Bank Subsidiaries or Branches are located.
9. Establishment: Every office, branch or agency of a Bank which is dedicated to Banking Business. Such equipment, machinery, systems and offices expressly excluded by the Superintendence are excluded from this definition.
10. Financial Statements: The Balance Sheet, Profit and Loss Statement, and the Equity Statement.
11. Non-Guaranteed Credit Facilities: Those granted without guarantees of rights in rem or those which, having them, the value of the same is inferior to the amount owed.
12. Capital Funds: The primary and secondary capital of a Bank.
13. Economic Group: That group of natural and legal persons whose interests are interrelated in such a way that, in the view of the Superintendence they should be considered as a single person.
14. Interest: The sum or sums which, in any form or under any denomination, is charged or paid for the use of money.
15. Board of Directors: The Board of Directors of the Banking Superintendence.
16. Banking Business: Principally the operation of capturing financial resources from the public or financial institutions by acceptance of money in deposit, payable upon sight or term or by any other means authorised by this Act, and the use of such and other resources, at the expense and risk of the Bank, for loans, investments or any other

operation authorised by this Act, the Superintendence or banking usages.

17. Representative Office: Such office established to act as a representative of Banks that do not operate in Panama, without undertaking Banking Business in or from the Republic of Panama.
18. Subsidiary: Legal persons owned totally or in the majority by another, or over which administrative control is exercised. Those legal persons with respect to whom the Bank acts as a trust agent are excluded from this definition.
19. Branch: Entity which does not have legal personality separate from the Main Office, and which is thereby, an integral part of the Bank.
20. Superintendence: The Banking Superintendence.
21. Superintendent: The Banking Superintendent.

## **HEADING II - THE BANKING SUPERINTENDENCE**

### *Chapter I - General Terms*

**Article 4. Creation of the Superintendence.** The Banking Superintendence is hereby created as an autonomous organ of the State, with legal personality and its own property.

In order to guarantee its autonomy, the Superintendence:

1. Shall have separate and independent funds from Central Government and the right to administer the same.
2. Shall approve its budget for income and expenses, which shall later be incorporated into the General State Budget.
3. Shall choose and name its personnel, establishing their remuneration and shall have the power to dismiss the same.

The Superintendence shall act independently in the exercise of its purposes and shall be subject to the supervision of the General Comptroller of the Republic in accordance with that established in the Political Constitution and this Act. This supervision does not imply, in any way, interference with the administrative powers of the Superintendence.

The Superintendence is not subject to the payment of taxes, rights, fees, charges, contributions or tributes of a national or municipal nature, with the exception of

the social security quotas, educational insurance, those of professional risks, the fees for public services and import duties.

The Superintendence shall have the benefit of the same guarantees established in favour of the State and Public Entities in article 1963 of the Judicial Code.

**Article 5. Duties of the Superintendence.** The Superintendence shall have, in addition to those other indicated in this Act, the following purposes:

1. Guard that the solidness and efficiency of the banking system is maintained.
2. Fortify and foster favourable conditions for the development of Panama as an international financial centre.
3. Promote public confidence in the banking system and guard that the Banks that make it up maintain appropriate solvency and liquidity ratios to meet their obligations.
4. Prevent persons that are not authorised in accordance with this Act from undertaking Banking Business
5. Ensure that the Banks have adequate procedures that permit the supervision and control of their activities at a national and international level, in strict cooperation with the Foreign Supervisory Bodies, where applicable.
6. Sanction violations of this Act.

#### *Chapter II - Composition*

**Article 6. Board of Directors and Superintendent.** The Superintendence shall have a Board of Directors formed of five (5) directors having rights of voice and vote, and one Superintendent. The Executive Branch shall appoint the directors of the Superintendence, as well as the Superintendent.

The directors will not receive remuneration nor expenses, except per diems established by the Executive Branch for attendance at meetings of the Board of Directors or participation in official missions. The Superintendent, on his part, shall act as a full-time public servant and shall be remunerated with a wage, in accordance with that provided by the Executive Branch to that effect.

The Board of Directors shall elect a President from among its members, who shall exercise the position for a one-year term. Said term may be renewed.

**Article 7. Non Ratification.** The first article of Law No. 3 of June 16, 1987 shall not apply to the appointment of the directors of the Superintendence nor the Superintendent.

**Article 8. Prerequisites to be Director.** The following prerequisites are hereby established for holding the position of director of the Superintendence:

1. Be a Panamanian citizen.
2. Not have been convicted by a competent authority for any intentional or negligent, property-related crime.
3. No Directors shall be related within the fourth grade of blood relation or second degree by marriage, nor be the spouse of another director or the Superintendent.
4. Shall not hold any other public, paid position, nor any other ad-honorem public position which may create a conflict of interests, except that of professor in tertiary education establishments.
5. Possess a university degree and a minimum of seven (7) year experience in the banking, finance or other related sectors.
6. Not have been disqualified by the Superintendence to practice as a bank officer.
7. Not have been declared bankrupt nor subject to intervention by creditors, nor in a state of obvious insolvency.
8. Not be a practicing banker, nor director of a Bank, nor shareholder which directly or indirectly holds more than five percent (5%) of the shares of a Bank.

**Article 9. Term of the Directors.** The directors shall hold their offices for a term of eight (8) years from the date of appointment.

Nevertheless, in order to permit the staggering renovation of the positions of director of the Superintendence, in the initial appointment, two (2) directors shall be appointed for a term of five (5) years each, one (1) director for a term of seven (7) years; and two (2) directors for a term of eight (8) years each.

The appointment of the directors may only be extended for a single additional term of eight (8) years.

**Article 10. Prerequisites for the Superintendent.** The following prerequisites are established to act as Superintendent:

1. Be a Panamanian citizen.
2. Not have been convicted by a competent authority for any intentional or negligent, property-related crime.
3. Not be related within the fourth grade of blood relation or second degree by marriage to any director, nor be the spouse of another director or the Superintendent.
4. Possess a university degree and a minimum of seven (7) year experience in the banking, finance or other related sectors.
5. Not be a practicing banker, nor director of a Bank, nor shareholder which directly or indirectly holds more than five percent (5%) of the shares of a Bank or the Economic Group to which the Bank belongs.
6. Not have been disqualified by the Superintendence to practice as a bank officer.
7. Not have been declared bankrupt nor subject to intervention by creditors, no in a state of obvious insolvency.

**Article 11. Term of the Superintendent.** The Superintendent shall be appointed for a term of five (5) years, renewable for only one time thereafter. He may participate with a right to be heard in the meetings of the Board of Directors, except when they concern such subjects that, in the opinion of the Board of Directors, should be discussed without his presence.

**Article 12. Conflict of Interest.** When topics, over which some director or the Superintendent may have a conflict of interest, are discussed in meetings of the Board of Director, that director or the Superintendent shall abstain from participating in that meeting. In the absence of voluntary abstinence, the Board of Directors may formally request the respective director or Superintendent to absent themselves from the meeting.

In the event of the absence of one or more directors in a meeting of the Board of Directors because of a conflict of interest, the corresponding decision shall be taken by the favourable vote of half plus one of the directors present, which in no case shall be less than three (3) directors.

**Article 13. Duties of the Superintendent.** The Superintendent shall be responsible for the administration and handling of the daily management of the

Superintendence and shall hold the representation of the same, without prejudice to the other attributes indicated by this Act. In his absence, the legal representation of the Superintendence shall fall on the President of the Board of Directors. Nonetheless, in the event of temporary absence of the Superintendent, the Board of Directors may appoint an interim Superintendent until the incumbent Superintendent returns.

The Superintendent shall uphold and execute the resolutions adopted by the Board of Directors and shall ensure that the rules and policies established in banking matters is complied with. Likewise, he may propose to the Board of Directors the taking of decisions which correspond to them.

**Article 14. Dismissal.** Once appointed, neither the directors nor the Superintendent shall be dismissed unless for the causes contemplated in this Act, according to the decision of the Third Chamber of the Supreme Court of Justice, dictated in accordance with the process contemplated in article 289 of the Judicial Code. The Executive Branch and the Board of Directors have standing to request the dismissal.

**Article 15. Causes for Dismissal.** The Third Chamber of the Supreme Court of Justice may order the dismissal of a director or the Superintendent if any of the following causes materialise:

1. Permanent incapacity to fulfil his duties.
2. Declaration of bankruptcy, creditor intervention or a manifest state of insolvency.
3. Ceases to fulfil the requirements established for appointment.
4. Absence of integrity in the performance of his duties.
5. Reiterated non-attendance at meetings of the Board of Directors.
6. Failure to comply with the obligations and prohibitions imposed by this Act.

### *Chapter III - Attributes of the Board of Directors and the Superintendent*

**Article 16. Attributes of the Board of Directors.** The Board of Directors shall act as the consultative body and as the maximum authority for the regulation and establishment of general policies of the Superintendence. The following attributes correspond to the Board of Directors:

1. Approve the annual budget of the Superintendence.

2. Approve general rules for the identification and supervision of Economic Groups which Banks form part of.
3. Approve the rules of general application for the definition and identification of interrelated amounts due by clients, or related with the Banks or the Economic Groups that the Banks form part of.
4. Approve the general criteria of classification of the risk assets and the guidelines for the establishment of reserves to cover credit and market risks.
5. Approve rules of general application for the suspense of interest accrual, in accordance with the internationally accepted criteria.
6. Resolve appeals presented against resolutions of the Superintendent.
7. Establish, in the administrative environment, the interpretation and scope of legal or regulatory provisions in banking matters.
8. Establish the rules according to which the inspections prescribed by this Act or ordered by the Superintendence shall be undertaken on the Banks or the Economic Groups that the Banks form part of, respectively.
9. Establish the requirements, of an accounting nature, relating to the financial information which Banks shall supply, which includes the approval of a catalogue of accounts to be used by banks.
10. Establish the general rules to be followed by banks in their accounting.
11. Modify the regulatory and banking supervisory fees by affirmative vote of four of its members.
12. Advise the National Government in all such subjects related to the development of the banking system.
13. Cooperate with the Executive Branch in the regulation of the provisions of this Act and dictate its internal management, subject to the approval of the Executive Branch.
14. Such other as indicated by this Act.

**Article 17. Attributes of the Superintendent.** The following attributes correspond to the Superintendent:

1. Approve the issuance of banking licenses within the framework established by this Act.
2. Authorise the closing and voluntary transfer of Establishments in the national territory; likewise the opening of Branches or Subsidiaries of Panamanians Banks overseas.
3. Authorise the voluntary liquidation of Banks.
4. Decree the intervention, reorganisation and involuntary liquidation of Banks in those cases contemplated by this Act.
5. Authorise the merger and consolidation of Banks and the Economic Groups which the Banks form part of.
6. Authorise the acquisition or transfer of shares of Banks or of the Economic Groups which the Banks form part of when the acquirer or other natural or legal persons related to them, become total or majority owners or obtain control of the administration of the same, because of such acquisition or transfer.
7. Publish or order the publishing of the Financial Statements of the Banks with such frequency and content as he deems convenient.
8. Hire such advisors, auditors and supervisors as may be necessary for the fulfilment of the duties of the Superintendence.
9. Instruct the boards of directors of the Banks regarding the dismissal of managing or executive officers, where he deems there is cause for the same.
10. Issue certificates relating to the existence and activities of the Banks, based on the information recorded in the Superintendence.
11. Acquire such assets and contract the services which are necessary for the operation of the Superintendence, subject to that provided in this Act and its regulations to that effect.
12. Prepare the draft of the annual budget together with the annual report of the activities and projects of the Superintendence and submit them to the consideration of the Board of Directors.
13. Supervise the Banks, in attention to all that provided in the international conventions ratified by the Republic of Panama and internationally accepted rules and criteria.

14. Supervise the Economic Groups which the Banks form part of, through regular inspections of the analysis of the audited financial statements and other reports; likewise, to obtain information regarding the transactions and relations between the companies of the Economic Group, both nationally and internationally, for the purpose of supervision.
15. Perform the bank inspections ordered by this Act or by the Board of Directors and those, which according to his own initiative, deemed necessary or prudent.
16. In accordance with the Law, establish the salaries and other emoluments and appoint, transfer, promote and dismiss employees and officers of the Superintendence and apply the corresponding disciplinary sanctions.
17. Ensure the performance and efficient administration of the annual budget of the Superintendence.
18. Approve the banking calendar.
19. Present to the Board of Directors unaudited financial statements of the Superintendence within the two (2) months following the close of the first semester of each tax year.
20. Present to the Board of Directors financial statements of the Superintendence, audited by independent certified public accountants, within the three (3) months following the close of each tax year.
21. Delegate, subject to the decisions and directives of the Board of Directors, responsibilities, authority and duties to the other officers and employees of the Superintendence.
22. Present and deliver to the Board of Directors and annual task report.
23. Establish prevention programs which permit knowledge of the financial situation of Banks; likewise, verify the integrity of the information that the Banks remit to the Superintendence.
24. Designate advisors or supervisors for the Banks which are the object of special attention by the Superintendence.

25. Impose the penalties which correspond to the infringement of the rules of this Act or the regulations which are dictate hereunder, as the case may be.
26. Authorise such amendments to the Articles of Incorporation of the Banks as determined by the Superintendence.
27. Adopt measure to avoid or correct irregularities or faults in the operations of the Banks which, in their view, may place in danger the interests of the depositors, the stability of the Bank or the solidness of the banking system.
28. Ensure that the Banks supply their clients with the information which guarantees utmost transparency in banking operations.
29. Establish cooperative links with Foreign Supervisory Bodies to strengthen control mechanisms, update prevention regulations and interchange information that is useful for the performance of the supervisory duties.
30. Evaluate the financial indicators of the Banks and Economic Groups that Banks form part of, as the case may be, such as adequacy of capital, asset and liquidity risks, and such other as the Superintendence may consider convenient.
31. Cooperate with the efforts of competent public bodies to eradicate unfair competition practices or practices which limit the free competition in the banking market.
32. Dictate such other rules, within the scope of the activities permitted by Law, which the Banks shall observe in order that their operations may take place within acceptable levels of risk, including the capacity to establish limits and rations which the Banks must observe in their operations.
33. Solve all that which is not expressly reserved to the Board of Directors or another authority.
34. Such other as set forth in this Act.

**Article 18. Decisions of the Board of Directors.** The decisions of the Board of Directors shall be adopted by the affirmative vote of at least three (3) directors, except those cases specifically contemplated in this Act in which a greater number of votes are required.

The presence of at least three (3) directors shall be necessary to constitute a quorum.

*Chapter IV - Regulation Fee and Banking Supervision*

**Article 19. <sup>2</sup>Banking Regulation and Supervision Fee.** The regulation and banking supervision fee is hereby created in favour of the Superintendence. Banks shall pay the annual fee in accordance with the following rates:

1. Banks with a general license: Thirty thousand *balboas*<sup>3</sup> (B/.30,000.00) plus the equivalent of thirty five *balboas* (B/.35.00) for every million *balboas* (B/.1,000,000.00), or part thereof, in total assets, up to a maximum amount of one hundred thousand *balboas* (B/.100,000.00).
2. Banks with an international license: Fifteen thousand *balboas* (B/.15,000.00).
3. Banks with a representation license: Five thousand *balboas* (B/.5,000.00).

The fee amount shall maintain a strict relation with the costs which the Superintendence should incur in the rational and efficient fulfilment of its duties, in accordance with the budget. To this end, the Superintendence may, at its discretion, increase or reduce the amount of applicable fees.

Nevertheless, if upon finishing a budgeting exercise, balances remain from the fees paid, the Superintendent shall transfer said balances to a special account, which shall be destined to cover the costs corresponding to future duties. Where balances remain during two consecutive budget periods, the Superintendence shall reduce the fee as it considers appropriate, with a view to ensuring that the subsequent exercises do not generate such balances.

**Article 20. Other Resources of the Superintendence.** In addition to the Regulation and banking supervision Fees, the Superintendence shall have the following resources to cover operational costs:

1. The sum of the fees for inspection and other special services, which shall be paid by the Banks.

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<sup>2</sup> Modified by Article 20 of Law 97 (1998), published in the Official Gazette, No. 23,698 on the 23/12/98.

<sup>3</sup> The balboa is the national currency of Panama. One balboa is equivalent to one USD.

2. Accepted donations and legacies.
3. Assets and rights acquired or received by any means.
4. The profits and interests generated from assets.

### *Heading III - Banking System*

#### *Chapter I - Authorisations*

**Article 21. Banking Licenses.** With the exception of the Official Banks, no person shall undertake Banking Business in or from Panama without previously obtaining due authorisation from the Superintendence, through the issuance of the corresponding license.

Three (3) classes shall be issued, being:

**GENERAL LICENSE:** which shall permit the undertaking of Banking Business in any part of the Republic of Panama and the transactions executed, consumed or effected outside of Panama, and the undertaking of such other activities as the Superintendence may authorise.

**INTERNATIONAL LICENSE:** which shall permit, from an office established in Panama, the direction of transactions executed, consumed or effected outside of Panama, and the undertaking of such other activities as the Superintendence may authorise.

**REPRESENTATION LICENSE:** which shall only permit the establishment of one or more Representation Offices in Panama, and the realisation of such other activities as the Superintendence authorises. When using the trade name of the Bank which they represent, the Representation Offices shall always include the expression "Representation Office".

**Article 22. Validity of the Banking Licenses already Issued.** Banking licenses already issued by the National Banking Commission as of the date this Act enters into force, shall be recognised as valid.

**Article 23. Previous authorisation.** Foreign Banks must previously obtain the authorisation of their Foreign Supervisory Body to undertake Banking Business in or from Panama, or to set up Representation Offices.

**Article 24. Use of the word "Bank".** With the exception of the national institutions or groups which are dedicated exclusively to the humanitarian or charitable activities, or state entities dedicated to making sector loans because of social interest, no person that is not an authorised Bank may use the word "Bank" or any of its derivatives, unless licensed by the National Banking Commission or

the Superintendence; in any language, in their name, trade name, description or firm name in letterhead for invoices, letters, advisories, notices or any other means or in any other form which indicates that they undertake Banking Business.

**Paragraph:** Notaries are hereby prohibited to authorised Public Deed or copies of the same, minutes, declarations or instruments particular to their office, and authentication of signatures which contravene this article. Likewise, the Public Registry is prohibited with respect to filing of the same. The General Director of the Public Registry shall remit a report to the Superintendence regarding the existence of inscriptions which may violate the provisions of this article. The Banking Superintendent shall evaluate the report and order that an annotation be made in the margin of the filing of each company that does not comply with the above requirements, so that such company, sixty (60) calendar days after the corresponding annotation is made, shall, by operation of law, dissolve or become disabled with respect to undertaking business in Panama, according with whether it is a Panamanian or foreign corporation.

**Article 25. Undertaking Banking Business without a License.** The Superintendence shall be empowered, whenever it has knowledge of or reasonable cause to believe that a natural or legal person is undertaking Banking Business without a license, to examine books, accounts and documents, for the purpose of determining such facts. Every unjustified refusal to present such books, accounts and documents shall be considered as a presumption of the act of undertaking Banking Business without a license. The Superintendence shall impose fines of up to one hundred thousand *balboas* (B/.100,000.00) on those natural or legal persons that violate the provisions of this article.

Where necessary, the Superintendence may intervene in those businesses in which it is presumed that Banking Business without a license is being undertaken, and if such acts are proved, shall order the closing thereof, for which they may rely on the assistance of the Police Force.

The Superintendence is empowered to notify the Public Registry that a note be made in the margin referred to in the above article and that the appropriate sanctions be imposed.

**Article 26. Publication of Orders.** In every case in which the Superintendence orders the General Director of the Public Registry that a note be made in the margin referred to in articles 24 and 25, the Superintendence shall publish such order in a newspaper which is read in all the Republic for three (3) working days.

#### *Chapter II - Consolidated Supervision*

**Article 27. Foreign Banks with an International License.** The Branches or Subsidiaries of Foreign Banks with an international license shall be subject to the

supervision of the Superintendence and such other applicable rules in accordance with this Act and its regulations and development. Nonetheless, such Branches shall observe the liquidity requirements, capital adequacy and such other technical conditions that the legislation and the Foreign Supervisory Body establish, to which end the Regulatory Body shall exercise the corresponding consolidated supervision.

**Article 28. Foreign Banks with General License.** The Foreign Banks with a general license shall be supervised in a consolidated manner by the corresponding Foreign Supervisory Body, without prejudice to its governance by the provisions of this Act.

**Article 29. Inspection by Foreign Supervisory Bodies.** Foreign Supervisory Bodies may, solely for the purpose of supervision, request information and make inspection visits in Panama to Branches or Subsidiaries of Foreign Banks over which they exercise consolidated supervision.

The information gleaned shall be maintained in strict reserve and shall not be revealed by the Foreign Supervisory Body without the prior authorisation of the Superintendence. The Superintendence shall require sufficient guarantees of such reserve.

The Foreign Supervisory Body shall deliver a copy of all reports and documents prepared by reason of the inspection to the Superintendence.

**Article 30.** The Superintendence shall supervise, in a consolidated form the foreign Branches or Subsidiaries of Panamanian Banks.

**Article 31. Agreements or Understandings with Foreign Supervisory Bodies.** The Superintendence shall reach such accords or understandings with Foreign Supervisory Bodies which permit the consolidated supervision referred to in this Chapter and which guarantee the relations between these and those which are based on the principles of reciprocity and confidentiality and limited strictly to the purposes of banking supervision. Such accords shall specify the applicable criteria of the inspections and the interchange of information and cooperation between the entities.

### *Chapter III - Procedure for the Granting of Licenses*

**Article 32. Application for License.** The applications for banking licenses made to the Superintendence shall be made in writing through an attorney. The Board of Directors shall establish the requirements and other conditions which shall be met by applicants for the purpose of obtaining a banking license.

**Article 33. Criteria for the Approval or Denial of Banking Licenses.** The Superintendence shall evaluate the application and accompanying documentation, and shall approve or deny the same within the ninety (90) calendar days after all documentation required by the Superintendence has been presented, in accordance with the following criteria and any others which the Superintendence may establish:

1. Identity of the principal shareholders and competence of the administrative body, based on their experience, integrity and professional history.
2. Compliance with the requirements of minimal capital required, whose origin shall be clearly determinable and shall be characterised by "additionality", with a view to preventing the multiple of the same capital resources in different Banks.
3. Business plan which show the viability of the bank and its contribution to the Panamanian economy.

The term referred to in this article may be extended if, at the Superintendence's discretion, it is necessary for a better evaluation of the application in question.

**Article 34. Provisional Permission.** Where the application for a banking license is approved, the Superintendence shall grant a temporary license in the same resolution, in order that the Articles of Incorporation of the new company or foreign company requesting the use of the word "Bank", or any of its derivatives, may be filed in the Public Registry, until such time as the definitive license is obtained.

The provisional permit shall be granted for a term of ninety (90) calendar days.

**Article 35. Definitive License.** Once granted the provisional permit and within the period therefore, the applicant shall present an application for the definitive license in accordance with the requirements established by the Superintendence for that purpose.

Within the one hundred and twenty (120) calendar days following receipt of the application for a definitive license, the Superintendence should, by reasoned resolution, grant or deny the license, notifying the applicant personally of the resolution.

The term referred to in this article may be extended if, at the Superintendence's discretion, it is necessary given the particular circumstances of each application.

**Article 36. Opposition to the Granting of Licenses.** Within fifteen (15) calendar days after the date on which the Superintendence receives the application for a banking license, it shall publish a notice for three (3) working days in a newspaper of national circulation which shall contain the following information:

1. Name of the license applicant.
2. Name of the applicant directors and officers.
3. Operational history of the applicant.
4. Names and personal identification numbers or passports of the directors, officers and executive officers of the Bank, indicating their respective duties.

The audited Financial Statements of the applicant corresponding to the year prior to the presentation shall be available to the public in the Superintendence's offices.

Those persons that have reasonable grounds for opposing the issuance of the requested license, may present them in writing to the Superintendence and present such documentation which supports the same, should it exist, within the fifteen (15) calendar days after the date of the last publication referred to in the previous paragraph. Reasonable grounds shall include those which relate to the economic capacity and moral consistency of the applicant, of the entity which aspires to obtaining the banking license, and of the officers and directors of both and of the executive officers mentioned in the notice, and, in general, such demonstrable circumstances which make the establishment of the new banking entity in Panama disadvantageous. The Superintendence is no obliged to pronounce itself with respect to such oppositions and objections. Nonetheless, in any case, the applicant shall have the right to refute the objections against the granting of the banking license within the fifteen (15) calendar days following the date on which the Superintendence notifies them of the same.

The Superintendence has the discretion to grant or not the respective license, by reasoned resolution, taking into account the analysis of the documentation provided by the applicant and the investigations undertaken by the Superintendence.

**Article 37. Agents of Branches of Foreign Banks.** So that Branches of Foreign Banks are at no time lacking of a legal representative, Branches of Foreign Banks shall designate at least two (2) General Attorneys, both natural persons resident in Panama and one of which, at least, shall be a Panamanian citizen.

#### ***Chapter IV - Cancellation of Licenses***

**Article 38. Causes for Cancellation.** The Superintendent may cancel the license of any Bank which incurs in any of the following causes:

1. Ceasing to undertake Banking Business.
2. Failure to being operations within the six (6) months following the conceding of the definitive license.
3. Intervention of a Foreign Supervisory Body in the head office of the Bank or cancellation of its license, of that said Supervisory Body failed to undertake an effective consolidated supervision, in the Superintendence's judgement.
4. Failure to pay the regulation and supervision fees within the term established by the Superintendence for the same.
5. Serious repeated violation of the provisions of this Act, as determined by the Superintendence.
6. The other cases contemplated by this Act.

The cancellation of the license shall be done by reasoned resolution adopted by the affirmative vote of three (3) Directors.

Before cancelling the license, the Superintendence shall personally notify the Bank of its intention to cancel, specifying the respective causes, and the same shall have a period of twenty one (21) calendar days, counted from the date of notification, to explain the reasons for which they consider the license should not be cancelled, accompanying it with the existing evidence which they deem relevant. Once the period has expired, the Superintendence shall, in reasoned resolution, decide what shall take place. A motion for reconsideration is allowed against this decision. The decision regarding this motion exhausts the administrative actions.

**Article 39. Actions after the Cancellation of Licenses.** Once in effect the resolution by which the license is cancelled, the Superintendence shall immediately proceed to:

1. Communicate the action to the General Director of the Public Registry, with a view to making the corresponding note in the margin; and
2. Publish the resolution in a newspaper of general circulation for three (3) working days.

3. Appoint a liquidator who shall be responsible for the liquidation of the Bank in the terms provided for the involuntary liquidation of Banks.

**Article 40. Opening and Closing of Establishments.** No Panamanian Bank shall open a new Establishment in Panama without previously notifying the Superintendence.

The opening of establishments overseas shall require the previous approval of the Superintendence.

Likewise, when a Bank considers it necessary to close or transfer an existing Establishment, it shall obtain the previous authorisation of the Superintendence, for the sole purpose of overseeing that the closure is done in an orderly fashion and in a manner which protects the interests of the depositors in said Establishment.

#### *Chapter V - Capital*

**Article 41. Composition of Capital.** Bank capital shall be composed of a primary and secondary capital.

The primary capital shall be made up of the paid up share capital, the declared reserves and the retained earnings.

The secondary capital shall be made up of the undeclared reserves, the re-evaluation reserves, the general reserves for losses, any hybrid instruments of capital and debt and subordinated short-term debt. The Superintendence shall define and regulate each one of the secondary capital elements in accordance with the universally accepted conventional rules and shall establish the deductions to the base capital as it esteems technically necessary.

The secondary capital shall not exceed the amount of primary capital.

**Article 42. Minimum Capital.** Every Bank which undertakes Banking Business in Panama under the umbrella of a general license shall have a minimum paid up capital or assigned capital or ten million *balboas* (B/.10,000,000.00).

Every Bank which undertakes Banking Business from Panama under the umbrella of an international license shall have a minimum paid up capital or assigned capital or three million *balboas* (B/.3,000,000.00), of which two hundred and fifty thousand *balboas* (B/.250,000.00) shall be deposited in the National Bank of Panama or invested in Bank Guarantee Bonds consigned in said institution.

**Article 43. Compliance with the New Capital Requirements.** A non-postponable term of five (5) years, counted from the date this Act enters into force,

is hereby established so that those Banks with general licenses that at that moment are not in compliance with the new minimum paid in capital requirements may adjust to the same. To this end, those Banks shall increase their paid in or assigned capital each year by one fifth of the amount required for compliance.

The previous term shall not apply where the majority of the shares of the share capital of the Bank in favour of which these are established are transferred to third persons. In such cases, the corresponding increase in capital shall be made within the six (6) months following the transfer of the Bank's shares.

In every case, the Banks shall annually capitalise their profits, until reaching the minimum capital required.

The Superintendence may appoint an advisor for those Banks which do not comply with the minimum annual quotas for capitalisation established in this article. The advisor shall evaluate the Bank's situation and recommend to the Superintendence the reorganisation of the same, or the cancellation of the license and subsequent involuntary liquidation, as the Bank's situation indicates.

Once the five (5) year term mentioned in this article has expired, the Superintendence may, at its sole discretion, increase the minimum paid in or assigned capital required for Banks with general or international licenses, respectively.

**Article 44. Capital Reserves.** The Banks shall not diminish their capital reserves without prior authorisation of the Superintendence. For this purpose, capital reserves shall be understood as that composed of the funds accumulated in the Banking records arising from profits and which are destined to reinforce the financial state of these.

**Article 45. Adequacy Indexes and Balances.** Banks with general licenses shall maintain Capital Funds equivalent to at least eight percent (8%) of the total assets and operations outside of the balance, weighed according to risks. The Adequacy Index previously expressed may be increased by the Superintendence should it so consider convenient.

The balance indexes of assets and operations outsider of the balance shall be established by the Superintendence in accordance with the generally accepted international guidelines for these matters.

### *Heading III - Banking Regime*

#### *Chapter VI - Bank Liquidity*

**Article 46. Liquidity Requirements.** Every Bank with a general license shall maintain, at all times, a minimum balance of liquid assets equivalent to the percentage of total gross deposits in Panama or overseas which the Superintendence establishes from time to time. Such percentage shall not exceed thirty five percent (35%).

The credits or deposits received by a Bank with a general license from a Head Office or from a Branch, Subsidiary or foreign affiliate shall be excluded from the calculation of the total gross deposits for the purposes of calculations of the liquidity percentages.

**Article 47. Modifications to Liquidity Percentages.** The modifications to liquidity percentages shall be met within the period established by the Superintendence, which shall not be less than thirty (30) days. Upon this Act entering into effect, and until such time as the Superintendence shall resolve otherwise, the applicable liquidity percentage shall be thirty per cent (30%).

**Article 48. Liquid Assets.** For the purposes of the previous articles liquid assets shall be understood as those detailed below, insofar as they are free of all charges or liens and are freely transferable:

1. Gold or money of legal tender in Panama.
2. Net balances in the Clearing House in the Republic of Panama.
3. Net balances in any Bank in Panama, whether on sight or term, whose term does not exceed one hundred and eighty six (186) calendar days from the date of the liquidity report, and receivables in Panama which are current or whose term does not exceed one hundred and eighty six (186) calendar days from the date of the liquidity report.
4. Treasury instruments and other securities issued by the State whose term does not exceed one (1) year, at market value.
5. Net balances in foreign Banks previously approved by the Superintendence, whether current or term, whose term does not exceed one hundred and eighty six (186) calendar days from the date of the liquidity report, and payable in money which is legal tender in Panama.

6. Debt securities issued by foreign governments or international financial bodies authorised by the Superintendence, which are actively traded in securities markets and have an investment quality of market value determined by an internationally recognised risk qualifier;
7. Debt securities of private national or foreign companies approved by the Superintendence, which are actively traded in securities markets and have an investment quality of market value determined by an internationally recognised risk qualifier;
8. Debt instruments of private national companies guaranteed by Banks with general license, insofar as the issuing company and the underwriting Bank do not form part of the same Economic Group.
9. Debt bonds which are payable within one hundred and eighty six (186) calendar days from the date of the liquidity report;
10. Other assets which the Superintendence shall authorise by resolution.

The distribution of the amount of the diverse types of liquid assets referred to in this article shall be at the discretion of each Bank. Nonetheless, if advisable for the health of the system, the Superintendence may establish a proportion of determined liquid assets which may represent the total liquidity of a Bank.

**Article 49. Liquidity Reports.** The Banks shall present to the Superintendence liquidity reports in the form and with the periodicity that the Superintendence may determine.

**Article 50. Sanctions.** Violations of that provided in this chapter shall be sanctioned by the Superintendence with a fine of up to fifty thousand *balboas* (B/.50,000.00), without prejudice to other measures which the Superintendence may undertake in each case.

**Article 51. Relation between Assets and Local Deposits.** Every Bank shall maintain assets in Panama equivalent to a percentage of the local deposits. Said percentage shall be determined by the Superintendence according to the national economic or financial conditions, shall be identical for every Bank and shall not exceed one hundred per cent (100%) of said deposits.

The Superintendence shall determine what shall be understood as local deposits for the effects of this article.

**Paragraph:** Upon this Act entering into force and until such time as the Superintendence shall resolve otherwise, the percentage referred to in this article shall be eighty five per cent (85%).

#### *Chapter VII - Bank Interest*

**Article 52. Establishment of Interest Rates.** The Banks may freely fix the amount of the active and passive interest rates for their operations; therefore, the provisions of the Law 4 of 1935, Law 5 of 1933 nor those of other laws which establish maximum interest rates shall be applicable. Nonetheless, they shall indicate the current rate of their loans and deposits in their client account statements or at the request of these.

**Article 53. Public Announcements.** Banks shall indicate their current rates of active and passive operations when referring to the same in public announcements.

#### *Chapter VIII - Documents and Reports*

**Article 54. Right to Request Information from Banks and Economic Groups.** The Superintendence is hereby empowered to request to any Bank and any company of an Economic Group of which a Bank forms part, such documents and reports regarding their operations and activities. For these purposes, each Bank shall deliver to the Superintendence a descriptive list of such companies within thirty (30) calendar days from the entering into force of this Act, and notify any changes produced thereon within five (5) working days following the date of such change.

Those companies over which Banks exercise effective control of their operations as trust agents are exempted from the provisions of this article.

**Article 55. Presentation of Audited Financial Statements.** Within the three (3) months following the close of each tax period, Banks with general and international licenses shall present the Superintendence with the corresponding Financial Statements with respect to their operations undertaken in or from the Republic of Panama, respectively. The documentation referred to above shall be signed by the legal representative or general attorney of the Bank.

The Financial Statements referred to in this articles shall be audited and shall be presented, in observance with the technical rules established by the Superintendence.

**Article 56. Display of Financial Statements to the Public.** Banks shall display in each of their Establishments in Panama, during the entire year, in a place accessible to the public, a copy of their latest audited Financial Statements - with the respective notes, if there are any - and shall publish the same in a newspaper of

national circulation in the Republic within the three (3) months following the closing of each fiscal period.

**Article 57. Presentation of unaudited Financial Statements.** Banks within the system shall present to the Superintendence their Financial Statements within the thirty (30) calendar days following the close of each trimester of the year. The Superintendence may publish the same periodically, as established by the Superintendence in financial information bulletins. Likewise, it shall publish the consolidated information for the banking system. It may also, by general instructions, require that the Banks make available to the public, either permanently or occasionally, information regarding such subjects.

**Article 58. Other Reports.** Every Bank shall sent to the Superintendence within the period and in the form prescribed:

1. A statement which shows the assets and liabilities and results of its Establishments in Panama at the closing of its operations on the last working day of the previous month, and
2. A report which contains 1) an analysis and classification of the credit and investment portfolios of its Establishments in Panama at the close of operations, and 2) the conciliation of its capital accounts.
3. Any other information required by the Superintendence, with the frequency which this shall determine, without prejudice to that provided in Article 59.

**Article 59. Information regarding Liabilities.** The Superintendence may obtain from each Bank consolidated information of the liabilities which permits the calculation of its liquidity, as well as identification of geographical concentrations or distributions of unusual deposits which expose the Bank to excessive risks. The Superintendence shall no solicit the identity of the Banks depositors except where the deposits guarantee assets which are the object of analysis or supervision by the Superintendence.

**Article 60. Accountants Report.** Each Bank shall annually designate, at its expense, certified public accountants, whom the Superintendence considers duly specialised and professionally competent, whose responsibility it shall be to report to the shareholders or members of each Panamanian Bank or to the Head Office of Foreign Banks regarding the financial operations; and in said report such auditors shall state whether, in their judgment, the Financial Statements are complete, reasonable and show the genuine and correct state of the Bank's operations.

The certified public accountants report shall be read, together with the report of the Bank's directors, at the annual meeting of the shareholders or members of each Panamanian Bank. With respect to Foreign Banks, said report shall be remitted to the Head Office. A copy of the report shall be sent to the Superintendence.

In the case of Branches or Subsidiaries of Foreign Banks, the report shall have the same date as the Financial Statements of the Head Office.

**Article 61. Accountants Designated by the Superintendence.** Where a bank fails to make the designation required by the previous articles, the Superintendence shall do so, determining for these purposes the remuneration to which the certified public accountants so designated shall be entitled. This remuneration shall be at the Bank's expense.

#### *Chapter IX – Prohibitions and Limitations*

**Article 62. Prohibition of the Payment of Dividends or Profits.** No Bank shall declare, credit or pay any dividend, nor distribute or transfer all or part of its profits, unless in the form of shares, until it has complied with the minimum annual capitalisation quota referred to in article 43 of this Act, and it has amortised or has created sufficient reserves for the total amortisation of deferred costs, including herein the preliminary costs, organisational costs, commissions for the sale of shares, brokerage commissions, loss suffered and any other expense items which are not represented in the tangible assets of the Bank or which diminish the capital thereof.

**Article 63. Loans to a Single Person.** The Banks are prohibited from granting directly or indirectly to a single natural or legal person, including such others as form part of an Economic Group with the same, loans or credit facilities, or granting another guarantee or incur some other obligation in favour of said person, where the total exceeds at any given moment twenty five per cent (25%) of the Capital Funds of the Bank.

**Paragraph:** With respect to those Banks referred to in article 65 of this Act, the limit referred to in the first paragraph of this article shall be thirty per cent (30%) of the Capital Funds.

**Article 64. Loans to Related Parties:** Banks are prohibited from:

1. Granting or obtaining, directly or indirectly, loans or credit facilities with their own shares in guarantee.
2. Granting, directly or indirectly, loans or Non-Guaranteed Credit Facilities, which exceed five per cent (5%) of their Capital Funds; loans with guarantees in rem which are not deposits which exceed

ten per cent (10%) of the Capital Funds; and loans guaranteed by deposits in the Bank which exceed fifty per cent (50%) of the Capital Funds, in favour of:

- a) One or more of its directors or any natural or legal person that directly or indirectly holds five per cent (5%) or more of the shares of the Bank, whether individually or jointly;
  - b) Any legal person of which one or more of its directors is a director or officer or guarantor of the loan or credit facility;
  - c) Any legal person or association, in which the Bank, or one or more of its directors or officers, has an individual or joint interest which is significant, a preponderant influence, or in any case, participation in excess of twenty per cent (20%) of the ownership of the respective legal person.
  - d) Its managers, officers, employees and spouses of the same, unless it relates to mortgage credits for their principal residence, granted in accordance with the established procedures for personnel, or personal guaranteed loans.
3. Granting loans or Non-Guaranteed Credit Facilities in favour of any of their employees, whose total exceeds the salaries, wages or other annual emoluments corresponding to said employee.
  4. Granting loans or credit facilities to any of its managers, officers, employees, natural or legal persons that hold five per cent (5%) or more of the Bank's shares, or anyone that forms an Economic Group with any of the former, with rate or term conditions which differ from market's customary conditions in corresponding types of operations.

In any case, the accumulated unsecured loans or with guarantees in rem which are not deposits, granted by the Bank and those entities which form part of its Economic Group, to parties related to those mentioned in this article, shall not exceed seventy five (75%) of the Capital Funds of the Bank.

**Article 65. Exception regarding Loans to Other Banks.** In the cases of loans and other credit facilities granted without guarantee by Banks of mixed capital with Head Offices in Panama which are primarily dedicated to the granting of loans to other Banks, the Superintendence may authorise the total or partial exclusion of said loans or said credit facilities from the total amount of the

unsecured loans and facilities which serve as the base for the application of the limit established in numeral 2 of the previous article.

The authorisation referred to in the present article shall require the satisfaction of the following criteria:

1. The share participation in the debtor Bank, directly or indirectly, of a common director or officer shall not exceed five per cent (5%) of the capital of said Bank or of any amount which may assure the majority control in the decisions of said Bank.
2. The share participation in the creditor Bank, directly or indirectly, of the debtor Bank represented in any way by a common director or common officer shall not exceed five per cent (5%) of the total shares in circulation of the creditor Bank or of any amount which may assure the majority control in the decisions of said Bank.
3. The common director or common officer shall abstain from participating in the deliberations and in the voting effected by the creditor Bank with respect to the loan or credit facilities submitted to the effects of this article.
4. The loan or credit facility shall strictly comply with the customary parameters of reasonableness established in the credit policies of the granting Bank.

The Superintendent shall determine the amount of the exclusion with respect to each loan or credit facility submitted for his consideration.

The Superintendence may require such certifications as it considers relevant and order the necessary inspections for the adequate supervision of loans and other facilities which are governed by the present Article.

**Article 66. Economic Groups.** The application of the prohibitions established in Articles 63 and 64 shall take into account the existence of Economic Groups. Nonetheless, where the Economic Group is subsequent, that is, that it does not exist at the moment of entering into the obligations, the Bank shall not be considered to have infringed that set forth in said articles. In such case, the Superintendence shall concede a term in which the Bank can remedy the exceeding of the applicable limits. Where it is proved that the Economic Group existed at the moment of creation of the obligation, the Superintendence shall impose a fine on the Bank in question in accordance with that established in article 72 of this Act and order that the fault be remedied within a pre-emptory term.

**Article 67. Limitation of the Participation of the Bank in other Companies.**

Banks are prohibited from acquiring or possessing shares or participation in any other companies not related to the banking business, whose value exceeds twenty five percent (25%) of the Capital Funds of the Bank. Those investments which the Bank effects as fiduciary agent are exempted, as are the participations or shares which the Bank acquires for sums which are owed to it, in which case they shall be liquidated as soon as possible, in accordance with the economic interests of the Bank as deemed by the Superintendence, which may establish a period to this end.

**Article 68. Exceptions to the Participation Limits in other Companies.** That set forth in the previous article shall not impede the purchase and sale of shares on the account and by order of a client.

Nor does it impede, with prior authorisation of the Superintendence, the purchase or sale of shares on the account of any corporation which is organised for the purpose of assuring the bank deposits, promoting the development of a money or stock market in Panama, or the improvement of the system of financing economic development.

**Article 69. Prohibition on the Purchase or Leasing of Real Property.** Banks are prohibited from purchasing, acquiring or leasing real property for themselves, except in the following cases:

1. When necessary to realise their operations or for the lodging or recreation of their personnel;
2. When it acquires land for construction of any type of housing or urbanisation with a view to selling them and insofar that the sales are effected within the limited established in Articles 67;
3. In the case of exceptional circumstances and with the prior authorisation of the Superintendence.

Nevertheless, the Banks which have accepted real property to guarantee their credits may, in the event of default in payment, acquire such real property in order to sell the same at the first opportunity during the term ordered by the Superintendence, having regard to the economic interests of the Bank.

The Superintendence may establish, when it considers convenient, limits on the capacity of the Banks to concentrate risks in determined areas or sectors of the economy, in general terms.

**Article 70. Prohibition of Capturing Deposits.** Banks are prohibited from receiving deposits while in a state of insolvency, as well as receiving any other resources from anyone who has not been previously informed by the Bank of the

state of insolvency. No executive, director or officer of a Bank that has, or that should have, knowledge of said insolvency, shall accept or authorise the receipt of deposits or other resources, infringing that ordered in this article.

**Article 71. Merger.** No Bank that undertakes Banking Business in or from Panama shall merge or consolidate, nor sell all or part of its assets, when this is equivalent to a merger or consolidation, without the prior authorisation of the Superintendence.

**Article 72. Penalties.** Violations of that set forth in this Chapter shall be penalised by the Superintendence with fines of up to one hundred thousand *balboas* (B/.100,000.00), applicable both to the directors and bank executives that participate in the transaction or have or should have had knowledge of the breach, and the Banks, as the case may be.

**Article 73. Banks with International License.** Banks with International License are exempted from that set forth in this chapter with respect to limits of risk concentration and investments in other companies.

**Article 73-A.**<sup>4</sup> Loans or credit facilities, duly guaranteed by pledging of the deposits in the bank of up to the amount of the guarantee, are hereby exempted from the provisions of this chapter.

#### *Chapter X – Bank Inspection*

**Article 74. Inspections.** Every two (2) years the Superintendence shall undertake at least one inspection of every Bank; in order to determine the financial situation and whether it has complied with the provisions of this Act in the course of its operations. Said inspections shall include the Bank and the companies of the Economic Group that the Bank forms part of. The total cost of the inspection and the incidental expenses shall be paid by the Bank.

The Superintendence may choose between undertaking the inspections with its own personnel or contracting independent external specialised auditors, qualified for this, in which case, the auditor's report shall be evaluated by qualified personnel of the Superintendence.

Those companies over which the Bank exercises effective control of operations acting as fiduciary agent are exempted from that set forth in this article.

**Article 75. Penalties.** Any refusal by the Bank to submit to the inspection referred to in the previous article, shall be penalised by the Superintendence with a

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<sup>4</sup> Added by Article 21 of Law 97 of 1998, published in the Official Gazette, No. 23,698 on the 23/12/98.

fine of up to one hundred thousand *balboas* (B/.100,000.00), without prejudice to the application of the provisions of Article 38 of this Act. If any of the documents or reports presented are false in any way, the Bank shall be penalised with a fine of up to one hundred thousand *balboas* (B/.100,000.00), without prejudice to the corresponding criminal penalty.

### **HEADING III – THE BANKING SYSTEM**

#### *Chapter XI – The Consultant*

**Article 76. Conservatory Measures.** If, on the basis of the available information, the Superintendence deems that the Bank's operations are being undertaken in an illegal or negligent manner, or that its capital has been diminished or that the Banks lacks solvency, the Superintendence may, without prejudice to the immediate measures demanded by the Bank, designate a person that has the adequate preparation and experience so that, acting in the name of the Superintendence, they may advise the Bank with respect to the measures that should be taken to remedy the deficiency. The Superintendence shall determine the remuneration which the Bank shall pay the consultant.

In no case may the consultant be a director, officer, member or employee of an external auditing firm which has effected an inspection as referred to in the previous chapter. The natural persons that have practiced the inspection, as well as their partners or employees, where applicable, are equally barred from acting as consultants with respect to inspected Banks. The adviser referred to in this article shall be obliged to maintain strict reserve in relation to the information or documentation to which he has access in fulfilling his duties.

**Article 77. Powers.** The consultant referred to in the previous article shall have the powers determined in writing by the Superintendence at the moment of his designation or at a later date, and those inherent to the task assigned to him, and shall exercise his duties within the term determined to that effect by the Superintendence. In any case, it shall be understood that the consultant shall have access to all the bank's documents, minutes, correspondence and registers with a view to undertaking a complete evaluation of those irregular aspects of the operations or the administration of the Bank which have motivated the appointment of the consultant.

**Article 78. Periodic Reports.** The consultant shall render reports to the Superintendence with the necessary frequency, containing at least a detailed and precise narration of the Bank's situation with respect to the irregularities which motivated his designation. The Superintendence shall penalise any act or omission of the bank executives which impedes his labour or the execution of the preventive or corrective measures dictated by the Superintendence.

**Article 79. Final Report.** Upon expiration of the term of appointment, in his final report, the consultant shall issue an opinion with respect to the state of the Bank and the results of the measures ordered by the Superintendence to correct the irregularities which were experienced. Likewise, for the improved protection of the interests of the depositors, he may recommend to the Superintendence the termination of the consulting where the reasons that motivated the same have been remedied, or, if he deems necessary, the intervention, reorganisation or administrative liquidation of the Bank.

#### *Chapter XII – Incompatibilities*

**Article 80. Incompatibility of the Accountants.** No Certified Public Accountant or firm of Certified Public Accountants in which one of the partners or executives is an employee, director or officer of a Bank, or has or acquires the condition of shareholder or partner of a Bank, may act as external auditors of said Bank.

The former applies likewise to the external auditors that may be hired to undertake bank inspections in accordance with that provided in article 74.

**Article 81. Incompatibilities of the Directors or Managers of Banks.** Notwithstanding that provided in the Commercial Code or other applicable laws, any persons that performs the office of director or performs management functions in a Bank, shall cease his labours:

1. If declared in bankruptcy or insolvency proceedings;
2. If sentenced for any crime against property or honesty.
3. For serious misdemeanours in the management of the Bank, as determined by the Board of Directors of the Superintendence.

Such person shall not return to perform such office or duties in any Bank.

**Article 82. Prohibition to act as Director, Officer or Administrator of a Bank.** No person that has been a director or officer of a Bank at the time of its involuntary liquidation, or that has participated in the managerial functions of a Bank and is responsible for acts which have lead to the involuntary liquidation, shall act as a director or officer or participate in the administration of another Bank.

**Article 83. Notification to the Superintendence of Judicial Proceedings.** The Superintendence shall be notified of every civil or criminal proceedings started against a Bank or against its directors or executives, which is related to the

exercise of banking activity or with respect to the commission of crimes with intent.

### *Chapter XIII – Bank Secrecy*

**Article 84. Information regarding Bank Clients.** The information obtained by the Superintendence in the course of its duties, relative to individual clients of a Bank, may only be revealed to the competent authority in accordance with the legal provisions in force, within a criminal proceeding.

The Superintendence, including all its personnel and the external auditors, advisers and receivers appointed thereby, shall maintain the due reserve regarding all information delivered thereto or which has been obtained in accordance with this Act, and consequently, shall not be revealed to third persons, unless it relates to a competent authority as provided in this article. Such reports and documents which in accordance with this Act shall be made public knowledge are exempted from this provision.

Public officials who, by reason of the office which they perform, have access to the information mentioned in this article, shall maintain the due reserve even once their duties are terminated.

**Article 85. Banking confidentiality of the Banks.** The Banks shall only divulge information regarding their clients, when there is a formal request from a competent authority, made in accordance with the Law.

The Banks may divulge information regarding their clients to the institutions that act as credit centres, at the Banks discretion.

**Article 86. Penalties.** The breach of that set forth in this Chapter shall be penalised with fines of up to one hundred thousand *balboas* (B/.100,000.00), without prejudice to the civil or criminal penalties which may correspond.

### *Chapter XIV – Voluntary Liquidation*

**Article 87. Prior Approval.** Any bank may voluntarily decide to liquidate, for which it shall have the prior authorisation of the Superintendence. The Superintendence shall concede the authorisation only when the Bank has sufficient assets to meet its obligations.

**Article 88. Requirements for Voluntary Liquidation.** The Bank that requests the authorisation of the Superintendence for its voluntary liquidation, shall present the following documents:

1. The duly authenticated Resolution of the Meeting of Shareholders or of the competent body or corporate authority which approves the liquidation of the Bank.
2. Liquidation plan.
3. Certificate of the Public Registry which evidences the existence of the Bank, its directors and the legal representatives.
4. Financial statements audited by an independent auditor, corresponding to the last year or to the period which the Superintendence may determine.
5. All such other documents that the Superintendence may determine.

**Article 89. Publication.** Once authorised the liquidation, the Bank shall publish the resolution issued by the Superintendence in a newspaper of national circulation for five (5) working days. The five publications shall be made within fifteen (15) calendar days following the date in which the resolution was notified to the Bank. At the same time, the Bank shall remit to each depositor, creditor or interested person, a notice about the liquidation with the thirty (30) calendar days following the date on which the Bank was notified of the resolution.

**Article 90. Ceasing Operations.** Upon being conceded the authorisation for voluntary liquidation, the applicant Bank shall cease its operations and its powers shall be limited to those strictly necessary to undertake the liquidation, collect its credits, reimburse its depositors, pay its creditors and, in general, settle all business. Nevertheless, the Bank may undertake the following activities for up to fifteen (15) calendar days after the date of the last publication of the resolution mentioned in the previous article:

1. Pay the cheques which have been drafted against current accounts.
2. Act as a collection agent of banks or other financial institutions located overseas and remit the funds collected there under to said institutions.
3. Such other activities established to this effect by the Superintendence.

The authorisation for liquidation shall not prejudice the right of the depositors or creditors to receive the integral amount of their credits, nor the right of the titleholders of funds or other assets, to have the same returned. All legitimate credits of the creditors or depositors shall be paid, and all funds and other assets excluded from the estate which the Bank has in its power shall be returns to their

owners within the term that the Superintendence indicates upon authorising the liquidation.

The Bank shall carry out the assignment to other banks of the credits of those clients that so request, in the same conditions as they were undertaken.

**Article 91. Designation of the Liquidator.** The Bank shall designate a liquidator or liquidators with the prior approval of the Superintendence. The administrators of the same may act as liquidators of the Bank, with the prior approval of the Superintendence. The appointed liquidator or liquidators shall fulfil all the requirements set forth in article 101.

During the course of the voluntary liquidation, the liquidator or liquidators shall deliver to the Superintendence, with the frequency that it may determine, the reports which may be requested regarding the liquidation.

**Article 92. Prohibition of Distribution of Assets.** The Bank which decides to voluntarily liquidate may not make any distribution of the assets to its shareholders without have previously fulfilled its obligations to all depositors and other creditors, in accordance with the liquidation plan approved by the Superintendence.

In the case of disputed credits, the liquidator shall consign the amount subject to litigation before the respective judge for deliver in accordance with the resolution of a final sentence.

In the case of litigation in which the Bank is the defendant, the liquidator shall consign the amount subject to dispute before the respective judge, to guarantee the results of the proceedings. Where the Bank is absolved, the funds so consigned shall be returned to the Bank. If the liquidation process has concluded and where it not possible to return the funds to the Bank, the Superintendence shall be notified of the existence of the funds and these shall be deposited in the National Bank of Panama for the Bank, in accordance with the provisions of article 124 of the second paragraph of article 94, as may correspond.

**Article 93. Obligations of the Liquidator.** During the period of voluntary liquidation, the liquidator(s) shall be obliged to:

Notify the Superintendence if the assets are insufficient to cover the debts, in which case the receivership of the Bank shall proceed, in accordance with that established in the following chapter.

Inform the Superintendence regarding the course of the liquidation, with the frequency which it may determine.

**Article 94. Unclaimed Assets and Securities.** The unclaimed assets and securities shall be liquidated and sold and the yield of the sale shall be deposited in the National Bank of Panama in the name of the titleholder.

Upon concluding the liquidation, if unclaimed credits or liquid amounts remain, the liquidator shall deliver the amount necessary to cover the same to the National Bank of Panama. Such deposited funds shall be transferred to the State if they have not been claimed after five (5) years. Likewise, the assets and securities may be sold by the liquidator, with the prior approval of the Superintendence, after the first year, and upon the completion of the fifth year, the yield of their sale shall be transferred to the State, if it has not been claimed by its owners.

**Paragraph:** The provisions of this article shall be interpreted without prejudice to the right granted in article 155.

#### *Chapter XV – Receivership and Reorganisation*

**Article 95. Grounds for Receivership.** The Superintendence, through reasoned resolution, shall intervene in the business of a Bank, taking possession of the assets and assuming the administration on the terms which the Superintendence determines, on any of the following grounds:

1. Upon the well-founded request of the Bank itself
2. If the Bank reduces its Capital Funds under that required by this Act.
3. If the Bank ceases to fulfil the Adequacy Index dealt with in article 45 of this Act above the level of affected assets which is indicated by the Superintendence.
4. If the Bank undertakes its operations in an illegal, negligent or fraudulent manner.
5. If the Bank is in a state of suspended payments.
6. If the Bank repeatedly breaches the liquidity requirements contemplated in this Act.
7. If the Bank cannot continue its operations without risking the interests of the depositors.
8. If the assets of the Bank are not sufficient to integrally satisfy its liabilities.
9. If the Superintendence judges it convenient, for undue delay in the voluntary liquidation.

10.If the Bank breaches the reorganisation plan proposed by the Superintendence.

**Article 96. Appointment of the Receiver.** In the resolution which decrees the receivership, the Superintendence shall appoint the receiver(s) which it deems necessary, with a view to their exclusive exercise of the legal representation, administration, and control of the intervened bank, in accordance with that provided in article 100. The receiver(s) shall inform the Superintendence of the progress of their conduct.

**Article 97. Notice of Receivership.** The Superintendence shall order the fixing of a copy of the resolution which decrees the intervention in a public and visible place in the principal place of business of the Bank and its branches. In this, the hour in which the receivership goes into effect shall be indicated, which shall not be prior to the fixing of the notice, which shall remain so fixed for a period of five (5) working days. The fixing of the notice in the principal place of business of the bank shall be understood as notification. The resolution shall be published for five (5) working days in a newspaper of national circulation.

**Article 98. Suspension of Deadlines.** While the Bank remains under the intervention of the Superintendence, it shall be understood that all prescriptive time limits of all rights and actions to which the Bank is entitled are suspended, as well as the terms of all lawsuits and proceedings in which the Bank is a party. Said deadlines shall remain suspended until the intervention phase is finished, unless the involuntary liquidation is ordered immediately, in which case the provisions of article 119 of this Act shall apply.

**Article 99. Measures for Contesting.** The resolution which decrees the intervention may be contested through an action in administrative law of plenary jurisdiction<sup>5</sup> before the Third Chamber of the Supreme Court of Justice in accordance with the Law. The resolution which order the receivership may be suspended in the course of the action in administrative law of plenary jurisdiction or of the writ of constitutional guarantees when in the judge's opinion it is necessary to avoid a serious and irreparable damage.

**Article 100. Powers of the Receiver.** The receiver(s) shall have within his powers:

1. Suspend or limit the payment of the obligations of the Bank, for a period which in no case shall exceed the term of the receivership.

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<sup>5</sup> Describe the jurisdiction and right of action

2. Employ such supporting personnel as necessary and remove from office those employees which wilful or negligent acts have instigated the receivership.
3. Attend to the correspondence and grant any document in the name of the Bank.
4. Make an inventory of the assets and liabilities of the intervened bank and remit copies of the same to the Superintendence.
5. Upon the completion of the term of the receivership, recommend to the Superintendence the return of the administration and control of the intervened bank to its directors or its reorganisation or involuntary liquidation.
6. Any other powers which, with the prior well-founded request of the receiver(s), shall be authorised by the Superintendence for a specific purpose.

**Article 101. Prerequisites of the Receiver.** To be a receiver, a minimum of five (5) years administrative experience in the banking sector shall be required. In the case that more than two receivers are appointed, their decisions shall be taken by a majority vote. If there are an even number of receivers, and there is no majority for a decision, any one of them may submit the issue to the Superintendence who shall decide forthwith.

The receiver shall carry out the intervention process with the most speed and diligence.

**Article 102. Period of Intervention.** The period of receivership shall be for thirty (30) calendar days unless, on exceptional grounds and with the prior well-founded request of the receiver(s), the Superintendence decides to extend the same; in which case the extension shall not exceed thirty (30) calendar days.

**Article 103. Final Report.** Upon the expiry of the period of intervention, the receiver(s) shall deliver a final report to the Superintendence, in which they shall evidence:

1. The relevant aspects of their performance.
2. An inventory of the assets and liabilities of the Bank.
3. The recommendation to proceed with a reorganisation, or the involuntary liquidation of the Bank, or the return of the administration and control to the directors.

**Article 104. Evaluation of the Receiver's Recommendation.** The Superintendence shall have a period of fifteen (15) calendar days in which to decide whether it accepts the recommendation of the receiver(s) or whether to proceed in another manner. Within this period, the state of receivership shall continue, and the Superintendence may summons the receiver(s) to render such additional explanations of his performance as many times as it deems necessary.

In no case shall the receivership phase exceed seventy five (75) calendar days.

**Article 105. Prohibition of Sequester, Embargo, Retention or Bankruptcy Application.** The intervened Bank may not be subjected to sequester, embargos, retentions or any other cautionary measures. Likewise, the receivership suspends the prescription of all credits and liabilities of the Bank, as of the date of notice dealt with in article 97.

Neither may debts of the intervened Bank, originating from before the intervention, be paid without the authorisation of the Superintendence.

**Article 106. End of the Intervention.** If during the period of the receivership, the cause which gave rise to the same is fixed, the receiver(s) may request the termination to the Superintendence, which shall have a period of fifteen (15) calendar days to approve or deny this request. In the event of being approved, upon the expiry of such period, the administration and control shall be returned to the directors.

**Article 107. Reorganisation.** If within the period established in article 104 of this Act, the Superintendence decides that the reorganisation of the Bank is necessary, it shall prepare a reorganisation plan which shall contain the following:

1. The appointment of one or more reorganisers who shall have no direct nor indirect relation with the Bank. The reorganisers shall exercise the exclusive administration and control of the Bank, while the reorganisation is underway, and shall respond to the Superintendence. They shall be persons with a minimum of five years administrative experience in the banking industry.
2. The general terms necessary to achieve an efficient and secure operation of the Bank, taking into consideration the interest of the depositors and creditors, and of the shareholders or members.
3. The instructions for the removal of any director, officer, executive, administrator or other employee which is considered necessary.
4. The period during which the reorganisation shall be completed, which may be extended for a period of equal duration by the

Superintendence, based on the reasoned requested of the reorganisers.

During the reorganisation period, the Shareholders of the Bank shall remain unable to take decisions which obstruct the progress of such process.

Where, in the course of a reorganisation, situations arise or occur which make the plan unfair, or its execution inconvenient or impossible, the Superintendence may modify it, or decree the liquidation of the Bank in accordance with the administrative procedures which are established further on.

**Article 108. Reorganisation without Prior Intervention.** The Superintendence may decree the reorganisation of a Bank without necessarily ordering previously its receivership, when it deems so necessary for the better protection of the interests of the depositors and to ensure the solvency and continuity of the Bank, on the basis of the reports provided by the adviser dealt with in article 76 or in the results reached in the inspections undertaken.

**Article 109. Powers of Reorganisation.** The Superintendence shall have the fullest powers to commence a reorganisation of a Bank. Consequently, the Superintendence may require that the shareholders of a Bank, within the short period indicated, pay the necessary additional capital to solve the situation and the results of the Bank. If the shareholders do not undertake the required contribution, the Superintendence may: a) amortise the losses against the paid in capital and reserves; b) appoint new administrators; c) authorise the issuance of new shares of the Bank, as well as their sale to third parties, at the price which the Superintendence determines; d) negotiate the merger or consolidation of the Bank with one or more Banks, the obtaining of loans, the sale or partial liquidation of its unproductive assets or the establishment of liens over the same; or e) commence the liquidation process.

**Article 110. Publication and Compulsoriness of the Reorganisation Plan.** The putting into effect of the reorganisation plan shall be preceded by its publication for five (5) consecutive working days in a newspaper of national circulation in the Republic and, while this is in effect, it shall be compulsory for all the creditors of the Bank, and no involuntary liquidation, sequester, embargo or other cautionary measure against its asses shall proceed.

**Article 111. Termination of the Reorganisation State.** Upon the expiry of the reorganisation period or its extension, if the reorganisation has not been satisfactorily concluded, or at any moment that the Superintendence considers necessary because the Bank is in a state of insolvency, or for any other motive which makes its recuperation impossible or extremely difficult, the

Superintendence shall terminate the reorganisation and order the involuntary liquidation of the Bank.

**Article 112. Restitution of Control of the Bank.** Upon the satisfactory conclusion of the reorganisation process, the Superintendence shall return the administration and control of the Bank to its directors or legal representatives, as the case may be.

**Article 113. Expenses of the Intervention or Reorganisation.** All expenses incurred in the intervention or reorganisation, including the salaries and emoluments of the receivers and interim administrators, as fixed by the Superintendence, shall be at the expense of the intervened Bank.

**Article 114. Contestation of the Reorganisation.** The resolution which decrees the reorganisation may be contested through an action in administrative law of plenary jurisdiction<sup>6</sup> before the Third Chamber of the Supreme Court of Justice in accordance with the Law. The resolution which orders the reorganisation may be suspended in the course of the action in administrative law of plenary jurisdiction or of the writ of constitutional guarantees when in the judge's opinion it is necessary to avoid a serious and irreparable damage.

## **HEADING XVI – INVOLUNTARY LIQUIDATION**

**Article 115. Liquidation Order.** If the Superintendence deems necessary the involuntary liquidation of the intervened or reorganised Bank, it shall pronounce a reasoned resolution in which it orders the administrative liquidation and appoint one or more liquidators who shall meet the same requirements as established to act as receiver of a Bank.

The liquidator shall direct the course of the involuntary liquidation process, taking into account the following criteria:

1. The swiftness which the process should adopt, with a view to liquidating with the most promptness possible, the assets of the Bank to satisfy any amounts due.
2. The informality and transparency of the process.
3. The respect of the rights and preferences recognised by this Act.

**Article 116. Notice.** The Superintendence shall order the fixing of a copy of the resolution which orders the involuntary liquidation of the Bank in a public and

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<sup>6</sup> Describe the jurisdiction and right of action

visible place in the principal place of business of the same and its branches. This notice shall indicate the hour in which the liquidation order shall enter into effect, which shall in no case be prior to the fixing of the notice and shall remain fixed for a period of five (5) working days. Upon the expiry of the five (5) working days of the fixing of the notice in the principal place of business, the notice shall be understood as effective. Likewise, the Superintendence shall order the publication of the resolution for five (5) working days in a newspaper of national circulation.

**Article 117. Suspension of Interest.** As of the resolution which orders the involuntary liquidation, interests against the liquidation estate shall cease, unless they relate to secured credits with lien or mortgage, in which cases the creditors may demand the current interests of the amounts due up to the yield of the item so pledged.

**Article 118. Contestation of the Liquidation Order.** The resolution which decrees the involuntary liquidation, may be contested through an action in administrative law of plenary jurisdiction<sup>7</sup> before the Third Chamber of the Supreme Court of Justice in accordance with the Law.

The resolution which orders the reorganisation may be suspended in the course of the action in administrative law of plenary jurisdiction or of the writ of constitutional guarantees when in the judge's opinion it is necessary to avoid a serious and irreparable damage.

**Article 119. Suspension of Deadlines.** When a Bank is found to be in a state of involuntary liquidation, all statutes of limitations for a right or action of which the Bank is a titleholder, and all deadlines of lawsuits or proceedings in which the Bank is a party, shall be suspended for up six (6) months.

**Article 120. Appearance of Depositors and other Creditors in the Liquidation.** The resolution which decrees the liquidation shall require that the depositors and other creditors appear at the Bank to submit the amounts due. Said depositors and creditors may appear at any moment until such time as the liquidator delivers the report dealt with in the following article, which shall in no case exceed thirty (30) calendar days. Nevertheless, the failure to appear shall not affect those credits due whose existence is established in the accounts of the Bank.

**Article 121. Preliminary Report.** The liquidator shall prepare a preliminary report which shall contain the following:

1. Name of the creditors of the Bank.

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<sup>7</sup> Describe the jurisdiction and right of action

2. Identification of the amounts due.
3. Title or evidence of the amounts due and their priority.
4. Financial situation of the Bank.

The report shall be published for three (3) working days in a newspaper of national circulation. The creditors shall have a term of thirty (30) calendar days, as of the last publication to request any clarifications or to formulate any objections which they may wish to.

**Article 122. Resolution of Objections.** Upon the expiry of the thirty (30) calendar days referred to in the previous article, the liquidation shall dictate a reasoned resolution which settles the objections formulated and which shall present the following:

1. The assets which make up the estate of the liquidation;
2. The amounts due which were accepted and those which were rejected, indicating the nature of the same and their amounts;
3. The order of priority in which the amounts due from the estate shall be paid.

Likewise, in a separate book, the liquidator shall dictate a resolution which shall contain a list of the assets excluded from the liquidation estate.

The resolutions dealt with in this article shall be published in a newspaper of national circulation for five (5) working days, and may be contested before the Third Chamber of the Supreme Court of Justice within the three (3) working days following the last publication by way of petition of appeal or by way of motion. The support shall take place before the liquidator, who may at his prudent discretion order the accumulation of all or various of the motions or the appeals, as the case may be. Upon the completion of this process, the liquidator shall send the various files to the Third Chamber of the Supreme Court of Justice for the purpose that the challenges be decided.

The liquidator may proceed to cancel the amounts due recognised in the resolution which have not been contested, as long as those amounts due which have been rejected and contested are intact.

**Article 123. Liquidation Estate.**<sup>8</sup> All assets and present and future rights of the Bank in liquidation make up the liquidation estate.

The following do not form part of the liquidation estate:

1. The securities which have been delivered to the Bank for their recovery and which have been acquired on another's account, as long as they are issued or endorsed directly in favour of the principal or beneficiary.
2. The funds dispatched to the Bank to advance a commission, agency or trust, as long as there is written evidence of the existence of the contract on the date on which the liquidation was decreed. This shall include the severance funds, the pension and retirement funds and such other monies that the Bank administers.
3. In general, the identifiable items which although found in the possession of the Bank, belong to another person, which shall be certified with sufficient evidence.
4. The assets deposited in security boxes in the Bank and in general the chattels or securities which the Bank holds as depository or custodian.

The liquidator shall return to the depositors the assets which do not form part of the estate within the ninety (90) calendar days following the date on which the resolution dealt with in the second paragraph of article 122 becomes binding. Said return does not incorporate any pronouncement whatsoever by the liquidator as to the title of the assets.

**Article 124. Continuation of the Liquidation Process.** If after the termination of the liquidation of a Bank the existence of assets or rights of property of the Bank become known, the Superintendence shall order the continuation of the liquidation process, with a view to liquidating such assets and paying any unpaid liabilities.

Those persons that consider themselves affected by the resolution may contest it through a petition of reconsideration before the Superintendence or by way of motion before the Third Chamber of the Supreme Court of Justice.

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<sup>8</sup> The term "liquidation estate" has been utilised herein to refer to all assets of the bank which are to be liquidated.

**Article 125. Rescission of Contracts.** As of the date on which the resolution which decrees the involuntary liquidation becomes final, all contracts to which the Bank is a party shall be rescinded by operation of law.

Without prejudice to aforesaid, the liquidator shall notify the debtors of the Bank of the conclusiveness of said resolution and shall request that they appear at the Bank to discharge their obligations, for which they shall have a period of two months, upon the expiry of which the corresponding liquidation procedures may be invoked.

**Article 126. Debts of the Estate.**<sup>9</sup> The following shall be deemed debts of the estate:

1. Those which arise from the judicial costs or extra-judicial operations incurred in the common interest of the creditors for the verification and liquidation of the assets and liabilities of the liquidation, for the administration, conservation and settling of the assets of the Bank and for the distribution of the price which they yield, including the fees of the liquidator, the salaries of the personnel that tender their services in the liquidation and the operating costs of the Bank;
2. All those that result from acts or contracts legally performed or celebrated by the liquidator;
3. The amounts which the Bank shall return for having rescinded an act or contract of the Bank and the due indemnification of the holder in good faith of the items which the liquidation recovers by replevin;
4. The sums which the Bank should return for having received the same as the price for the securities and other assets of another which the liquidator may have sold;
5. The current national and municipal taxes;
6. The amounts due which arise in favour of other Banks in the system as a result of the insufficient funds of the Bank in the exchange of the Clearing House;

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<sup>9</sup> In Spanish “deuda de la masa” – this refers to those debts which are given priority over all other debts, as they are incurred in the administration of the liquidation itself.

The liabilities of the estate shall be paid with preference of all other amounts due by the Bank, except those amount guaranteed by lien or mortgage dealt with in article 128.

**Article 127. Priority Order.** Except that provided in other articles of this Act, the amounts due against the estate of the liquidation shall be paid in the following order:

1. Amounts due of a employment nature;
2. Amounts due to the Social Security Fund for worker-employee quotas for employees of the Bank;
3. Amounts due of a fiscal nature to the National or Municipal Treasury, as well as the rates for public services tendered by the State;
4. The deposits dealt with in article 131 of this Act;
5. The remaining deposits and other amounts due;

The amounts due in each one of the previous categories shall be paid prorated. Each category shall exclude the other, in accordance with the order established in this article up to the limit that the assets of the Bank reach.

The preferences or priorities established by special laws shall not apply to the Banks.

**Article 128. Amounts due Guaranteed by Lien or Mortgage.** Except for the sums due to the Treasury as real estate tax, the amounts due guaranteed by lien or mortgage shall have priority over any other amounts due, with respect to the assets so pledged, up to their value. The creditors may present such amounts due in the liquidation or demand separately through the corresponding summary executive process.

**Article 129. Liquidation of Assets.** The liquidator shall negotiate the sale and liquidation of all the goods, rights and other assets of the Bank in the most advantageous conditions possible, in accordance with the following rules:

1. In the case of real estate or chattels, rights or other assets whose value is less than twenty thousand *balboas* (B/.20,000.00), the liquidator may sell them for a value which shall not be less than that which results from an evaluation carried out by at least two (2) independent experts. The liquidator shall determine, according to

the circumstances, if the evaluation referred to in this subsection shall be carried out by one (1) or two (2) experts.

2. In the case of real estate or chattels, rights or other assets whose value exceeds twenty thousand *balboas* (B/. 20,000.00), the liquidator may sell them by private auction, following the auction or judicial sale procedure contemplated in the articles 1732 and following of the Judicial Code, to the extent that these are applicable.
3. In the case of mortgage, pledge or other types of credits, the Superintendence is hereby granted summary jurisdiction for the liquidation of such amounts due, applying herein the rules regarding summary proceedings contained in the Judicial Code. The Superintendence may delegate its powers to one of its officials, as long as s/he is a duly qualified lawyer, to act as Executing Judge.

The foregoing is without prejudice to the power of the liquidator to assign the amounts due to other Banks.

**Article 130. Financial Leasing.** In relation to those assets leased by the Bank in accordance with the Financial Leasing Control of Personal Property, that provided in Law No. 7 of the 10<sup>th</sup> of July of 1990 and in the Executive Decree No. 76 of the 10<sup>th</sup> of July of 1996 shall be observed.

**Article 131. Preference in the Payment of Deposits.** Those deposits of five thousand *balboas* (B/.5,000.00) or less belonging to natural persons shall be paid with preference over the remaining deposits, as contemplated in the foregoing article 127. For the effects of the recognition of this priority, the deposits that a single natural person shall have in the same bank shall be added.

The Superintendence may, when it esteems convenient, revise the amount indicated in the previous article, to bring it up to date, in accordance with the Consumer Price Index.

**Article 132. Dissolution of the Bank.** Upon concluding the liquidation, the Superintendence shall proceed to decree the dissolution of the Bank, and shall send the corresponding official letter to the Public Registry.

**Article 133. Cautionary Measures and Embargos.** The assets of a Bank in liquidation are not susceptible to cautionary measures or to embargos unless founded on a right in rem.

**Article 134. Appeal to the Superintendent.** Those resolutions dictated by the liquidator which are not susceptible to being contested before the Third Chamber of the Supreme Court of Justice may be appealed before the Superintendent.

**Article 135. Illegality of Bankruptcy.** It shall be unlawful to request the declaration of bankruptcy of Banks. Nevertheless, upon the involuntary liquidation the rules of the Civil, Commercial and Judicial Codes shall be applied in a complementary manner, insofar as they are not incompatible with the provisions of this Act.

Notwithstanding the foregoing, when the Superintendent considers that the requirements of a negligent or fraudulent bankruptcy referred to in the Commercial Code are met, he shall remit a copy of the relevant acts to the Attorney General's office for the corresponding criminal effects.

**Article 136. Applicable Legal Rules.** The Banks which are found in a liquidation process upon the entering into force of this Act shall be regulated by the Cabinet Decree No. 238 of the 2<sup>nd</sup> of July of 1970 and further provisions which modify or add to the same.

#### **HEADING IV – PENALTIES**

**Article 137. Generic Penalties.** The Superintendence shall impose the administrative penalties which correspond to the acts which violate the provisions of this Act, in accordance to the seriousness of the fault, its recurrence and the damages caused to third parties.

The acts which violate this Act for which there is not contemplated a specific penalty, shall be punished by the Superintendence, at its discretion and without prejudice to the corresponding criminal action, in accordance with any of the following penalties:

1. Private warning
2. Public warning
3. Fine of up to fifty thousand *balboas* (B/.50,000.00)

The penalties specifically contemplated in this Act, as well as the generic penalties contemplated in this article may be imposed by the Superintendence on the Bank and/or its directors, officers, managers, employees and the other officials who have participated in the perpetration of the violation. In the latter case, the Bank shall be jointly responsible for the fine imposed on such persons. Likewise said fines shall be imposed on the officials of the Superintendence who have incurred in violations of the provisions of this Act.

**Article 138. Progressive Fines.** In all cases in which the commission of acts which violate the provisions of this Act last over time, the Superintendence shall impose progressive fines until the commissioned violation is rectified.

## **HEADING V – PROTECTION OF THE USER OF BANKING SERVICES**

**Article 139. Special Rules and Definitions.** The protection of the consumer or user of the banking services shall be regulated by the special rules contained in this Heading.

For the effects of this Heading, the following terms shall be understood as follows:

1. Provider: All person duly authorised by a general license to exercise Banking Business in the Republic of Panama. Therefore, the person that undertakes Banking Business by virtue of an international or representation license shall not be considered a provider.
2. Consumer or User: Natural or legal person that acquires from a provider a banking service which meets the following conditions:
  - a) In the case of a natural person, relating to financing destined to the consumer operations of the user personally or of their family, or for the construction or improvement of their home, insofar as the use or investment of the corresponding funds take place in the Republic of Panama, and in the case of a legal person, that it refers to a small business. For the purposes of this article, a small business is considered to be one whose assets and capital do not exceed one hundred thousand *balboas* (B/. 100,000.00) and whose annual sales or services rendered do not exceed one hundred thousand *balboas* (B/.100,000.00).
  - b) That the amount does not exceed thirty five thousand *balboas* (B/. 35,000.00).
3. Banking services or contracts: Banking services are those rendered by a provider to a user within the framework of the definitions and within the limits indicated in this article. Banking contracts are the documents in which the provision of such services is agreed.

**Article 140. Application of Law 29 of 1996.** In matters of the protection of the consumer or user of banking services, the pertinent provisions of the Law 29 of the 1<sup>st</sup> of February of 1996 shall apply, insofar as they do not contradict the provisions of this Heading. Insofar as they are applicable, said provisions shall be

interpreted in the administrative sense and in any case shall be applied in accordance with the rules and principles established in the present Heading.

The Superintendence shall have the authority to develop the provisions of this chapter, fixing the meaning, scope and interpretation of the rules contained herein. Likewise, it shall correspond to the Superintendence to oversee that the current rules in matters of protection of the user of banking services are complied with in banking contracts.

**Article 141. Provision of Information.** With respect to the contents of article 31 of Law 29 of the 1<sup>st</sup> of February of 1996, only that set forth in numerals 1, 2, 7, 9, 12 and 13, which establish the obligation to provide information to clients shall be applicable to the providers.

For the purposes of that established in said numerals, and where the banking contracts comply with the requirements of the law, providers shall be understood to comply with the obligation to provide information to their users, with the delivery of the document that contains the contract or the terms and conditions of the respective service.

The user may sign blank supplementary documents, where they are related to the principal transaction which they supplement and they are clearly identified as such. In such case, the principal contract or another document executed by the Bank and by the user, shall specify a brief description of the blank supplementary document(s) signed. Any signed blank supplementary documents shall be destroyed by the provider or returned to the user if not utilised, once concluded or extinguished the particular operation in question. The return may be made by registered mail to the postal address of the user or any prudent means.

The foregoing shall be understood without prejudice to the provisions of the Law of Negotiable Instruments.

**Article 142. Invalidity of Clauses in Adherence Contracts.** For the purposes of that provided in Article 34 of the Law 29 of the 1<sup>st</sup> of February of 1996, the provisions, in any banking adherence contract, which implies the abandonment or reduction of a right recognised in this law and its amendments or regulations shall be considered void. Those clauses which imply abandonment of the rights or procedures, expressly permitted by other laws, are excluded from the effects of said cause for nullity.

**Article 143. Revision of the Banking Contract Models.** For the purposes of the Banks, Article 35 of the Law 29 of the 1<sup>st</sup> of February of 1996 shall be applied in the following manner:

1. The Providers shall maintained at the order of the Superintendence the models of the banking contracts and other related supplementary documents, with a view to that they can be examined to determine if these fulfil the provisions of the Law.
2. The Superintendence may issue its recommendations to the providers, upon examining the contracts and other supplementary documents. The recommendations made by the Superintendence shall not be understood “per se” as a violation of the Law 29 of 1996, as an infringement or as cause for the imposition of a penalty.
3. The review and approval of a contract or any document by the Superintendence shall not inhibit a user in his right to have recourse to a judicial authority in the case that he considers that his rights have been infringed.

**Article 144. Written Contracts:** The provisions of articles 60 and 61 of Law 29 of the 1<sup>st</sup> of February of 1996 shall not apply to banking contracts and transactions. The following shall apply in its place:

In those cases in which the law or the banking usages and practices, as generally observed in the market, require that a banking contract or transaction be evidenced in writing, the same shall contain at least the following basic information:

1. Complete name, nationality, domicile and personal identification number of each one of the contracting parties. In the case of legal persons, it should indicate the trade name, the data of the registration identification, the place of business plus the complete details of the legal representative;
2. Detailed description of the contracted services;
3. The total amount of the contracted obligation or of the transaction in question, expressed in monetary terms, in those cases where this is applicable;
4. Indication of the frequency in which the payments or quota payments shall be made, the amount of the same and the place at which they shall be made;
5. The period of the contracted obligation or the term of the contract;
6. The nominal interest rate and the applicable effective interest rate, indicating the calculation method. In the case of lines of credit, the

formula for determining the applicable effective interest rate shall be expressed;

7. In the case that the contract or transaction has exclusions, limitations and/or termination causes, the same shall be highlighted in the text;
8. The date on which the contract or transaction is formalised;
9. Any other clause or provision that the parties consider it convenient to stipulate.
10. In the same contract or in a separate document, which in any case shall be delivered to the user, a detailed description of the amounts which are to be charged to the user of a banking services, shall be made, indicating the reason for the charge and expressing the same in monetary terms. It shall be understood that these include the costs of credit investigations, application processing, late interest fees, charges, commissions, notary and registration fees, insurance premiums, surcharges, and any others of an analogous nature.

**Article 145. Invalidity of Contractual Clauses.** The scope and interpretation of article 62 of Law 29 of the 1<sup>st</sup> of February of 1996, shall be as follows:

1. The abusive nature, and therefore the absolute nullity of the contractual clause, shall be examined taking into account the nature of the products and services which are the object of the contract and considering, at the moment of the celebration of the same, all the circumstances which occur simultaneously with its execution, as well as the other clauses of the contract or such other on which it depends.
2. Price fluctuations of financial products, insofar as these do not depend exclusively on the will of the provider, shall not be considered changes to the contract conditions, so long as the same has been agreed to.
3. Banking contracts drafted in a different language than Spanish, shall not be considered void, insofar as the banking service user so requests and it is not a public document. Likewise, the drafting of a banking contract in a language different from Spanish shall be permitted in those cases in which the international nature of the contract so requires.
4. The clauses which permit the renouncing of domicile, the stages of a process, the deadlines and the personal notifications shall not be

considered void, insofar as they comply with the rules contemplated in the Judicial Code, the Civil Code and/or in other laws.

If a clause conforms with the usages generally observed in the market, they shall not be considered void.

**Article 146. Cause for Voidability.** The limits for determining the adequate proportion in each of the causes for voidability contemplated in article 63 of the Law 29 of the 1<sup>st</sup> of February of 1996, shall be those established in special laws and in the absence of the same, those established by the banking usages and practices generally observed in the market and the principles of good faith and contractual equity.

**Article 147. Right to Information.** The users of banking services shall have the right to be informed, in a timely manner, of the interest rates, commissions and charges which the banks charge for their services, as well as the progress of the operations, accounts and businesses undertaken by the bank.

**Article 148. Interest Charges.** In every banking contract in which interest is charged, the effective interest rate which the client must pay in the operation and the late payment interest, as well as the calculation method for each of these, shall be indicated. Likewise, any other penalty for breach or belated fulfilment of the agreed terms shall be evidenced. In the case of lines of credit the formula for the determination of the applicable effective interest rate shall be expressed.

**Article 149. Complaints made by the users of the Banking Services.** The Commission of Free Competition and Consumer Matters shall only have competence to know the complaints of the users against providers, as defined in this Heading, by means of the consumer conciliation process established in Law 29 of 1996.

## **HEADING VI – VARIOUS PROVISIONS**

**Article 150. Supervision of Official Banks.** The Official Banks are subject to the inspection and oversight of the General Controller of the Republic on the terms of the Constitution and the Law, and the supervision of the Superintendence as well as the standards, rules and requirements which, in accordance with this Act, are applicable to the other Banks for the same type of operations in question.

**Article 151. Certification of the Banks.** The certification of each Bank, referred to in Article 1010 of the Tax Code, shall be made by the Superintendence in accordance with the criteria fixed therefore.

**Article 152. Days Operations are Closed.** The Superintendence shall indicate, with previous notice to the public, of the days on which no Bank shall undertake public operations, which need not necessarily coincide with holidays.

**Article 153. Banking Timetable.** The Superintendence shall indicate the minimum number of hours per week during which the Banks shall provide services to the public.

Upon the existence of justified reasons, in the opinion of the Superintendence, it may authorise exceptions to the general rule.

**Article 154. Dormant Assets.** Every Bank shall communicate to the Superintendence any assets, funds and securities in its power which remain dormant for five (5) years and which belong to persons whose whereabouts are unknown. The Superintendence, upon verifying the facts, shall order that the liquid value be transferred to the National Treasury.

**Article 155. Return of Funds.** The State shall restore to the owner the funds dealt with in the previous article, if they are claimed within the ten (10) years following the date in which they were transferred, but the restitution shall be made without interest.

**Article 156. Unity of Banks for Tax Purposes.** Without prejudice to that provided in the Tax Code, all Establishments of a Bank in Panama shall be considered as a single Bank for the purposes of this Act.

**Article 157. Immunity from Accounts.** The funds deposited in the country by Central Banks or similar depository institutions of the international reserves of Sovereign States, shall not be subjected to cautionary measures, embargos nor any other type of retention.

**Article 158. Deposits in Banks with International Licenses.** The money deposited in Banks with International Licenses shall be considered domiciled in Panama, and therefore, shall be subject to the jurisdiction of Panamanian Courts.

**Article 159. Creditors of Branches in Panama.** In the case of liquidation, the assets of a Branch of a Bank in Panama shall be used to satisfy, in first place the creditors of the Branch, whether national or foreign.

**Article 160. Subjection to Panamanian Legislation and Jurisdiction.** The assets transferred or deposited in Banks, whether as deposits or under agency or trust title, or under any other form, shall be subject entirely to the laws and the jurisdiction of the Republic of Panama, unless the instruments in which their transfer is made specifies otherwise.

It is hereby established as a rule of public order and public politics, that the assets of a foreigner (as defined in the only paragraph of this article), shall be submitted completely to the principle of the freedom of will and the system of free disposition of assets, even when the testamentary rules or the matrimonial system of the country of nationality or the domicile of the owner, or the settlor, or the founder, or the beneficiary, provide otherwise.

**Paragraph:** The assets of which the owners, or settlors or beneficiaries are not Panamanians nor residents of the Republic of Panama at the moment in which the transfer of the assets is perfected, shall be considered as “Assets of Foreigners” for the purposes of this article.

## HEADING VII – FINAL PROVISIONS

**Article 161. Remedies.** Except in those special cases contemplated in this Act, the resolutions dictated by the Board of Directors shall only allowed a motion for reconsideration before the same, for which the affected person shall have a period of five (5) working days as of the notification thereof. The resolution which decides the motion for reconsideration shall exhaust the administrative proceedings.

The resolutions of the Superintendent allow an appeal before the Board of Directors of the Superintendence, for which the affected person shall have a term of five (5) working days as of the notification of the respective resolution or of the notification of the resolution which decides the motion for reconsideration, as the case may be. The appeal shall exhaust the administrative proceedings.

The foregoing is without prejudice to the resources which correspond in the administrative proceedings.<sup>10</sup>

**Article 162. Special Tax Period.** The Banks that desire to adjust to a different tax period than the calendar year and which have received the approval of the Ministry of Income and Treasury, shall notify such authorisation to the Superintendence.

**Article 163. Repeal.** This Act completely repeals the Cabinet Decree No. 238 of the 2<sup>nd</sup> of July of 1970 and all other legal provisions which are contrary to it. Nevertheless, the National Banking Commission shall exercise the duties of the Superintendence until the Board of Directors and the Superintendent have been appointed.

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<sup>10</sup> Contencioso-administrativo

The budget items assigned to the National Banking Commission shall be transferred to the Superintendence as of the entering into force of this Act to be used for the rest of the budget period of 1998.

**Article 164. References to the National Banking Commission.** All reference made to the National Banking Commission in laws, decrees and other provisions, as well as contracts, agreements or accords prior to this Act, shall be understood made with the Superintendence and, the rights, powers, obligations and duties thereof so established shall be the rights, powers, obligations and duties of the same, except express provisions to the contrary in this Act.

Likewise, all reference to the Executive Director of the National Banking Commission in laws, decrees and other provisions, as well as in contracts, agreements or accords prior to this Act, shall be understood as made to the Superintendent, and the powers, obligations and duties of the same, until the Board of Directors decides otherwise.

**Article 165. Validity of the Banking Resolutions.** The validity of the banking resolutions dictated by the National Banking Commission at the date of entry into force of this Act is hereby recognised, insofar as they do not contradict the letter and spirit hereof.

**Article 166. Entry into Force.** This Act shall enter into force three (3) months after its publication.

**Be it hereby Communicated and Published.**

Prepared in the city of Panama on the twenty-sixth (26<sup>th</sup>) day of the month of February of Nineteen Ninety-Eight.

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President of the Republic

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Minister of Commerce and Industry, a.i.

MARTIN TORRIJOS  
Minister of Government & Justice

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