

**DECREE-LAW #9**  
(of February 26, 1998)

**"Whereby the banking system is amended and  
the Superintendency of Banks is established."**

**THE PRESIDENT OF THE REPUBLIC**

In the exercise of his constitutional functions, particularly that conferred upon him by Law #1,  
Section 1, of January 2, 1998, and being apprised of the favorable opinion of the Cabinet Council.

**DECREES:**

**TITLE I —GENERAL PROVISIONS AND DEFINITIONS**

**ARTICLE 1. SCOPE OF ITS APPLICATION.** This Decree-Law shall be applicable to natural or juridical persons engaged in the Banking Business in or from Panama and to Representative Offices.

**ARTICLE 2. ENGAGING IN THE BANKING BUSINESS.** Only persons which have obtained the respective license may engage in the Banking Business in or from Panama. Duly authorized public legal entities may likewise engage in the Banking Business.

**ARTICLE 3. DEFINITIONS.** For the purposes of this Decree-Law, the terms hereinafter set forth shall have the following meanings:

1. Productive Assets: Such loans and investments that regularly generate income, irrespective of their locations, as determined by the Superintendency of Banks. Local Productive Assets: Such productive assets that are economically situated in the Republic of Panama.
2. Bank: Any person engaged in the Banking Business or which acts as a Representative Office.
3. Foreign Banks: Branches or Subsidiaries of banks whose Home Office is based outside the Republic of Panama.
4. Panamanian Banks: Such Banks whose Home Office is based in the Republic of Panama.
5. Official Banks: Such in which the State owns a majority interest.
6. Assigned Capital: Such part of its paid-in capital stock that a Foreign Bank allots or assigns to Banking Business carried out in or from Panama, through its branches.
7. Foreign Supervisory Body: The official authority charged with the supervision of banks in those countries where the Home Offices of the Subsidiaries or Branches of Foreign Banks are based.
8. Establishment: Any office, branch or agency of a Bank engaged in the Banking Business. Such equipment, machines, systems or offices expressly excluded by the Superintendency are excepted under this definition.
9. Financial Statements: The General Balance Sheet, the Profit-and-Loss Statement and the Net Worth Statement.
10. Unsecured Credits: Those granted without real collateral or with collateral valued at less than the indebted sum.
11. Capital Funds: The primary capital and the secondary capital of a Bank.
12. Economic Group: A group of natural or juridical persons whose interests are interrelated in such a manner as to lead the Superintendency to deem that they ought to be considered as a single person.

13. Interest: The sum or sums which in any manner or under any denomination is charged or paid for the use of money.
14. Board of Directors: The Board of Directors of the Superintendency of Banks.
15. Banking Business: Primarily the act of obtaining financial resources from the public or from financial institutions by means of the acceptance of on demand or time deposits of money, or by any other means authorized under this Decree-Law; and the use of such and other resources, on account and at the risk of the Bank, for loans, investments or any other transactions authorized by this Decree-Law, the Superintendency or banking practices.
16. Representative Office: Such office established to act as a representative of Banks not operating in Panama, which does not engage in Banking Business in or from the Republic of Panama.
17. Subsidiary: A juridical person which is wholly or mostly (majority) owned by another, or whose administration is controlled by such other. Exception is made under this definition of juridical persons on whose behalf the Bank acts as a trustee.
18. Branch: An entity which is devoid of juridical personality if separated from its Home Office, and is, therefore, an integral part of the Bank.
19. Superintendency: The Superintendency of Banks.
20. Superintendent: The Superintendent of Banks.

## **TITLE II — THE SUPERINTENDENCY OF BANKS**

### **CHAPTER I — GENERAL PROVISIONS**

**ARTICLE 4. ESTABLISHMENT OF THE SUPERINTENDENCY.** The Superintendency of Banks is hereby established as an autonomous State institution, with juridical personality and its own capital.

In order to ensure its autonomy, the Superintendency:

Shall have funds that are separate and independent of the Central Government and the right to administer them.

Shall approve its budget of revenues and expenses, which will subsequently be added to the General Budget of the State.

Shall select and appoint its staff, set its compensation and have the authority to discharge it.

The Superintendency shall act independently in the exercise of its functions and shall be subject to the supervision of the Office of the Comptroller General of the Republic as established by the Political Constitution and this Decree-Law. This supervision does not imply, in any manner, interference in the administrative powers of the Superintendency.

The Superintendency shall not be subject to the payment of taxes, duties, fees, charges, levies or tributes of a national or municipal nature, with the exception of the levies for social security, educational insurance, workmen's compensation, public service fees and import tariffs.

The Superintendency shall be entitled to the same rights established by article 1963 of the Judicial Code on behalf of the State and of Public Institutions.

**ARTICLE 5. FUNCTIONS OF THE SUPERINTENDENCY.** In addition to others stipulated under this Decree-Law, the Superintendency shall have the following objectives:

1. To oversee the preservation of the soundness and efficiency of the banking system.
2. To strengthen and foster auspicious conditions towards the development of Panama as an international financial center.
3. To promote public trust in the banking system and to oversee that member banks maintain appropriate rates of solvency and liquidity for the discharge of their obligations.
4. To prevent persons unauthorized under this Decree-Law from engaging in the Banking Business.
5. To oversee that Banks establish suitable procedures that allow for the supervision and control of their national and international activities, in close collaboration with Foreign Supervisory Bodies, when required.
6. To punish violations of this Decree-Law.

## **CHAPTER II — ORGANIZATION**

**ARTICLE 6. BOARD OF DIRECTORS AND SUPERINTENDENT.** The Superintendency shall consist of a Board of Directors integrated by five (5) directors with the right to speak and to vote, and by one Superintendent. The directors of the Superintendency, as well as the Superintendent, shall be appointed by the Executive Branch.

The directors shall not be entitled to compensation or to business expenses, save for fees set by the Executive Branch for their attendance to meetings of the Board of Directors or for their participation in official missions. For his or her part, the Superintendent shall be employed as a full-time public official, and shall be compensated with a salary, to be determined by the Executive Branch. The Board of Directors shall select a President from its members, to serve for a period of one year. Said term may be renewed.

**ARTICLE 7. NON RATIFICATION.** The provisions of Law #3, article 1, of June 16, 1987 shall not be applicable to the appointment of the directors of the Superintendency or of the Superintendent.

**ARTICLE 8. REQUIREMENTS FOR THE OFFICE OF DIRECTOR.** To hold the office of director of the Superintendency the following requirements are hereby established:

1. To be a Panamanian citizen.
2. To not have been convicted by a competent authority of a crime characterized by willful deceit, or of a crime of a financial nature characterized by gross negligence.
3. To not have a kinship to other Directors within four degrees of consanguinity or two degrees of affinity, nor to be the spouse of another director or of the Superintendent.
4. To not hold any other remunerated public office, or any other public honorary post that may create a conflict of interests, with the exception of that of University professor.
5. To hold a University degree and a minimum experience of seven (7) years in the banking or financial sectors, or in other similar endeavors.
6. To not have been disqualified by the Superintendency from functioning as a banking officer.
7. To not have been declared bankrupt or undergone insolvency proceedings, nor to be in a state of manifest insolvency.
8. To not be a functioning banker, or a director of a Bank, or a shareholder who directly or indirectly holds more than five-percent (5%) of a Bank's stock.

**ARTICLE 9. DIRECTORS' TERM OF OFFICE.** Directors shall serve for a term of eight (8) years from the date of their appointments.

However, in order to allow for the staggered renewal of the posts of directors of the Superintendency, in the initial designation 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. Directors' appointments may be extended for a sole additional term of eight (8) years.

**ARTICLE 10. REQUIREMENTS FOR THE OFFICE OF SUPERINTENDENT.** To hold the office of Superintendent the following requirements are hereby established:

1. To be a Panamanian citizen.
2. To not have been convicted by a competent authority of a crime characterized by willful deceit, or of a crime of a financial nature characterized by gross negligence.
3. To not have a kinship to members of the Board of Directors within four degrees of consanguinity or two degrees of affinity, nor to be the spouse of any director.
4. To hold a University degree and a minimum experience of seven (7) years in the banking or financial sectors, or in other similar endeavors.
5. To not be a functioning banker, or a Bank director, or a shareholder who directly or indirectly holds more than five-percent (5%) of the stock of a Bank or of the Economic Group of which a Bank is a member.
6. To not have been disqualified by the Superintendency from functioning as a banking officer.
7. To not have been declared bankrupt or undergone insolvency proceedings, nor to be in a state of manifest insolvency.

**ARTICLE 11. THE SUPERINTENDENT'S TERM OF OFFICE.** The Superintendent shall be appointed for a term of five (5) years, renewable only once. He or she may participate in the meetings of the Board of Directors with the right to speak, save for meetings dealing with such matters which in the judgment of the Board of Directors should be discussed without his or her presence.

**ARTICLE 12. CONFLICT OF INTERESTS.** Whenever a meeting of the Board of Directors should deal with matters that could present a conflict of interests for any director or for the Superintendent, the said director or Superintendent must abstain from participating in such meeting. Lacking a voluntary abstention, the Board of Directors may formally request that the director or Superintendent, as the case may be, be absent from that meeting.

In case of the absence of one or more directors from a meeting of the Board of Directors by reason of a conflict of interests, any decision taken shall be arrived at with the favorable vote of half- plus- one of the directors present, which in no case may be less than three (3) directors.

**ARTICLE 13. DUTIES OF THE SUPERINTENDENT.** The Superintendent shall be in charge of the administration and the handling of the daily operations of the Superintendency and shall function as its representative, without prejudice to the rest of his or her duties under this Decree-Law. In his or her absence, the legal representation of the Superintendency shall be assumed by the President of the Board of Directors. Notwithstanding, in case of the temporary absence of the Superintendent, the Board of Directors may designate an interim Superintendent until the return of the Superintendent of record.

The Superintendent shall comply with and execute the resolutions adopted by the Board of Directors, and shall supervise compliance with the regulations and policies to be established regarding banking matters. In like manner, he or she may propose to the Board of Directors to decide matters under its responsibility.

**ARTICLE 14. DISCHARGE.** Once appointed, neither the directors nor the Superintendent may be discharged from office save for grounds stipulated under this Decree-Law, in accordance with the decision of the Supreme Court of Justice, Third Chamber, arrived at pursuant to procedure stipulated in article 289 of the Judicial Code. The Executive Branch and the Board of Directors are authorized to request dismissals from office.

**ARTICLE 15. GROUNDS FOR DISCHARGE.** The Third Chamber of the Supreme Court of Justice may order the discharge of a director or of the Superintendent if any of the following grounds should arise:

1. Permanent incapacity to fulfill his or her functions.
2. Declaration of bankruptcy, insolvency proceedings or a state of manifest insolvency.
3. Cessation of compliance with the requirements established for his or her selection.
4. Lack of integrity in the exercise of his or her functions.
5. Repeated absence from meetings of the Board of Directors.
6. Failure to comply with the obligations and prohibitions imposed under this Decree-Law.

### **CHAPTER III — DUTIES OF THE BOARD OF DIRECTORS AND THE SUPERINTENDENT**

**ARTICLE 16. DUTIES OF THE BOARD OF DIRECTORS.** The Board of Directors shall function as a consulting body and as the highest entity regarding the implementation and determination of the general policies of the Superintendency. The Board of Directors shall be charged with the following duties:

1. To approve the annual budget of the Superintendency.
2. To approve general regulations for the identification and supervision of Economic Groups of which Banks are members.
3. To approve general-application regulations for defining and identifying loans to interrelated clients, or to clients linked to Banks or to Economic Groups of which Banks are members.
4. To approve the general criteria for the classification of assets at risk and the guidelines for the building of reserves to cover loan and market risks.
5. To approve general-application regulations for the suspension of the accrual of interest, in accordance with internationally accepted criteria To resolve appeals brought against the resolutions of the Superintendent.
6. To set, at the administrative level, the interpretation and scope of legal or regulatory dispositions pertaining to banking matters.
7. To establish regulations to govern the inspections prescribed by this Decree-Law or those ordered by the Superintendency itself on the Banks or Economic Groups of which Banks are members, as the case may be.
8. To set accounting requirements relative to the financial information that Banks must furnish, including the approval of a catalog of accounts for banking usage.
9. To set the general regulations that Banks must adhere to in their accounting practices.
10. To amend the banking regulation and supervision tax by the affirmative vote of four of its members.
11. To advise the National Government in all matters pertaining to the development of the banking system.

12. To collaborate with the Executive Branch in the regulation of the provisions of this Decree-Law and to establish its internal regulations, subject to the approval of the Executive Branch.
13. All others set forth under this Decree-Law.

**ARTICLE 17. DUTIES OF THE SUPERINTENDENT.** The Superintendent shall be charged with the exercise of the following duties:

1. To approve the granting of banking licenses within the framework set under this Decree-Law.
2. To authorize the voluntary closing or transfer of Establishments in the national territory, as well as the opening of Branches or Subsidiaries of Panamanian Banks abroad.
3. To authorize the voluntary liquidation of Banks.
4. To decree the intervention, reorganization and compulsory liquidation of Banks pursuant to the provisions of this Decree-Law.
5. To authorize the merger and consolidation of Banks and of Economic Groups of which Banks are members.
6. To authorize the acquisition or transfer of shares of Banks or of Economic Groups of which Banks are members, in such cases where the acquirer, or other natural or juridical persons linked to these, thereby become sole or majority owners or obtain control of their administration.
7. To publish or to order the publication of the Financial Statements of Banks with the regularity and the content he or she may deem suitable.
8. To retain the advisers, auditors or supervisors that may prove necessary to better discharge the functions of the Superintendency.
9. To instruct the boards of directors of Banks in matters pertaining to the dismissal of its managing or executive officers, whenever he or she deems such actions warranted.
10. To issue certifications relative to the existence and activities of Banks, based on information filed with the Superintendency.
11. To acquire the assets and contract the services that may prove necessary for the proper functioning of the Superintendency, subject to the pertinent dispositions of this Decree-Law and its regulations.
12. To prepare the preliminary draft of the annual budget as well as the annual report about the activities and projects of the Superintendency, and to submit them for the consideration of the Board of Directors.
13. To supervise the Banks, in accordance in all cases with the provisions of international agreements ratified by Panama and with internationally accepted norms and criteria.
14. To supervise the Economic Groups of which Banks are members, through regular inspections, the analysis of audited financial statements and other reports, as well as to obtain information regarding the transactions and relations among the enterprises within the Economic Group, national as well as international, for purposes of their supervision.
15. To carry out the banking inspections mandated under this Decree-Law or by the Board of Directors, and those that may be deemed necessary or prudent on his or her own initiative.
16. Pursuant to the Law, to set the salaries and other compensation, and to appoint, transfer, promote and discharge the employees and officers of the Superintendency, and impose upon them the disciplinary measures that may obtain.
17. To oversee the implementation and efficient administration of the annual budget of the Superintendency.
18. To approve the banking calendar.
19. To submit to the Board of Directors non-audited financial statements of the Superintendency within two (2) months after the closing of the first semester of each fiscal year.

20. To submit to the Board of Directors financial statements of the Superintendency audited by independent certified public accountants, within three (3) months after the closing of each fiscal year.
21. To delegate responsibility, authority and functions to other officers and employees of the Superintendency, in accordance with the decisions and instructions of the Board of Directors.
22. To submit and deliver to the Board of Directors an annual report of its operations.
23. To establish programs of prevention that would afford knowledge of the financial conditions of the Banks, as well as the verification of information submitted by the Banks to the Superintendency.
24. To designate advisers or supervisors for Banks that should require special attention on the part of the Superintendency.
25. To impose the corresponding penalties for violations of the provisions of this Decree-Law or of its subsequent regulations, as the case may be.
26. To authorize such modifications of the corporate Charters of Banks as the Superintendency may determine.
27. To adopt measures to prevent or correct irregularities or flaws in the operations of the Banks which, in his or her judgment, may jeopardize the interests of its depositors, the stability of the Bank or the soundness of the banking system.
28. To oversee that Banks furnish their clients with information that ensures the highest transparency in banking operations.
29. To establish bonds of cooperation with the Foreign Supervisory Bodies in order to strengthen control mechanisms, update preventive regulations and exchange useful information for the implementation of the supervisory function.
30. To evaluate the financial indicators of the Banks and of the Economic Groups of which the Banks are members, as the case may be, such as adequacy of capital, asset risks and liquidity, and others deemed appropriate by the Superintendency.
31. To collaborate with efforts by competent public entities to eradicate the practice of unfair competition or of restricting free access to the banking marketplace.
32. To establish the rest of the regulations that Banks must observe, subject to their prescribed legal framework, in order to carry out their operations within adequate risk margins, including the capacity to set limits and quotas that Banks must abide by in their operations.
33. To resolve all matters not expressly reserved for the Board of Directors or another authority.
34. All others set forth under this Decree-Law.

**ARTICLE 18. DECISIONS OF THE BOARD OF DIRECTORS.** The Board of Directors shall reach its decisions by the affirmative vote of at least three (3) directors, except for special cases under this Decree-Law which may require a larger plurality.

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

#### **CHAPTER IV — BANKING REGULATION AND SUPERVISION TAX**

**ARTICLE 19.\* BANKING REGULATION TAX.** The banking regulation and supervision tax is hereby established in favor of the Superintendency of Banks. Banks shall be subject to the annual payment of such tax according to the following rates:

1. General-license Banks: Thirty-thousand balboas (B/.30,000.00) plus a sum equivalent to thirty-five balboas (B/.35.00) for each million balboas (B/.1,000,000.00) or fraction of total assets, the latter sum up to a maximum amount of one-hundred-thousand balboas (B/.100,000.00).



2. International-license Banks: Fifteen-thousand balboas (B/.15,000.00).
3. Representative-license Banks: Five-thousand balboas (B/.5,000.00).

The amount of the tax must bear a strict relationship with the costs to be borne by the Superintendency of Banks in order to discharge its duties in a rational and efficient manner in accordance with its budget. To that end, the Superintendency may, at its discretion, increase or reduce the amount of the applicable tax.

The foregoing notwithstanding, if at the end of a budget period there are balances from the payment of the tax, the Superintendent shall transfer said balances to a special account, which must be reserved for expenses in future budget periods. If there are balances during two consecutive budget periods, the Superintendency must proceed to reduce the tax in a manner it deems appropriate, with the goal of eliminating such balances in subsequent budget periods.

**ARTICLE 20. OTHER RESOURCES OF THE SUPERINTENDENCY.** In order to cover its costs of operations, in addition to the banking regulation and supervision tax the Superintendency shall dispose of the following resources:

1. The levy on inspection rights and other special services, to be borne by the Banks.
2. Donations and legacies that accrue to it.
3. Assets and rights acquired under any title.
4. The profits and income generated by its assets.

### **TITLE III — BANKING REGULATIONS**

#### **CHAPTER I — AUTHORIZATION**

**ARTICLE 21. BANKING LICENSES.** With the exception of Official Banks, no person may engage in the Banking Business in or from Panama without previously obtaining the proper authorization from the Superintendency through the issuance of the respective license.

\* Ratified by Article 20 of Law #97 of December 21, 1998 (O. G. 23.698 of December 23, 1928).

Three (3) types of licenses shall be issued, to wit:

**GENERAL LICENSE:** that which will allow engaging in the Banking Business in any part of the Republic of Panama and transactions to be perfected, consummated or to take effect abroad, and to undertake such other activities as the Superintendency may authorize.

**INTERNATIONAL LICENSE:** that which will allow, from an office established in Panama, to conduct transactions to be perfected, consummated or to take effect abroad, and to undertake such other activities as the Superintendency may authorize.

**REPRESENTATIVE LICENSE:** that which will only allow the establishment of one or more Representative Offices in Panama, and to undertake such other activities as the Superintendency may authorize. In their usage of the trade name of the Bank they represent, Representative Offices must always include the terms "Representative Office."

**ARTICLE 22. VALIDITY OF EXISTING BANKING LICENSES.** The validity of banking licenses granted by the National Banking Commission up to the date of enactment of this Decree-Law is hereby fully recognized.

**ARTICLE 23. PRIOR AUTHORIZATION.** Foreign Banks must have previously obtained authorization from their Foreign Supervisory Body in order to engage in the Banking Business in or from Panama, or to establish themselves as Representative Offices.

**ARTICLE 24. USE OF THE WORD "BANK".** With the exception of national institutions or associations exclusively engaged in humanitarian or charitable activities, or of state entities dedicated to the granting of regional loans of a social nature, no person which is not an authorized Bank may, without a license from the National Banking Commission or the Superintendency, as the case may be, make use of the word "Bank" or its derivatives, in any language, in its name, trade name,



description or denomination on invoice headings, letterheads, notices, advertisements or by any other means or in any other form that indicates that it engages in the Banking Business.

**PROVISO:** Public Notaries are forbidden to authorize deeds or copies thereof, acts, statements or instruments proper to their office, or to authenticate signatures which are in violation of this article. The Public Registry Office is likewise forbidden as pertains to its entries. The Director General of the Public Registry must submit a report to the Superintendency concerning entries that may violate the provisions of this article. The Banking Superintendent shall evaluate the report and order the addition of a marginal annotation in the registration of any company not in compliance with the stipulations herein, to the effect that the said company, upon the expiration of a period of sixty (60) calendar days from the date of the corresponding annotation, has been dissolved as a matter of law, or that its authorization to conduct business in Panama has been revoked, depending on whether it may be a Panamanian or a foreign company.

#### **ARTICLE 25. ENGAGING IN THE BANKING BUSINESS WITHOUT A LICENSE.**

Whenever it is known, or there are reasonable grounds to believe, that a natural or juridical person is engaged in the Banking Business without a license, the Superintendency shall be authorized to examine its books, accounts and documents in order to ascertain that fact. Unjustified refusal to submit said books, accounts or documents shall lead to the presumption that it is in fact engaged in the Banking Business without a license. The Superintendency shall levy fines of up to one-hundred-thousand balboas (B/.100,000.00) upon natural or juridical persons in violation of the provisions of this article.

If necessary, the Superintendency may intervene establishments which are presumed to be engaged in the Banking Business without a license, and upon obtaining proof thereof, must order their closing, to which end it may avail itself of the Public Force.

The Superintendency shall be authorized to notify the Public Registry Office to proceed with the marginal annotation described in the preceding article, and to impose the proper sanctions.

**ARTICLE 26. PUBLICATION OF ORDERS.** In all cases in which the Superintendency issues an order to the Director General of the Public Registry to add the annotation referred to in articles 24 and 25, the Superintendency shall publish said order in a newspaper of wide circulation throughout the Republic for three (3) working days.

### **CHAPTER II — CONSOLIDATED SUPERVISION**

**ARTICLE 27. INTERNATIONAL-LICENSE FOREIGN BANKS.** Branches or Subsidiaries of Foreign Banks with an international license are subject to supervision by the Superintendency and to other applicable rules under this Decree-Law, its regulations and developments. However, said Branches shall comply with the requirements of liquidity, adequacy of capitalization and other technical specifications established by law and by the Foreign Regulatory Body, to which end said Foreign Regulatory Body shall implement the corresponding consolidated supervision.

**ARTICLE 28. GENERAL-LICENSE FOREIGN BANKS.** Foreign Banks with a general license shall be supervised in a consolidated manner by the corresponding Foreign Supervisory Body, without prejudice to their subordination to the provisions of this Decree-Law.

**ARTICLE 29. INSPECTION BY FOREIGN SUPERVISORY BODIES.** Exclusively for purposes of supervision, Foreign Supervisory Bodies may request information and realize inspection visits to the Branches or Subsidiaries of Foreign Banks in Panama over which they exercise consolidated supervision.

All information gathered shall be subject to strict confidentiality and may not be disclosed by the Foreign Supervisory Body without prior authorization from the Superintendency. The Superintendency shall require suitable assurance of such confidentiality.

The Foreign Supervisory Body must deliver to the Superintendency copies of all reports and documents it may prepare in relation to the inspection.

**ARTICLE 30.** The Superintendency shall supervise in a consolidated manner the Branches or Subsidiaries of Panamanian Banks located abroad.

**ARTICLE 31. AGREEMENTS OR UNDERSTANDINGS WITH FOREIGN SUPERVISORY BODIES.** The Superintendency shall reach agreements or understandings with Foreign Supervisory Bodies that would allow for the consolidated supervision described in this chapter, and which would ensure that relations among the parties are founded on principles of reciprocity and confidentiality and strictly adhere to the purpose of banking supervision. Said agreements shall specify the criteria applicable to the inspections and to the exchange of information and cooperation among the bodies.

### **CHAPTER III — PROCEDURE FOR THE GRANTING OF LICENSES.**

**ARTICLE 32. LICENSE APPLICATION.** Banking license applications presented to the Superintendency must be submitted in writing through an Attorney-in-fact. The Board of Directors shall establish the requirements and other conditions that petitioners must meet in order to obtain a banking license.

**ARTICLE 33. CRITERIA FOR THE APPROVAL OR DENIAL OF BANKING LICENSES.** The Superintendency shall evaluate the application and its accompanying documentation and shall approve or deny it within ninety (90) calendar days from the date of receipt of all the documentation requested by the Superintendency, focusing on the following criteria, among others that the Superintendency may establish:

1. The identities of the principal shareholders and the fitness of the administrative body in terms of experience, integrity and professional background.
2. Compliance with the requirement of minimum prescribed capitalization, of clearly determinable origin, and which must represent a net addition to the system, in order to prevent the multiple use of the same capital resources in different Banks.
3. A business plan that evinces the Bank's viability and its contribution to the Panamanian economy.

The term stipulated in this article may be extended if the Superintendent deems it conducive to the better evaluation of a given application.

**ARTICLE 34. TEMPORARY PERMIT.** If an application is approved, the Superintendency shall grant a temporary permit in the same resolution with the sole purpose of allowing the registration in the Public Registry of the Charter of the new company, or the foreign company, which seeks the banking license while making use of the term "Bank", or any derivative thereof, pending the processing of the permanent license.

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

**ARTICLE 35. PERMANENT LICENSE.** Once the temporary permit has been granted, and during the term that it is operative, the petitioner must submit the application for a permanent license in accordance with the requirements established by the Superintendency to that end.

Within one-hundred-and-twenty (120) calendar days from receipt of the application for a permanent license, the Superintendency must issue or deny the license by means of a considered resolution, and must personally notify the petitioner of said resolution.

The term stipulated in this article may be extended if the Superintendent deems it necessary by reason of the particular circumstances of each application.

**ARTICLE 36. OPPOSITION TO THE GRANTING OF LICENSES.** Within fifteen (15) calendar days from the date of receipt of an application for a banking license, the Superintendency must publish a notice during three (3) working days in a newspaper of national circulation, which must provide the following information:

1. The name of the petitioner of the license.
2. The names of the directors and officials of the petitioner.
3. The petitioner's business background.
4. The names, identification certificates or passports of the directors, officials or executive officers of the Bank, specifying their posts.
5. The petitioner's audited Financial Statements for the year prior to its presentation shall be readily available to the public at the offices of the Superintendency.

Persons with justifiable grounds to oppose the granting of the sought license may disclose them in writing to the Superintendency and file the corroborating documentation, if any, within fifteen (15) calendar days from the date of the last publication, as specified herein. It shall be deemed as justifiable grounds those that deal with the economic capacity or moral solvency of the petitioner, of the entity seeking a banking license, of the directors and officials of both and of the executive officers mentioned in the notice, and, in general, such verifiable circumstances as would render unsuitable the establishment of the new banking entity in Panama. The Superintendency shall not be bound to pass judgment on said oppositions or objections. Nonetheless, in every case, the petitioner shall have the right to refute the objections to the granting of the banking license within fifteen (15) calendar days from the date it receives notification of them from the Superintendency.

The granting or denial of the respective license shall be left to the discretion of the Superintendency, by means of a considered resolution, with emphasis on the analysis of documentation presented by the petitioner and investigations carried out by the Superintendency.

**ARTICLE 37. ATTORNEYS-IN-FACT OF BRANCHES OF FOREIGN BANKS.** To prevent ever lacking representation, Branches of Foreign Banks must appoint at least two (2) General Attorneys-in-fact, both natural persons residing in Panama and one of whom, at least, must be a Panamanian citizen.

#### **CHAPTER IV — REVOCATION OF LICENSES**

**ARTICLE 38. GROUNDS FOR REVOCATION.** The Superintendency may revoke the license of any Bank on any of the following grounds:

1. The cessation of its Banking Business.
2. Failure to begin operations within six (6) months after the granting of the permanent license.
3. The Foreign Supervisory Body intervenes the Bank's Home Office or revokes its license, or said Foreign Supervisory Body, in the judgment of the Superintendency, is not implementing an effective consolidated supervision.
4. Lack of payment of the regulation and supervision tax within the term specified by the Superintendency.
5. Repeated, serious violations of the provisions of this Decree-Law, as determined by the Superintendency.
6. Other reasons within the purview of this Decree-Law.

The revocation of the license must be effected by means of a considered resolution adopted by the affirmative vote of three (3) directors.

**ARTICLE 39. MEASURES SUBSEQUENT TO THE REVOCATION OF LICENSES.** Once the resolution to revoke a license becomes final, the Superintendency shall immediately proceed:

1. To communicate the measure to the Director General of the Public Registry so that the corresponding marginal annotation be made; and
2. To publish the resolution in a newspaper of general circulation for three (3) working days.

3. To appoint a liquidator charged with the liquidation of the Bank, pursuant to the established provisions pertaining to compulsory Bank liquidation.

**ARTICLE 40. OPENING AND CLOSING OF ESTABLISHMENTS.** No Panamanian Bank may open a new establishment in Panama without prior notification to the Superintendency.

The opening of establishments abroad shall require the prior approval of the Superintendency.

Similarly, whenever a Bank deems it necessary to close or to transfer an existing Establishment, it must obtain prior authorization from the Superintendency, for the sole purpose of enabling the latter to oversee that the closing be carried out in an orderly manner for the protection of the interests of said Establishment's depositors.

#### **CHAPTER V — CAPITAL STOCK**

**ARTICLE 41. COMPOSITION.** The capital stock of Banks shall comprise a primary capital and a secondary capital.

The primary capital shall consist of the paid-in capital in shares, the declared reserves, and the retained profits.

The secondary capital shall consist of non-declared reserves, reassessed reserves, general reserves to cover losses, hybrid instruments comprising capital stock and debt and subordinated debt. The Superintendency shall define and regulate each component of the secondary capital in accordance with universally accepted conventional rules and shall set the deductions of the capital base that it deems technically necessary.

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

**ARTICLE 42. MINIMUM CAPITAL STOCK.** Any Bank engaged in the Banking Business in Panama under a general license must have a minimum paid-in capital stock, or assigned capital stock, of ten-million balboas (B/.10,000,000.00).

Any Bank engaged in the Banking Business from Panama under a general license must have a minimum paid-in capital stock, or assigned capital stock, of three-million balboas (B/.3,000,000.00), of which two-hundred-and-fifty-thousand balboas (B/.250,000.00) must be deposited with the National Bank of Panama or invested in Bank Warranty Bonds assigned to said institution.

**ARTICLE 43. COMPLIANCE WITH THE NEW CAPITAL STOCK REQUIREMENTS.** An unextendible term of five (5) years is hereby established, from the date of enactment of this Decree-Law, for general-license Banks not presently in compliance with the new requirements of minimum paid-in capital stock to effect the necessary adjustments. To that end, Banks shall increase their paid-in or assigned capital stock each year by at least one-fifth of the required sum.

The foregoing terms shall not be applicable if the majority of the shares of the Bank's capital stock, in whose benefit they are set, are transferred to third parties. In such a case, the corresponding capital stock increase must be met within six (6) months from the transfer of the Bank's shares.

In any case, Banks shall be bound to capitalize the totality of their profits each year until the minimum required capital stock is attained.

The Superintendency may appoint an adviser for Banks which do not comply with the annual minimum capitalization quotas prescribed in this article. The adviser shall evaluate the Bank's situation and recommend to the Superintendency its reorganization, or the revocation of its license with its attendant compulsory liquidation, as the Bank's situation may warrant.

Upon the expiration of the five-(5) year term stipulated in this article, the Superintendency may, at its sole discretion, increase the minimum required paid-in or assigned capital stock for Banks with a general or international license, as the case may be.

**ARTICLE 44. CAPITAL RESERVES.** Banks may not decrease their capital reserves without prior authorization from the Superintendency. To this end, capital reserves shall be construed as the funds derived from profits accumulated in the Banks' books and which are allotted to the strengthening of their financial condition.

**ARTICLE 45. ADEQUACY AND WEIGHTING INDICES.** General-license Banks should maintain Capital Funds equivalent to at least eight-percent (8%) of their total assets and off-balance sheet operations, weighted in proportion to their risk. The stated adequacy index may be increased at the discretion of the Superintendency.

Indices of weighting of assets and off-balance sheet operations shall be set by the Superintendency according to norms of general international acceptance in the matter.

#### **CHAPTER VI — BANKING LIQUIDITY**

**ARTICLE 46. LIQUIDITY REQUIREMENTS.** Any Bank with a general license must maintain at all times a minimum balance of liquid assets equivalent to such percentage of the gross total of its deposits in Panama or abroad as the Superintendency may periodically set. Said percentage shall not exceed thirty-five-percent (35%).

Credits or deposits received by general-license Banks from their Home Office or from a Branch, Subsidiary or Affiliated Company abroad, shall be excluded from the gross total of their deposits for purposes of calculating the liquidity percentage.

**ARTICLE 47. CHANGES IN THE LIQUIDITY PERCENTAGE.** Changes to the liquidity percentage must be complied with within the term indicated by the Superintendency, which shall not be less than thirty (30) calendar days. Upon the enactment of this Decree-Law and until the Superintendency may determine otherwise, the applicable liquidity percentage shall be of thirty- percent (30%).

**ARTICLE 48. LIQUID ASSETS.** For the purposes of the preceding articles, the assets hereinafter specified shall be deemed liquid, provided they are free from all liens or encumbrances and are freely transferable:

1. Gold or currency of legal tender in Panama;
2. Net balances in the Clearing House of the Republic of Panama;
3. Net balances in any Bank in Panama, on demand or within a term not to exceed one-hundred-and-eighty-six (186) calendar days, counted from the date of the liquidity report, and obligations payable in Panama, on demand or within a term not to exceed one-hundred-and-eighty-six (186) calendar days, counted from the date of the liquidity report;
4. Treasury Bills and other securities issued by the State with a maturity of not more than one (1) year, at market value;
5. Net balances held abroad in Banks previously approved by the Superintendency, redeemable on demand or within a term not to exceed one-hundred-and-eighty-six (186) calendar days, counted from the date of the liquidity report and payable in currencies of legal tender in Panama;
6. Obligations issued by foreign governments or by international financial organizations authorized by the Superintendency, which are actively traded in stock markets and are adjudged to be of investment grade by an internationally acknowledged risk appraiser, at their market value;
7. Obligations of national or foreign private enterprises approved by the Superintendency, which are actively traded in stock markets and are adjudged to be of investment grade by an internationally acknowledged risk appraiser, at their market value;
8. Obligations of national private enterprises guaranteed by general-license Banks, when the issuing enterprises and the guarantor Bank are not members of the same Economic Group;
9. Installment payments of obligations due within one-hundred-and-eighty-six (186) calendar days, counted from the date of the liquidity report;

10. Other assets which the Superintendency may authorize by means of a resolution.

The apportioning of the different types of liquid assets discussed in this article shall remain at the discretion of each Bank. Notwithstanding, on behalf of the welfare of the system, the

Superintendency may set the proportion that certain liquid assets may constitute of the total liquidity of a Bank.

**ARTICLE 49. LIQUIDITY REPORTS.** Banks shall submit liquidity reports to the Superintendency in such manner and as regularly as the Superintendency may determine.

**ARTICLE 50. PENALTIES.** Violations of the provisions of this chapter shall be punished by the Superintendency with fines of up to fifty-thousand balboas (\$50,000.00), without prejudice to the measures which the Superintendency may apply in each case.

**ARTICLE 51. RATIO OF ASSETS TO LOCAL DEPOSITS.** Each Bank shall maintain assets in Panama equivalent to a percentage of its local deposits. Said percentage shall be determined by the Superintendency with attention to national economic or financial conditions, shall be equal for all Banks and shall not exceed one-hundred-percent (100%) of said deposits.

The Superintendency shall interpret the meaning of "local deposits" for purposes of this article.

Proviso: Upon enactment of this Decree-Law and until the Superintendency may determine otherwise, the percentage referred to in this article shall be of eighty-five-percent (85%).

#### **CHAPTER VII — BANK INTEREST**

**ARTICLE 52. SETTING OF INTEREST RATES.** Banks may freely set the active or passive interest rates of their operations; therefore, the provisions of Law #4 of 1935, Law #5 of 1933, or of any other laws which establish maximum rates of interest shall not be applicable to them. Nonetheless, they should disclose the effective rates of their loans and deposits on their clients' bank statements or upon their request.

**ARTICLE 53. PUBLICITY ADVERTISEMENTS.** Banks should disclose the effective rate of their active or passive operations whenever they make reference to these in their publicity advertisements.

#### **CHAPTER VIII — DOCUMENTS AND REPORTS**

**ARTICLE 54. RIGHT TO REQUEST INFORMATION FROM BANKS OR ECONOMIC GROUPS.**

The Superintendency is empowered to request from any Bank or any enterprise belonging to the Economic Group of which the Bank is a member, the documents and reports pertaining to its operations and activities. To this end, each Bank must furnish the Superintendency with a descriptive list of the said enterprises within thirty (30) calendar days from the date of enactment of this Decree-Law, and give notice of any change that may take place no later than within five (5) working days from the time it occurs.

Exception is made under the dispositions of this article of such enterprises whose operations are effectively controlled by the Bank acting as a trustee.

**ARTICLE 55. PRESENTATION OF AUDITED FINANCIAL STATEMENTS.** Within three (3) months from the closing of each fiscal year, Banks with a general or international license shall submit to the Superintendency their corresponding Financial Statements relative to operations realized in or from the Republic of Panama, as the case may be. The mentioned documentation shall bear the signature of the Bank's legal representative, or of one of its General Attorneys-in-fact.

The Financial Statements to which this article refers must be audited, and shall be submitted in accordance with the technical specifications established by the Superintendency.

**ARTICLE 56. PUBLIC DISPLAY OF FINANCIAL STATEMENTS.** Banks shall display throughout the year, in an accessible place in each of their Establishments in Panama, a copy of their latest audited Financial Statements—accompanied by any pertinent explanatory notes—and shall publish them in a newspaper of national circulation within three (3) months after the closing of each fiscal period.

**ARTICLE 57. PRESENTATION OF NON-AUDITED FINANCIAL STATEMENTS.** Banks within the system shall submit their Financial Statements to the Superintendency within thirty (30) calendar days



after the closing of each Quarter of the year. The Superintendency may publish these periodically, in a manner it may determine, in financial bulletins. Similarly, it shall publish consolidated information regarding the banking system. It may likewise, through instructions of a general nature, require Banks to make available to the public related information, either permanently or occasionally.

**ARTICLE 58. OTHER REPORTS.** All Banks must submit to the Superintendency, within the term and in the manner prescribed by it:

1. A statement disclosing the assets, the liabilities and the results of their Establishments in Panama at the closing of operations on the last working day of the previous month; and
2. A report containing (1) an analysis and classification of the loan and investment portfolios of their Establishments in Panama at the closing of operations, and (2) the settlement of the capital account.
3. Any other information requested by the Superintendency, as regularly as the latter may determine, without prejudice to the dispositions of Article 59.

**ARTICLE 59. INFORMATION ABOUT LIABILITIES.** The Superintendency shall be authorized to obtain from each Bank consolidated information regarding its liabilities, allowing it to ascertain its liquidity, as well as to identify unusual geographic concentrations or distributions of deposits that may expose the Bank to excessive risk. The Superintendency may not solicit the identities of the Bank's depositors, except when the deposits guarantee assets under scrutiny or supervision on the part of the Superintendency.

**ARTICLE 60. ACCOUNTANTS' REPORT.** Every Bank must annually appoint, at its own expense, certified public accountants deemed specialists by the Superintendency and professionally qualified, whose duties shall be to render a report to the shareholders or partners of each Panamanian Bank, or to the Home Offices of Foreign Banks, concerning the fiscal period; and in said report such accountants shall certify whether, in their opinion, the Financial Statements are complete, reasonable and disclose the true and correct account of the Bank's operations.

The report of the certified public accountants shall be read, together with the report of the Bank's Board of Directors, at the annual meeting of shareholders or partners of each Panamanian Bank. In the case of Foreign Banks, said report shall be forwarded to their Home Offices. A copy of the report shall be sent to the Superintendency.

In the case of Branches or Subsidiaries of Foreign Banks, the report shall bear the same date as the Home Office's Financial Statements.

**ARTICLE 61. ACCOUNTANTS APPOINTED BY THE SUPERINTENDENCY.** If a Bank fails to make the appointment described in the preceding article, the Superintendency shall make it in its stead, and it shall determine the compensation that the certified public accountants so designated shall be entitled to. Said compensation shall be borne by the Bank.

#### **CHAPTER IX — PROHIBITIONS AND LIMITATIONS**

**ARTICLE 62. PROHIBITION OF PAYMENT OF DIVIDENDS OR PROFITS.** No Bank shall declare, credit or pay any dividends, nor shall it distribute or transfer all or part of its profits, save in the form of shares, until it has complied with the minimum annual capitalization quota prescribed under article 43 of this Decree-Law, and all deferred expenses have been amortized, or sufficient reserves have been established for their full amortization, including preliminary expenses, organizational expenses, commissions on the sales of shares, brokerage fees, losses incurred, and any other expenses not reflected in the Bank's tangible assets, or as long as its capital is undergoing losses.

**ARTICLE 63. LOANS TO A SINGLE PERSON.** Banks are forbidden, directly or indirectly, to grant loans or credits to any individual natural or juridical person, including other persons which are its partners in an Economic Group, or to grant any security or incur in any other obligation in favor of such a person, the total of which may at any time exceed twenty-five-percent (25%) of the Bank's Capital Funds.

Proviso: As pertains to Banks referred to in article 65 of this Decree-Law, the limit set forth under the first paragraph of said article shall be of thirty-percent (30%) of the Capital Funds.

**ARTICLE 64. LOANS TO LINKED PARTIES.** Banks are forbidden:

1. To grant or obtain, directly or indirectly, loans or credits by pledging their own shares as collateral;
2. To grant, directly or indirectly, unsecured loans or credits that exceed five-percent (5%) of its Capital Funds; loans backed by real collateral other than deposits that exceed ten-percent (10%) of its Capital Funds; and loans backed by deposits in the same Bank that exceed fifty-percent (50%) of its Capital Funds, in favor of:
  - a. One or more of its directors, or any other natural or juridical person which holds, directly or indirectly, five-percent (5%) or more of the Bank's shares, whether granted jointly or severally;
  - b. Any juridical person in which one or more of the Bank's directors is a director or officer, or is a guarantor of the loan or credit;
  - c. Any juridical person or association of persons in which the Bank, or one or more of its directors or officers, individually or jointly holds a significant interest, a prevailing influence or, in any case, a holding of more than twenty-percent (20%) of the ownership of the respective juridical person;
  - d. Its managers, officers, employees and their spouses, save in cases of mortgage loans for their main dwelling, granted in accordance with standard personnel plans, or of secured personal loans.
3. To grant unsecured loans or credits to any of its employees, for a total amount greater than the salary, wages and other annual compensation earned by the said employee.
4. To grant loans or credits to any of their managers, officers, employees, natural or juridical persons which hold five-percent (5%) or more of the Bank's shares, and anyone participating with these in an Economic Group, under conditions pertaining to cost and term that differ from standard market practices for such transactions.

The total sum of the unsecured loans, or secured loans other than deposits, granted by the Bank and the entities forming an Economic Group with it to the linked parties mentioned in this article, may not in any case exceed seventy-five-percent (75%) of the Bank's Capital Funds.

**ARTICLE 65. EXCEPTION OF LOANS TO OTHER BANKS.** In cases of unsecured loans and other credits granted by mixed-capital Banks with headquarters in Panama whose principal business is the granting of loans to other Banks, the Superintendency may authorize the total or partial exclusion of said loans or credits from the total sum of the unsecured loans and credits that serves as the basis for the computation of the limitations set forth under Section 2 of the preceding article.

The authorization referred to by the present article is contingent on the following conditions:

1. The ownership of shares in the debtor Bank –directly or indirectly– by the shared director or shared officer, may not exceed five-percent (5%) of the said Bank's capital, or may not amount to any sum that would ensure his or her majority control over the decisions of this Bank.
2. The ownership of shares in the creditor Bank –directly or indirectly– by the debtor Bank represented in any manner by the shared director or shared officer, may not exceed five-percent (5%) of the shares outstanding of the creditor Bank, or may not amount to any sum that would ensure his or her majority control over the decisions of this Bank

3. The shared director or shared officer must abstain from participating in the deliberations and in the voting sessions held by the creditor Bank regarding the loan or credit requested under this article.
4. The loan or credit must strictly comply with customary standards of discretion set by the grantor Bank's credit policy.

The Superintendent shall determine the amount of the exclusion in the case of each loan or credit submitted for his or her consideration.

The Superintendency may request whichever certifications it deems pertinent and order the necessary inspections in furtherance of the proper supervision of the loans and other facilities submitted under the present article.

**ARTICLE 66. ECONOMIC GROUPS.** The application of the prohibitions established by articles 63 and 64 shall take into account the existence of Economic Groups. However, it shall not be deemed that a Bank has infringed the provisions of said articles in cases where the existence of the Economic Group supervenes the obligations, that is, where the Economic Group did not exist at the time the obligations were contracted. In such a case, the Superintendency shall grant the Bank a term to curtail any excess over the applicable limits. If it is ascertained that the Economic Group did in fact exist at the time the obligation was contracted, the Superintendency shall levy a fine upon the Bank in question pursuant to the dispositions of article 72 of this Decree-Law and shall decree redress within a peremptory term.

**ARTICLE 67. LIMITATION TO THE PARTICIPATION OF A BANK IN OTHER ENTERPRISES.**

Banks are forbidden to acquire or possess shares of, or beneficial interests in, any other type of enterprises not related to the banking business whose value exceeds twenty-five percent (25%) of the Bank's Capital Funds. Exception is made of investments that the Bank may undertake as a trustee, as well as beneficial interests or shares which the Bank may acquire in the collection of sums owed to it, in which case these must be liquidated at the earliest opportunity, consistent with the economic interests of the Bank as determined by the Superintendency, which may set a term for this purpose.

**ARTICLE 68. EXCEPTIONS TO THE LIMITS OF PARTICIPATION IN OTHER ENTERPRISES.** The provisions of the preceding article are not an impediment to the purchase or sale of shares for the account and at the request of a client.

Neither do they impede, with prior authorization from the Superintendency, the purchase or sale of shares for its own account of any company established for the purpose of insuring bank deposits, promoting the development of a money or securities market in Panama, or improving the financing system of the economic development.

**ARTICLE 69. PROHIBITION OF PURCHASE OR LEASE OF REAL ESTATE PROPERTY.** Banks are forbidden to buy, acquire or lease real estate property for themselves, except in the following cases:

1. Whenever necessary for their operational requirements, or for the housing or recreational needs of their personnel;
2. When they acquire land for the construction of any type of dwellings or housing developments for the purpose of selling them, provided the sales are executed within the limitations set by Article 67; Under exceptional circumstances, and with prior authorization from the Superintendency.
3. The foregoing notwithstanding, Banks that have accepted real estate property as collateral may, in cases of default, acquire such property in order to sell it at the earliest opportunity within a term set by the Superintendency, consistent with the economic interests of the Bank.

Whenever it deems it appropriate, the Superintendency may establish limits of a general nature to the capacity of Banks to concentrate their risks in given areas or sectors of the economy.

**ARTICLE 70. PROHIBITION TO ACCEPT DEPOSITS.** Banks are forbidden to accept deposits while in a state of insolvency, or to receive any other resources from whomever has not been previously advised by the bank of that state of insolvency. No officer, director or official of a Bank who has, or should have, knowledge of said insolvency shall accept or authorize the acceptance of deposits or other resources in violation of the provisions of this article.

**ARTICLE 71. MERGER.** No Bank engaged in the Banking Business in or from Panama may merge or consolidate, nor sell all or part of its assets, whenever such actions may be equivalent to a merger or consolidation, without the prior authorization of the Superintendency.

**ARTICLE 72. PENALTIES.** Violations of the provisions of this Chapter shall be punished by the Superintendency with fines of up to one-hundred-thousand balboas (B/.100,000.00), applicable to directors and officers who participate in the transaction and have, or should have, knowledge of the violation, as well as to Banks, as the case may be.

**ARTICLE 73. INTERNATIONAL-LICENSE BANKS.** International-license Banks are exempt from the provisions of this chapter concerning limits to the concentration of risks and investments in other enterprises.

**ARTICLE 73-A.\*** Loans or credits duly secured by deposits pledged to the same Bank are exempt from the provisions of this chapter up to the amount of the collateral.

#### **CHAPTER X — BANKING INSPECTIONS**

**ARTICLE 74. INSPECTIONS.** Every two (2) years the Superintendency must conduct at least one inspection in each Bank, to determine if its financial condition is sound and whether it has complied with the provisions of this Decree-Law in the course of its operations. Such inspections shall comprise the Bank and the enterprises of the Economic Group of which the Bank is a member. The total cost of the inspections and their incidental expenses shall be borne by the Bank.

The Superintendency may opt for conducting the inspections with its own personnel, or for contracting the services of outside specialized independent auditors who are professionally qualified, in which case the auditors' report must be evaluated by the Superintendency's qualified personnel.

Exception is made under the dispositions of this article of enterprises whose operations are effectively controlled by the Bank acting as a trustee.

**ARTICLE 75. PENALTIES.** Any refusal by the Bank to submit to the inspection addressed by the preceding article shall be punished by the Superintendency with a fine of up to one-hundred-thousand balboas (B/.100,000.00), without prejudice to the application of the dispositions of Article 38 of this Decree-Law. If any of the submitted documents and reports should prove to be false in any manner, the Bank shall be punished with a fine of up to one-hundred-thousand balboas (B/.100,000.00), without prejudice to the applicable criminal sanction.

#### **CHAPTER XI — THE ADVISER**

**ARTICLE 76. PREVENTIVE MEASURES.** If information obtained by the Superintendency leads it to believe that the Bank is conducting its operations in an illegal or negligent manner, or that its capital has suffered losses or that the Bank lacks solvency, the Superintendency, without

\*Added by article 21 of Law #97 of December 23, 1998 (G.O. 23.698 of December 23, 1998).

prejudice to any immediate measures it may demand of the Bank, may designate a person with proper training and experience who, in representation of the Superintendency, shall advise the Bank regarding the measures it must undertake to correct the deficiency. The Superintendency shall set the compensation that the Bank shall pay to the adviser.

In no case may the adviser be a director, officer, member or employee of an outside accounting firm which has carried out an inspection as per the preceding chapter. Natural persons who have conducted an inspection, as well as their partners or employees, if any, shall likewise be disqualified from serving as advisers to the inspected Bank. The adviser described in this article shall be bound to keep strict confidentiality about information and documents to which it gains access in the performance of its duties.

**ARTICLE 77. FACULTIES.** The adviser described in the preceding article shall have such faculties as the Superintendency may decree in writing upon its appointment, or at a subsequent time, and those inherent to the task at hand, and shall perform its duties within the term stipulated by the Superintendency to that end. In any case, it is understood that the adviser shall have access to all documents, minutes, correspondence and records of the Bank for purposes of carrying out a thorough evaluation of such irregularities in the Bank's operations or management that gave rise to its appointment.

**ARTICLE 78. PERIODIC REPORTS.** The adviser shall render reports to the Superintendency, as regularly as necessary, containing as a minimum a precise and detailed account of the Bank's status with respect to the irregularities that gave rise to its appointment. The Superintendency shall sanction any act or omission by banking officers that may obstruct the performance of its functions or the enforcement of the preventive or corrective measures decreed by the Superintendency.

**ARTICLE 79. FINAL REPORT.** At the expiration of its appointed term the adviser must render a final report regarding the status of the Bank and the results of the measures decreed by the Superintendency to correct the detected irregularities. Similarly, in furtherance of the better protection of depositors' interests, it may recommend that the Superintendency terminate the advisory office by reason of the reparation of the flaws that prompted it, or, if it deems it necessary, the intervention, reorganization or administrative liquidation of the Bank.

## **CHAPTER XII — INCOMPATIBILITY**

**ARTICLE 80. INCOMPATIBILITY OF ACCOUNTANTS.** No certified public accountant or firm of certified public accountants may act as outside auditors of a Bank, if any of its members or officers is an employee, director or officer, or is or becomes a shareholder or partner, of the said Bank. The foregoing is equally applicable to outside auditors retained to conduct banking inspections pursuant to the provisions of article 74.

**ARTICLE 81. INCOMPATIBILITY OF DIRECTORS AND MANAGERS OF BANKS.** Without prejudice to the provisions of the Code of Commerce and other laws in force, any person who is a director of, or who performs managerial functions in, a Bank, shall cease his or her function:

1. If he or she is declared bankrupt or is undergoing insolvency proceedings; or
2. If he or she is convicted of any crime against property or public interests.
3. For serious misdeeds in the management of the Bank, as determined by the Board of Directors of the Superintendency.

Such person may never again hold such office or function in any Bank.

**ARTICLE 82. PROHIBITION TO ACT AS DIRECTOR, OFFICER OR MANAGER OF A BANK.** No person who has been a director or officer of a Bank at the time it underwent compulsory liquidation, or who has been part of the management of a Bank and was responsible for acts leading to its compulsory liquidation, may act as a director or officer or participate in the management of another Bank.

**ARTICLE 83. NOTIFICATION TO THE SUPERINTENDENCY OF JUDICIAL PROCESS.** The Superintendency must be notified of any civil or criminal action brought against a Bank or against its directors or officers pertaining to banking matters or involving the commission of crimes characterized by willful deceit.

## **CHAPTER XIII — BANK CONFIDENTIALITY**

**ARTICLE 84. INFORMATION REGARDING A BANK'S CLIENTS.** Information obtained by the Superintendency in the exercise of its duties relative to individual clients of a Bank may only be disclosed to competent authorities within the course of criminal proceedings, in accordance with legal dispositions in force.



The Superintendency, including all of its personnel and outside auditors, advisers and intervenors appointed by it, shall keep the proper confidentiality concerning all information furnished to it, or that it has obtained in pursuance of this Decree-Law and, consequently may not disclose it to third parties, except in the case of competent authorities as established in this article. Exception is made under this disposition of such reports and documents which must be disclosed to the public in accordance with this Decree-Law.

Public officials who by virtue of their posts gain access to the information described in this article shall be bound to keep the proper confidentiality, even after the termination of their functions.

**ARTICLE 85. CONFIDENTIALITY OF BANKS.** Banks may disclose information about their clients or about their transactions only with the consent of the said clients, save in cases of formal requests from competent authorities as prescribed by Law.

Banks may, at their discretion, disclose information about their clients to Credit Information Agencies.

**ARTICLE 86. PENALTIES.** Violations to the provisions of this chapter shall be punished with fines of up to one-hundred-thousand balboas (B/.100,000.00), without prejudice to the civil or criminal sanctions that may apply.

#### **CHAPTER XIV — VOLUNTARY LIQUIDATION**

**ARTICLE 87. PRIOR AUTHORIZATION.** Any Bank may voluntarily opt for its liquidation, for which end it must obtain prior authorization from the Superintendency. The Superintendency shall grant the authorization, provided the Bank has sufficient assets to discharge its obligations.

**ARTICLE 88. REQUIREMENTS FOR VOLUNTARY LIQUIDATION.** A Bank requesting authorization from the Superintendency for its voluntary liquidation must furnish the following documents:

1. A resolution from the Board of Directors or from the competent body or corporate authority, approving the liquidation of the Bank, duly sanctioned by law.
2. A liquidation plan.
3. A Certification from the Public Registry attesting to the existence of the Bank, its directors and legal representatives.
4. Financial statements audited by an independent auditor, corresponding to the last year or to the period determined by the Superintendency.
5. All other documents that the Superintendency may determine.

**ARTICLE 89. PUBLICATION.** Once the liquidation is authorized, the Bank must publish the resolution issued by the Superintendency in a newspaper of national circulation for five (5) working days. The five publications must take place within fifteen (15) calendar days from the date the Bank was notified of the resolution. For its part, the Bank must give notice of the liquidation to each depositor, creditor or interested party, within thirty (30) calendar days after the date the Bank received notice of the resolution.

**ARTICLE 90. SUSPENSION OF OPERATIONS.** Once the authorization for voluntary liquidation is granted, the petitioner Bank shall cease operations and its functions shall be limited to those strictly necessary to carry out the liquidation, collect its credits, reimburse its depositors, pay its creditors, and, in sum, to settle all its remaining business. The foregoing notwithstanding, the Bank shall be authorized to carry out the activities hereinafter set forth for up to fifteen (15) calendar days after the date of the last publication of the resolution addressed in the preceding article:

1. Pay checks drawn on current accounts.
2. Act as collecting agent for banks or other financial institutions established abroad, and transfer the collected funds to the said institutions.
3. All other activities established by the Superintendency to this end.



The authorization for the liquidation shall not prejudice the rights of depositors or creditors to collect the full amount of their claims, nor the rights of holders of funds or other assets to be fully reimbursed. All legitimate claims of the Bank's creditors and depositors must be paid, and all funds and other assets outside the bulk of assets held by the Bank must be returned to their owners within the term set by the Superintendency upon authorizing the liquidation.

The Bank shall procure the assignment to other Banks of the claims of clients who so request it, under the same contractual terms.

**ARTICLE 91. APPOINTMENT OF THE RECEIVER.** The Bank shall appoint its receiver or receivers with the prior approval of the Superintendency. The Bank's own managers may act as receivers, with the prior approval of the Superintendency. The appointed receiver or receivers must meet the requirements of article 101.

During the course of the voluntary liquidation, the receiver or receivers shall be bound to furnish the Superintendency, as regularly as it may determine, with the reports it may request regarding the liquidation.

**ARTICLE 92. PROHIBITION OF DISTRIBUTION OF ASSETS.** A Bank which resolves to voluntarily liquidate may not undertake any distribution of assets among its shareholders without first discharging its obligations to all depositors and creditors, in pursuance of the liquidation plan approved by the Superintendency.

In the case of claims under litigation, the receiver shall place the disputed sum on consignment with the presiding judge, for disposal pursuant to legal adjudication.

In cases of litigation where the Bank is a defendant, the receiver shall place the disputed sum on consignment with the presiding judge to guarantee the outcome of the process. If the Bank is acquitted, the consigned funds shall be returned to the Bank. If the liquidation process has concluded and it proves impossible to return the funds to the Bank, the Superintendency shall be notified of the existence of the funds and these will be deposited for the account of the Bank in the National Bank of Panama, and the matter shall proceed as per the provisions of article 124, or the second paragraph of article 94, whichever corresponds.

**ARTICLE 93. OBLIGATIONS OF THE RECEIVER.** During the course of the voluntary liquidation the receiver or receivers shall be bound:

1. To notify the Superintendency if the Bank's assets are insufficient to cover its liabilities, in which case the intervention of the Bank will be initiated, in accordance with the provisions of the next chapter.
2. To report to the Superintendency regarding the course of the liquidation, as regularly as the latter may determine.

**ARTICLE 94. UNCLAIMED ASSETS AND SECURITIES.** Unclaimed assets and securities will be liquidated and sold and the proceeds of the sale shall be deposited with the National Bank of Panama in the name of the owner of record.

Upon completion of the liquidation, if there should remain unclaimed credits or liquid funds, the receiver shall deliver to the National Bank of Panama the necessary sum to cover them. Any funds thus deposited will be transferred to the State if still unclaimed at the end of five (5) years. As pertains to assets and securities, these may be sold by the receiver after the end of the first year, with prior authorization from the Superintendency, and the proceeds of their sale shall be transferred to the State at the end of the fifth year, should they remain unclaimed by their proprietors.

Proviso: The provisions of this article shall be interpreted without prejudice to the right granted under article 155.

## CHAPTER XV — INTERVENTION AND REORGANIZATION

**ARTICLE 95. GROUNDS FOR INTERVENTION.** The Superintendency, by means of a considered resolution, shall intervene the business concerns of a Bank, taking possession of its assets and assuming its administration under such terms as the Superintendency may determine, for any of the following reasons:

1. Upon a justified request from the Bank itself.
2. If the Bank reduces its Capital Funds below the requirements of this Decree-Law.
3. If the Bank ceases to comply with the adequacy index described in article 45 of this Decree-Law, beyond such limits of asset depletion as the Superintendency may set.
4. If the Bank conducts its operations in an illegal, negligent or fraudulent manner.
5. If the Bank has suspended payments.
6. If the Bank repeatedly violates the liquidity requirements established under this Decree-Law.
7. If the Bank cannot continue to operate without jeopardizing the interests of depositors.
8. If the Bank's assets are insufficient to cover the totality of its liabilities.
9. If the Superintendency deems it appropriate, by reason of the unjustified delay of the voluntary liquidation.
10. If the Bank fails to comply with the reorganization plan proposed by the Superintendency.

**ARTICLE 96. APPOINTMENT OF THE INTERVENOR.** In the resolution which decrees the intervention, the Superintendency shall appoint the intervenor or intervenors it deems necessary to exclusively carry out the legal representation, administration and control of the intervened Bank, in accordance with the dispositions of article 100. The intervenor or intervenors must keep the Superintendency abreast of their progress.

**ARTICLE 97. NOTICE OF THE INTERVENTION.** The Superintendency shall order the posting of a copy of the resolution which decrees the intervention in a public and visible location in the main offices of the Bank and its branches. This notice shall indicate the time at which the intervention became effective, which in no case may be prior to the posting of the notice, and shall remain posted during five (5) working days. At the end of the five (5) working days of the posting of the notice in the Bank's main offices the notification will be deemed to have taken place. The resolution shall be published for five (5) working days in a newspaper of national circulation.

**ARTICLE 98. SUSPENSION OF STATUTES.** While a Bank is intervened by the Superintendency all statutes of limitations relative to any of the Bank's rights or causes of action, as well as the terms of lawsuits or proceedings to which the Bank is a party, shall be considered suspended. Said statutes shall remain suspended for the duration of the intervention proceedings, unless an order is issued to proceed immediately to a compulsory liquidation, in which case the provisions of article 119 of this Decree-Law shall apply.

**ARTICLE 99. MEANS OF APPEAL.** The resolution which decrees the intervention may be contested by means of a contentious-administrative appeal of full jurisdiction before the Third Chamber of the Supreme Court of Justice, in accordance with the Law.

The resolution which orders the intervention may be suspended during the course of a contentious-administrative appeal of full jurisdiction or an appeal for infringement of constitutional rights whenever the adjudicator deems it necessary for the prevention of grave and irreparable damages.

**ARTICLE 100. FACULTIES OF THE INTERVENOR.** The intervenor or intervenors shall exercise, among others, the following faculties:

1. To suspend or limit payment of the Bank's obligations, for a term that in no case shall exceed

The term of the intervention.

To employ the necessary auxiliary personnel and to dismiss from their posts those employees whose deceitful or negligent action prompted the intervention.

2. To attend to the correspondence and to grant any other document in the name of the Bank.
3. To prepare an inventory of the assets and liabilities of the intervened Bank, and deliver a copy thereof to the Superintendency.
4. At the end of the term of the intervention, to recommend to the Superintendency the restitution of the management and control of the intervened Bank to its directors, or its reorganization or compulsory liquidation.
5. Any other faculty authorized by the Superintendency for a specific purpose, in answer to a prior justified request from the intervenor or intervenors.

**ARTICLE 101. REQUIREMENTS FOR THE INTERVENOR.** The post of intervenor shall require a minimum of five (5) years of managerial experience in the banking business. In cases where more than two intervenors are appointed, their decisions shall be arrived at by majority vote. In cases of an even number of intervenors and a lack of a majority to reach a decision, any of them may submit the matter to the Superintendency, which will render a decision without further procedure.

The intervenor is bound to carry out the process of intervention with the utmost promptness and diligence.

**ARTICLE 102. TERM OF THE INTERVENTION.** The term of the intervention shall be of thirty (30) calendar days except where, for exceptional reasons and a prior justified request from the intervenor or intervenors, the Superintendency may decide to extend it; in such a case, the extension shall not exceed thirty (30) calendar days.

**ARTICLE 103. FINAL REPORT.** Upon expiration of the term of the intervention, the intervenor or intervenors shall deliver a final report to the Superintendency, which will detail:

1. The relevant aspects of their management.
2. An inventory of the assets and liabilities of the Bank.
3. The recommendation to proceed to the reorganization, or to the compulsory liquidation of the Bank, or to the restitution of its management and control to the directors.

**ARTICLE 104. EVALUATION OF THE INTERVENOR'S RECOMMENDATION.** The Superintendency shall dispose of a term of fifteen (15) calendar days to decide whether to admit the recommendation of the intervenor or intervenors or to proceed in another manner. Within this period the state of intervention will persist, and the Superintendency may summon the intervenor or intervenors as often as it deems necessary to render additional explanations regarding their management.

In no case may the intervention period exceed seventy-five (75) calendar days.

**ARTICLE 105. PROHIBITION OF ATTACHMENT, EMBARGO, WITHHOLDING OR APPLICATION FOR BANKRUPTCY.** The intervened Bank shall not be subject to attachments, embargoes, withholdings or any other preventive measures. Likewise, the intervention suspends the statutes of limitations pertaining to the credits or debts of the Bank, from the date of the notice described in article 97.

Neither may there be payment, without the authorization of the Superintendency, of the debts of the intervened Bank, incurred prior to the intervention.

**ARTICLE 106. END OF THE INTERVENTION.** If during the term of the intervention its originating cause is rectified, the intervenor or intervenors may request its conclusion to the Superintendency, which shall dispose of a term of fifteen (15) calendar days to approve or deny said request. In case of approval, at the expiration of said term the management and control of the Bank shall be returned to its directors.

**ARTICLE 107. REORGANIZATION.** If the Superintendency should decide, within the term established by article 104 of this Decree-Law, that the reorganization of the Bank is necessary, it shall draw up a reorganization plan containing the following:

1. The appointment of one or more reorganizers that have neither a direct nor indirect relationship with the Bank. The reorganizers shall exercise the exclusive management and control of the Bank for the duration of the reorganization and they shall be answerable to the Superintendency. They shall be persons with a minimum of five years of managerial experience in the banking business.
2. The general guidelines necessary to restore the efficient and secure operation of the Bank, taking into consideration the interests of depositors and creditors, and of shareholders or partners.
3. The instructions for the dismissal of any director, officer, executive, manager or other employee that are considered necessary.
4. The term within which the reorganization must be completed, which may be extended for a term of equal duration by the Superintendency, based on a considered request from the reorganizers.

For the duration of the process of reorganization the Assembly of Stockholders of the Bank shall be incapacitated to reach decisions that may obstruct the development of said process.

Whenever in the course of the reorganization situations are discovered, or arise, which render the plan unjust, of inappropriate execution, or not feasible, the Superintendency may modify it, or decree the liquidation of the Bank as per the administrative proceedings set forth hereinafter.

**ARTICLE 108. REORGANIZATION WITHOUT PRIOR INTERVENTION.** The Superintendency may decree the reorganization of a Bank without first ordering its intervention, whenever it deems it necessary to better defend the interests of depositors and ensure the solvency and viability of the Bank, with basis on the reports furnished to it by the adviser described in article 76, or on the results disclosed by the realized inspections.

**ARTICLE 109. FACULTIES FOR REORGANIZATION.** The Superintendency shall count with the most ample faculties to conduct the reorganization of a Bank. Consequently, the Superintendency may require from the Bank's shareholders, within a brief term set by it, payment of additional capital as may be necessary for the resolution of the net worth situation and the profitability of the Bank. If the shareholders should fail to effect the requested payment, the Superintendency may: a) amortize the losses against the paid-in capital stock and reserves; b) appoint new managers; c) authorize the emission of new shares of the Bank, as well as their sale to third parties at a price determined by the Superintendency; d) promote the merger or the consolidation of the Bank with one or more Banks, the obtention of loans, the sale or partial liquidation of its non-productive assets or the imposition of liens upon them; or e) initiate the process of liquidation.

**ARTICLE 110. PUBLICATION AND BINDING NATURE OF THE REORGANIZATION PLAN.** For the reorganization plan to become effective, it must first be published for five (5) consecutive working days in a newspaper of national circulation and, while in force, it shall be binding upon all of the Bank's creditors, and shall not admit any process of compulsory liquidation, attachment, embargo or other preventive measures over its assets.

**ARTICLE 111. TERMINATION OF THE REORGANIZATION PROCESS.** At the end of the reorganization process or of its extension, if the reorganization has not been satisfactorily completed, or at any time the Superintendency may deem it necessary due to the Bank's state of insolvency, or for any other reason that may render its recovery impossible or extremely difficult, the Superintendency shall consider the reorganization as terminated and shall decree the compulsory liquidation of the Bank.

**ARTICLE 112. RESTITUTION OF THE BANK'S CONTROL.** If the reorganization process is satisfactorily concluded, the Superintendency shall return the management and control of the Bank to its directors or legal representatives, as the case may be.

**ARTICLE 113. EXPENSES OF THE INTERVENTION OR REORGANIZATION.** All expenses caused by the intervention or reorganization, including the salaries and compensations of the intervenors and interim managers, as fixed by the Superintendency, shall be charged to the intervened Bank.

**ARTICLE 114. REORGANIZATION APPEAL.** The resolution which decrees the reorganization of a Bank may be contested through a contentious-administrative appeal before the Third Chamber of the

Supreme Court of Justice, in accordance with the Law. The resolution which decrees the reorganization of a Bank may be suspended during the course of a contentious-administrative appeal of full jurisdiction, or of an appeal for infringement of constitutional rights, whenever the adjudicator deems it necessary for the prevention of grave and irreparable damages.

#### **CHAPTER XVI — COMPULSORY LIQUIDATION**

**ARTICLE 115. LIQUIDATION DECREE.** If the Superintendency deems necessary the compulsory liquidation of a Bank undergoing intervention or reorganization, it shall decree a considered resolution ordering its administrative liquidation and shall appoint one or more liquidators who should meet the same standards as those set for intervenors of a Bank.

The liquidator shall guide the process of compulsory liquidation with attention to the following criteria:

1. The need for promptness in the process in order to liquidate the Bank's assets as soon as possible to satisfy existing claims.
2. The informality and transparency of the process.
3. The observance of the rights and priorities recognized under this Decree-Law.

**ARTICLE 116. NOTICE.** The Superintendency shall order the posting of a copy of the resolution which decrees the compulsory liquidation of the Bank in a public and visible location in its main offices and branches. Said notice shall indicate the time at which the liquidation order shall take effect, which in no case may be prior to the posting of the notice, and shall remain posted for a term of five (5) working days. At the end of the five-(5) working-day term of the posting of the notice in the main offices, the notification will be deemed to have taken place. In like manner, the Superintendency shall order the publication of the resolution for five (5) working days in a newspaper of national circulation.

**ARTICLE 117. SUSPENSION OF INTEREST.** From the time of issuance of the resolution which decrees the compulsory liquidation, all interest on the bulk of assets under liquidation shall cease to accrue, save in the case of claims secured by a pledge or mortgage, in which case the creditors may demand the current interest due, up to the value of the proceeds from the encumbered assets.

**ARTICLE 118. APPEAL OF THE LIQUIDATION DECREE.** The resolution which decrees the compulsory liquidation, may be contested through a contentious-administrative appeal of full jurisdiction before the Third Chamber of the Supreme Court of Justice in accordance with the Law. The resolution which orders the compulsory liquidation may be suspended during the course of a contentious-administrative appeal of full jurisdiction, or of an appeal for infringement of constitutional rights, whenever the adjudicator deems it necessary for the prevention of grave and irreparable damages.

**ARTICLE 119. SUSPENSION OF STATUTES.** While a Bank is undergoing a compulsory liquidation, all statutes of limitations relative to any of the Bank's rights or causes of action, as well as the terms of lawsuits or proceedings to which the Bank is a party, shall be considered suspended for up to six (6) months.

**ARTICLE 120. SUMMONS TO DEPOSITORS AND CREDITORS TO THE LIQUIDATION.** The resolution which decrees the liquidation shall summon depositors and other creditors to present themselves at the Bank to state their claims. The said depositors and creditors may present themselves at any time before the liquidator renders the report described in the following article, which term in no case shall be less than thirty (30) calendar days. Notwithstanding, failure to appear shall not prejudice such claims whose existence is confirmed by the Bank's records.

**ARTICLE 121. PRELIMINARY REPORT.** The liquidator shall draft a preliminary report containing the following information:

1. The names of the Bank's creditors.
2. The identification of the claims.
3. Title or proof of the claims and their order of preference.

4. The Bank's net worth.

The report shall be published for three (3) working days in a newspaper of national circulation. Creditors shall dispose of a term of thirty (30) calendar days, counted from the last publication, to request clarifications or to register such objections as they may have.

**ARTICLE 122. RESOLUTION REGARDING OBJECTIONS.** Upon expiration of the thirty-(30) calendar-day term mentioned in the preceding article, the liquidator shall issue a considered resolution which shall resolve the registered objections and shall dispose of the following:

1. The assets that constitute the bulk of the liquidation;
2. The claims that were accepted and those that were rejected, indicating their nature and amount;
3. The order of preference for the payment of claims against the bulk.

In the same manner, the liquidator shall issue, in a separate file, a resolution containing the list of assets excluded from the bulk of the liquidation.

The resolutions under this article must 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 by means of an appeal or by a subordinate plea, within three (3) working days after the last publication. The proceedings shall be pleaded before the liquidator, who shall be at liberty to order the consolidation of all or part of the subordinate pleas or appeals, as the case may be. Upon completion of the proceedings, the liquidator shall remit the various files to the Third Chamber of the Supreme Court of Justice for its decision regarding the impugnations.

The liquidator may proceed to cancel the claims acknowledged in the resolution that have not been contested, as long as he or she sets aside those claims that were rejected and were then contested.

**ARTICLE 123. THE BULK OF THE LIQUIDATION.** The bulk of the liquidation consists of all assets and rights, present and future, of the Bank under liquidation.

The following are not part of the bulk of the liquidation:

1. Titles delivered to the Bank for their collection, and those it has acquired on account of another, whenever they are issued or endorsed directly in favor of the client or grantor.
2. Moneys transferred to the Bank in execution of a commission, mandate or trust, whenever there is written proof of the existence of the contract at the time the liquidation was decreed. Included under this Section are severance pay funds, pension and retirement funds and other moneys managed by the Bank.
3. In general, identifiable generic assets which, although under the Bank's control, belong to another person, which fact must be certified with sufficient proof.
4. Assets stored in the Bank's safe-deposit boxes and in general chattel goods or securities kept by the Bank as a depositary or custodian.

The liquidator must make restitution of the assets that are not part of the bulk of the liquidation to their depositors within ninety (90) calendar days after the date that the resolution described in the second paragraph of article 122 becomes final. Said restitution does not imply the taking of any position on the part of the liquidator regarding the ownership of the assets.

**ARTICLE 124. CONTINUATION OF THE LIQUIDATION PROCESS.** If after the termination of the liquidation of a Bank knowledge is obtained of the existence of assets or rights owned by said Bank, the Superintendency shall order the continuation of the liquidation process, with the purpose of realizing the said assets and canceling the pending liabilities.



Persons who deem themselves prejudiced by the resolution may contest it by means of a motion for reconsideration before the Superintendency, or by a subordinate plea before the Third Chamber of the Supreme Court of Justice.

**ARTICLE 125. RESCISSION OF CONTRACTS.** From the date that the resolution which decrees the compulsory liquidation becomes final, all contracts to which the Bank is a party shall be rescinded as a matter of law.

Without prejudice to the foregoing, the liquidator shall notify the Bank's debtors of the finalization of the said resolution and shall request their appearance at the Bank to cancel their obligations, to which end they shall dispose of a term of two months, upon the expiration of which the corresponding liquidation measures may ensue.

**ARTICLE 126. DEBTS OF THE BULK OF THE LIQUIDATION.** The following are considered debts of the bulk of assets of the liquidation:

1. Those arising from judicial expenses or extrajudicial transactions, incurred in the common interest of the creditors for the verification and liquidation of the assets and liabilities of the liquidation, for the administration, preservation and realization of the Bank's assets and for the distribution of their proceeds, including the liquidator's fees, the salaries of the personnel who served on the liquidation and the operating costs of the Bank;
2. All those arising from acts or contracts legally executed or celebrated by the liquidator;
3. The sums that the Bank has to return as a result of the rescission of any act or contract of the Bank, and the indemnification owed to the holder in good faith of items cleared by the liquidation;
4. The sums that the Bank has to return as a result of having received them as payment for securities and other assets belonging to others, that were transferred by the liquidator;
5. Current national and municipal taxes;
6. The claims that arise in favor of the Banks in the system as a result of the insufficiency of the Bank's funds in the exchange in the Clearing House.

The debts of the bulk of the liquidation must be paid with priority over all other claims of the Bank, with the exception of the claims secured by a pledge or mortgage addressed in article 128.

**ARTICLE 127. ORDER OF PREFERENCE.** Save for dispositions of other articles under this Decree-Law, claims against the bulk of the liquidation shall be paid in the following order:

1. Labor-related claims.
2. Social Security claims relative to payroll taxes of the Bank's employees;
3. Tax-related claims of the National Treasury or the Municipalities, as well as levies for public services rendered by the State.
4. The deposits described under article 131 of this Decree-Law.
5. All other deposits and claims.

The claims in each of the preceding categories shall be paid on a pro rata basis. Each category shall exclude the others as per the order specified in the present article, up to the depletion of the Bank's assets.

The preferences or priorities established under special laws shall not be applicable to Banks.

**ARTICLE 128. CLAIMS SECURED BY PLEDGE OR MORTGAGE.** With the exception of sums owed to the National Treasury for property taxes, claims secured by pledge or mortgage shall have preference over any other claims among the encumbered assets, up to the amount of their value. Creditors may present said claims at the liquidation or demand payment separately through the corresponding executive proceedings.

**ARTICLE 129. LIQUIDATION OF ASSETS.** The liquidator shall procure the sale and realization of all goods, rights and other assets of the Bank under the most advantageous conditions possible, in conformity with the following rules:

1. As pertains to real estate property or chattels, rights or other assets whose value is less than twenty-thousand balboas (B/.20,000.00), the liquidator may sell these for an amount that cannot be less than that obtained by an appraisal by up to two (2) qualified independent experts. The liquidator shall determine, according to the circumstances, if the appraisal referred to in this Section should be undertaken by one (1) or two (2) experts.
2. As pertains to real estate property or chattels, rights or other assets whose value is more than twenty-thousand balboas (B/.20,000.00), the liquidator may sell these through a private auction, following the proceedings for foreclosures and judicial sales set forth in the Judicial Code beginning with article 1732, insofar as applicable.
3. As pertains to claims arising from mortgages or pledges, or those of any other nature, the Superintendency is hereby granted compelling jurisdiction for the execution of said claims, with observance of the regulations for executive proceedings set forth in the Judicial Code.

The foregoing does not prejudice the liquidator's authority to transfer the claims to other Banks.

**ARTICLE 130. FINANCIAL LEASING.** As pertains to goods on lease by the Bank in accordance to a Contract for the Financial Lease of Chattel Goods, the dispositions of Law #7 of July 10, 1990 and Executive Decree #76 of July 10, 1996, shall obtain.

**ARTICLE 131. PREFERENCE IN THE PAYMENT OF DEPOSITS.** Deposits of five-thousand balboas (B/.5,000.00) or less belonging to natural persons shall be paid preferentially over the rest of deposits, as per the preceding article 127. For purposes of the recognition of this priority, all deposits held by the same natural person in the same Bank shall be added together. When it deems it suitable, the Superintendency may revise the amount set in the preceding paragraph in order to update it, with attention to the Consumer Price Index.

**ARTICLE 132. DISSOLUTION OF THE BANK.** Upon termination of the liquidation, the Superintendency shall proceed to decree the dissolution of the Bank, remitting the corresponding notice to the Public Registry.

**ARTICLE 133. PREVENTIVE MEASURES OR ATTACHMENTS.** The assets of a Bank under liquidation are not subject to preventive measures or attachments, save when based on an action in rem.

**ARTICLE 134. APPEAL BEFORE THE SUPERINTENDENT.** Such resolutions decreed by the liquidator that may not be contested before the Third Chamber of the Supreme Court of Justice shall be subject to appeal before the Superintendent.

**ARTICLE 135. INADMISSIBILITY OF BANKRUPTCY.** A declaration of bankruptcy on the part of Banks may not be requested. Notwithstanding, the compulsory liquidation shall admit, in a supplementary capacity, the regulations established in the Civil Code, the Code of Commerce and the Judicial Code, insofar as these may not be incompatible with this Decree-Law.

The foregoing notwithstanding, as soon as the Superintendent may consider that there are discernible grounds for a negligent or fraudulent bankruptcy as addressed by the Code of Commerce, he or she shall remit a copy of the pertinent proceedings to the Public Ministry for purposes of the corresponding criminal action.

**ARTICLE 136. APPLICABLE LEGAL PROVISIONS.** Banks under the process of liquidation at the time this Decree-Law is enacted shall be governed by Cabinet Decree #238 of July 2, 1970 and other provisions that amend or supplement it.

#### **TITLE IV — SANCTIONS**

**ARTICLE 137. GENERIC SANCTIONS.** The Superintendency shall impose the proper administrative sanctions for acts in violation of the provisions of this Decree-Law, in accordance with the severity of the offense, its recurrence and the damages caused to third parties.

Acts in violation of this Decree-Law for which a specific sanction has not been designated, shall be punished by the Superintendency, at its discretion and without prejudice to a corresponding criminal action, with any of the following sanctions:

1. Private admonition.
2. Public admonition.
3. Fines, of up to fifty-thousand balboas (B/.50,000.00).

The special sanctions set forth in this Decree-Law, as well as the generic sanctions set forth in this article may be imposed by the Superintendency upon the Bank and/or the directors, officials, managers, employees and other officers who participated in the perpetration of the violation. In the latter case, the Bank shall be held jointly liable for the fine levied upon the said persons. These sanctions shall be equally imposed upon officials of the Superintendency who have incurred in the violation of the provisions of this Decree-Law.

**ARTICLE 138. PROGRESSIVE FINES.** In all cases in which the perpetration of violations to the provisions of the present Decree-Law persists in time, the Superintendency may levy progressive fines until the perpetrated violation is corrected.

#### **TITLE V — PROTECTION TO THE USER OF BANKING SERVICES**

**ARTICLE 139. SPECIAL REGULATIONS AND DEFINITIONS.** The protection of the consumer or user of banking services shall be governed by the special regulations set forth under the present Title. For the purposes of this Title the following terms shall be interpreted in the following manner:

1. Supplier: Any person duly authorized under a general license to engage in the banking business in the Republic of Panama. Therefore, a person engaging in the banking business under an international or representative license shall not be deemed a supplier.
2. Consumer or User: A natural or juridical person which acquires from a supplier a banking service that meets the following conditions:
  - a. As pertains to a natural person, cases of financing for the purpose of consumption by the individual user or his or her family, or for the construction or improvement of his or her dwelling, whenever the utilization or investment of the corresponding funds takes place in the Republic of Panama; and as pertains to a juridical person, cases concerning a small enterprise. For the purposes of this article, a small enterprise is defined as one with assets and capital stock not in excess of one-hundred-thousand balboas (B/.100,000.00), and whose annual sales or rendering of services does not exceed one-hundred-thousand balboas (B/.100,000.00).
  - b. Its amount may not exceed thirty-five-thousand balboas (B/.35,000.00).
3. Banking services or contracts: Banking services are those rendered by a supplier to a user within the framework of the definitions and limitations established in this article. Banking contracts are the documents wherein the rendering of said services is agreed upon.

**ARTICLE 140. APPLICABILITY OF LAW #29 OF 1996.** Matters pertaining to the protection of the consumer or user shall be governed by the pertinent dispositions of Law #29 of February 1, 1996, insofar as these are not contradictory to the provisions of the present Title. Insofar as applicable, said dispositions shall be interpreted at the administrative level and shall be applied in all cases in conformity with the regulations and principles established under the present Title.

The Superintendency shall have the authority to implement the dispositions of the present chapter, to set the meaning, scope and interpretation of the regulations therein. The Superintendency shall be equally authorized to supervise that the regulations in force pertaining to the protection of the user of banking services are complied with in banking contracts.

**ARTICLE 141. FURNISHING INFORMATION.** The only provisions of article 31 of Law #29, of February 1, 1996 applicable to suppliers shall be Sections 1, 2, 7, 9, 12 and 13, which establish the obligation to furnish their clients with information.

For purposes of the dispositions of said Sections, and provided the banking contracts conform to the requirements of the law, suppliers shall be deemed to be in compliance with the obligation to furnish information to their clients by the delivery of the document comprising the contract or the terms and conditions of the service in question.

The user may sign annexed blank documents, provided these are related to the principal transaction they supplement and are clearly identified as such. In such cases, the principal contract or another document subscribed by the Bank and the user, must include a brief description of the annexed document or documents signed in blank. Any annexed document signed in blank that is not used must be destroyed by the supplier or returned to the user, once that particular transaction has been concluded or has expired. The devolution may be effected by registered mail to the postal address of the user or by any diligent means.

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

**ARTICLE 142. INVALIDITY OF CLAUSES IN CONTRACTS OF ADHESION.** For the purposes of the dispositions of Article 34 of Law #29, of February 1, 1996 all stipulations in banking contracts of adhesion that imply a waiver or curtailment of a right as recognized under that law and its amendments or regulations, shall be considered null and void. Clauses that imply a waiver of rights or procedures expressly allowed by other laws are exempt from the effects of said grounds for nullification.

**ARTICLE 143. REVISION OF SAMPLES OF BANKING CONTRACTS.** For the purposes of Banks, Article 35 of Law #29 of February 1, 1996, shall be applied in the following manner:

The supply enterprises shall maintain at the disposal of the Superintendency samples of banking contracts and of other documents annexed thereto, for purposes of their examination in order to determine whether they conform to the dispositions of the Law.

Once the contracts and annexed documents have been examined, the Superintendency may issue its recommendations to the suppliers. The recommendations issued by the Superintendency shall not be interpreted *per se* as a breach of law #29 of 1996 as an infringement or as grounds for the imposition of a penalty.

The revision and approbation of a contract or of any document on the part of the Superintendency shall not deprive a user of its right of recourse to a jurisdictional authority, in case it considers there has been an infringement of its rights.

**ARTICLE 144. WRITTEN CONTRACTS.** The dispositions of Articles 60 and 61 of Law #29 of February 1, 1996 shall not be applicable to banking contracts and transactions. The following will apply in their stead:

In cases where the law or banking practices or usage, generally prevailing in the marketplace, require that a banking contract or transaction be set forth in writing, said instrument must at least contain the following information:

1. The full name, nationality, domicile and number of the personal identification card of each of the contracting parties. In the case of a juridical person, stipulation must be made of the trade

- name, registry identification data, corporate domicile plus the full personal data of its legal representative;
2. A detailed description of the services contracted for;
  3. The total amount of the contracted obligation or of the transaction in question, expressed in monetary terms, where applicable;
  4. Specification of the regularity of payments of installments or quotas, their amounts, and the place of payment;
  5. The term of the contracted obligation or the duration of the contract;
  6. The rates of nominal interest and effective interest applicable, and the method of their computation. Cases of lines of credit must include the formula for the determination of the applicable effective interest rate;
  7. In cases where the contract or transaction contains exclusions, limitations, and/or grounds for termination, the same shall be highlighted in the text;
  8. The date when the contract or transaction is formalized;
  9. Any other clause or provision that the parties consider appropriate to stipulate;
  10. In the same contract or in a separate document which must be delivered to the user in every case, a detailed description must be made of the sums to be charged to a user of the banking service, indicating the nature of the charge and its expression in monetary terms. This will include costs for credit checks, handling of applications, penalty interests, extra charges, commissions, notarization costs, registration fees, insurance premiums, costs of appraisals, surcharges and any others of a similar nature.

**ARTICLE 145. INVALIDITY OF CONTRACTUAL CLAUSES.** The scope and interpretation of article 62 of Law #29 of February 1, 1996, shall be the following:

The abusive nature, hence the absolute invalidity of a contractual clause, shall be recognized by taking into account the nature of the products or services that are the object of the contract, and by considering, at the moment of its execution, all the circumstances attendant to it, as well as the rest of the provisions of the contract, or of another contract on which it may depend.

1. Fluctuations in the costs of financial products, whenever not exclusively dependent on the will of the supplier, shall not be deemed to be changes in the conditions of the contract, whenever so specified therein.
2. Banking contracts drafted in a language other than Spanish, shall not be deemed to be null and void, provided they are thus requested by the user of the banking service and are not public documents. Similarly, the drafting of a banking contract in a language other than Spanish shall be permitted in cases where the international nature of the contract so demands it.
3. Clauses containing waivers of domicile, procedural requirements, terms and personal notifications shall not be deemed to be null and void when in conformity with the principles established by the Judicial Code, the Civil Code and/or other laws.
4. A clause shall not be deemed to be null and void if it conforms to generally established market practices.

**ARTICLE 146. GROUNDS FOR RELATIVE INVALIDITY.** The parameters for determining the adequate proportion in each of the grounds for relative invalidity set forth in article 63 of Law #29 of February 1, 1966, will be those established by special laws and in their absence, those established by banking usage and practices generally prevailing in the marketplace and the principles of good faith and contractual fairness.

**ARTICLE 147. RIGHT TO INFORMATION.** Users of banking services shall have the right to be kept informed, in a timely manner, as to rates of interest, commissions and charges that banks exact for

their services, as well as to the evolution of transactions, accounts and businesses held with the banks.

**ARTICLE 148. CHARGING INTEREST.** In every banking contract in which interest is charged, indication must be made of the effective rate of interest payable by the client in the transaction and as penalty interest, as well as the method of calculation for each case. Likewise, specification must be made of any other penalty for breach of, or tardy compliance with, agreed stipulations. In cases of lines of credit there should be disclosure of the formula for calculating the rate of effective interest applicable.

**ARTICLE 149. COMPLAINTS BY USERS OF BANKING SERVICES.** The Commission for Free Competition and Consumer Affairs shall only be competent to deal with the complaints of users against suppliers, as defined under this Title, by means of the process of conciliation with the consumer established by Law #29 of 1996.

#### **TITLE VI — MISCELLANEOUS PROVISIONS**

**ARTICLE 150. SUPERVISION OF OFFICIAL BANKS.** Official Banks shall be subject to the inspection and vigilance of the Office of the Comptroller General of the Republic under the terms of the Constitution and the Law, and to the supervision of the Superintendency as well as to the regulations, rules and requirements under this Decree-Law applicable to Banks for transactions of the same type.

**ARTICLE 151. CLASSIFICATION OF BANKS.** The classification of each Bank, as addressed by Article 1010 of the Fiscal Code, shall be made by the Superintendency according to criteria that it shall set to that end.

**ARTICLE 152. DAYS OF CLOSING OF OPERATIONS.** The Superintendency shall establish, with prior notice to the public, the days in which no Bank may conduct operations with the public, which may not necessarily coincide with holidays.

**ARTICLE 153. BANKING SCHEDULE.** The Superintendency shall establish the minimum number of weekly hours during which the Banks shall render services to the public. In cases of justified causes, in the judgment of the Superintendency, the latter may authorize exceptions to the general rule.

**ARTICLE 154. INACTIVE ASSETS.** Every Bank must inform the Superintendency of any assets, funds and securities held by it which remain inactive for five (5) years and which belong to persons of unknown whereabouts. Once the Superintendency has ascertained this fact, it shall order that their liquid value be transferred to the National Treasury.

**ARTICLE 155. RESTITUTION OF FUNDS.** The State shall be bound to make restitution of the funds described in the preceding article to their owners, provided they are reclaimed within ten (10) years after the date on which they were transferred to it, but the restitution shall be made without the payment of interest.

**ARTICLE 156. UNITY OF A BANK FOR FISCAL PURPOSES.** All of the Establishments of a Bank in Panama shall be considered as a single Bank for purposes of this Decree-Law, without prejudice to the dispositions of the Fiscal Code.

**ARTICLE 157. IMMUNITY OF ACCOUNTS.** Funds deposited in the country by Central Banks or similar depositaries of the international reserves of Sovereign States, may not be subject to preventive measures, attachments or any type of withholding.

**ARTICLE 158. DEPOSITS IN INTERNATIONAL-LICENSE BANKS.** Money deposited in International-License Banks shall be construed as domiciled in Panama and, therefore, shall be subject to the jurisdiction of Panamanian courts.

**ARTICLE 159. CREDITORS OF BRANCHES IN PANAMA.** In case of a liquidation, the assets of the Branch of a Bank in Panama shall serve to first satisfy the creditors of the Branch, be these nationals or aliens.

**ARTICLE 160. SUBMISSION TO PANAMANIAN LEGISLATION AND JURISDICTION.** Assets transferred to or deposited in Banks, whether as a deposit or under a mandate or trust, or under any other title, shall be wholly subject to the laws and jurisdiction of the Republic of Panama, unless the instruments of transfer provide otherwise.



It is hereby established as a principle of public order and of public policy, that the assets of aliens (as defined in the sole proviso to the present article) are fully subject to the principle of free will and the norm of free disposition of assets, even if the laws of succession or the matrimonial laws of the country of nationality or domicile of the title holder, grantor, founder or beneficiary provide otherwise. Proviso: The assets whose title holders, grantors or beneficiaries are persons who are not Panamanians nor residents in the Republic of Panama at the time the transfer of the assets is consummated, shall be deemed as "Assets of Aliens" for purposes of the present article.

## **TITLE VII — FINAL PROVISIONS**

**ARTICLE 161. REDRESS.** Save for special cases addressed under this Decree-Law, the resolutions issued by the Board of Directors shall admit as sole redress a motion for reconsideration before the said body, to which end the aggrieved party shall dispose of a term of five (5) working days from the date of its notification. The resolution which decides the reconsideration proceedings shall be final at the administrative level.

The resolutions of the Superintendent shall be subject to appeal before the Board of Directors of the Superintendency, to which end the aggrieved party shall dispose of a term of five (5) working days from the date of notification of the respective resolution or of notification of the resolution which decides the reconsideration proceedings, as the case may be. The appeal shall be final at the administrative level.

The foregoing is without prejudice to any corresponding recourse at the contentious-administrative level.

**ARTICLE 162. SPECIAL FISCAL PERIOD.** Banks that wish to adopt a fiscal period different from the calendar year and have obtained permission from the Ministry of Finance and Treasury to that end, must notify the Superintendency of said authorization.

**ARTICLE 163. REPEAL.** This Decree-Law repeals in its entirety Cabinet Decree #238 of July 2, 1970 and all other legal provisions inconsistent with it. Notwithstanding, the National Banking Commission shall exercise the functions of the Superintendency until the Board of Directors and the Superintendent have been appointed.

The budget appropriations assigned to the National Banking Commission shall be transferred to the Superintendency at the enactment of this Decree-Law, to be utilized for the remainder of the 1998 budget period.

**ARTICLE 164. REFERENCES TO THE NATIONAL BANKING COMMISSION.** All references to the National Banking Commission in laws, decrees and other provisions, as well as in contracts, pacts or agreements prior to the present Decree-Law, shall be understood as made with respect to the Superintendency, and the rights, faculties, obligations and functions of the former thus established shall be taken as rights, faculties, obligations and functions of the latter, save for provisions expressly contrary to the present Decree-Law.

Likewise, all references to the Executive Director of the National Banking Commission in laws, decrees and other provisions, as well as in contracts, pacts or agreements prior to the present Decree-Law, shall be understood as made with respect to the Superintendent, and the faculties, obligations and functions of the former thus established shall be taken as faculties, obligations and functions of the latter, until the Board of Directors may decide otherwise.

**ARTICLE 165. VALIDITY OF THE BANKING AGREEMENTS.** The validity of the banking agreements issued by the National Banking Commission is hereby recognized up to the date of enactment of this Decree-Law, insofar as they are not contrary to its letter and spirit.

**ARTICLE 166. ENACTMENT.** This Decree-Law shall take effect three (3) months after its promulgation.

**LET IT BE KNOWN AND PUBLISHED**

**Given in the city of Panama, on February 26, 1998.**