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OFFSHORE BANKING REGULATIONS IN PANAMA

Law Decree No.2 of 22 February 2008, which amends Law Decree No.9 of 1998 is the applicable banking regulation of the Republic of Panama as of August 25, 2008.

CARRYING OUT BANKING BUSINESS. Only persons who have obtained the relevant banking licence may carry out banking business in or from the Republic of Panama.

No person may directly or indirectly obtain funds from the public, in or from the Republic of Panama, by receiving money on deposit or otherwise, unless: (a) the activity is licensed or authorised by a legally competent regulatory authority or agency, or (b) the activities for raising capital are expressly exempt by law from requiring a licence, or any regulation or authorisation.

DEFINITIONS.

- **Foreign bank.** A branch or subsidiary of a bank or of an owner of bank shares, whose parent is located outside of the Republic of Panama.
- **Panamanian bank.** Whose head office is located in the Republic of Panama.
- **Office of representation.** An office of a bank which, from the Republic of Panama, promotes banking business without carrying it out.

BANKING LICENCES. No person shall carry out any banking business in or from the Republic of Panama without the appropriate banking licence or legal authorisation.

Three types of licences are issued by the Superintendency of Banks:

1. **General Licence.** Allows banking business to be carried out in any part of the Republic of Panama and authorises any transaction which is perfected, completed and which enters into force abroad, as well as any other activity which may be authorised by the Superintendency.
2. **International Licence.** Allows transactions that are perfected, completed and which enter into force abroad to be directed from an office established in Panama, and allows any other activities which may be authorised by the Superintendency. **This is the type of license that**

comprises offshore banking operations in Panama, because transactions do not have effect in the territory.

- 3. Representation Licence.** Allows foreign banks to establish an office of representation in the Republic of Panama and to carry out such other activities that the Superintendency may authorise. Offices of representation shall always include the term "Office of Representation", in all their operations.

The representation licence shall be applied for directly by the bank to be represented and it shall only be granted to the former. Once granted, the bank shall carry out any activities through a branch or subsidiary wholly owned by the bank who has made the application.

PRIOR AUTHORISATION OR NON-OBJECTION. Foreign banks shall have previously obtained authorisation or an indication of non-objection from their foreign supervisory authority in order to apply for a licence to carry out banking business in or from Panama or to apply for an office of representation.

USE OF THE WORD "BANK". Only banks holding the pertinent banking licences issued by the Superintendency, as the case may be, may use the word "Bank" or its derivatives in any language, in their names, trade names, commercial names, descriptions, letterheads, invoices, stationery, notices, advertisements or by any other means or in any other form, which indicates or may lead anyone to think that they carry out or engage in banking business. Excluded from this rule are national institutions or groups which exclusively undertake humanitarian or charitable work, government bodies which grant loans for social projects, and multilateral or international organisations recognised by the Republic of Panama.

Notwithstanding the foregoing, the Superintendent may, in exceptional cases, authorise the use of the word "Bank" or its derivatives, in any language, to an individual or legal entity not carrying out any banking business, insofar as the word "Bank" or its derivatives shall be used solely as part of the applicant's name and that it does not generate any confusion or doubt as to the nature of its operations and activities.

The Superintendency is the only institution with the power to authorise the use of the word "Bank" and any derivatives, in any language, in the Republic of Panama.

Notaries are prohibited from authorising deeds or copies of deeds, acts, statements or instruments specific to their office or to authenticate signatures which are in breach of these provisions. The Public Registry is similarly prohibited as it pertains to its registrations, and it shall be compulsory for the Director General of the Public Registry to inform the Superintendency of any registration which may be in breach of this requirement.

The Superintendent shall evaluate the report and order the addition of a marginal annotation in the registration of any company in breach of the provisions of this Decree-Law and, after sixty calendar days have elapsed from the date of the corresponding annotation, the company shall be dissolved as

a matter of law or disqualified from carrying out any business in Panama, depending on whether it is a Panamanian or a foreign company.

CARRYING OUT BANKING BUSINESS WITHOUT A LICENCE. Wherever there is knowledge of or there are reasonable grounds to believe that any person is carrying out or intends to carry out any banking business without a licence, the Superintendency has the authority to examine its books, accounts and any other documents in order to ascertain this fact. Unjustified refusal to submit these books, accounts, and documents shall lead to the presumption that it is in fact carrying out banking business without a licence.

If necessary, the Superintendency may intervene any establishment presumed to be carrying out banking business without a licence and upon obtaining confirmation thereof it shall order its closure. The Superintendency may use the services of the national police and any other authority to aid them to this effect.

The Superintendency shall order the Public Registry to add a marginal annotation in the registration of any company involved in unauthorized activity and shall impose the sanctions established in Law Decree No.2 of 2008. After sixty calendar days have elapsed from the date of the corresponding annotation, the company shall be dissolved as a matter of law or disqualified from carrying out any business in Panama, depending on whether it is a Panamanian or foreign company.

These provisions shall also apply in those cases in which the Superintendency has reasonable grounds to believe that any person is obtaining or intending to obtain funds from the public in breach of the provisions of Law Decree No.2 of 2008.

LICENCE APPLICATION. Banking licence applications filed with the Superintendent shall be submitted in writing through an attorney-in fact.

REQUIREMENTS FOR THE APPROVAL OR DENIAL OF A BANKING LICENCE. The Superintendent shall have a term of up to ninety days from the date on which all documentation required by the Superintendency is submitted in order to approve or deny the application for a banking licence, in accordance with the following requirements:

1. The identities of the principal shareholders and of the fitness of the administrative body on the basis of its experience, integrity and professional background.
2. Evidence of the ability to provide the minimum capital required, whose origin shall be clearly determinable.
3. A business plan showing the bank's viability and its contribution to the Panamanian economy.
4. Corporate governance policies.
5. Any other requirements the Superintendent or the Board of Directors may deem to be appropriate.

The term may be extended if he deems it necessary for the better assessment of the application submitted.

The formal consideration on the part of the Superintendent of Banks of a Temporary Permit application, requires filing of a Petition requesting a Temporary Permit from the Superintendent of Banks for the sole purpose of registering with the Public Registry any documents pertaining to the organization or authorization of the corporation under national or foreign Laws applicable to its organization. The application shall indicate the type of License being applied for: General, International or Representative.

The application shall be accompanied by the following documentation:

1. POWER-OF-ATTORNEY.

The applicant shall file the petition through a Lawyer or a Law Firm authorized to render legal services in the Republic of Panama.

2. ARTICLES OF INCORPORATION:

- a) In the case of corporations to be organized under domestic law: minutes of the applicant's articles of incorporation and By-Laws, if any.
- b) In the case of corporations organized under foreign law: legalized copy of the deed containing the applicant's articles of incorporation and by-Laws, if any.

3. AUTHORIZATION BY THE BOARD OF DIRECTORS:

Minutes, extract of minutes or Secretary's certificate of the Meeting of the Board of Directors of the applicant or of its financial promoter attesting to its financial support, its authorization to exercise the banking business, as well as the allotment or investment of capital required to exercise banking activities in Panama.

4. CERTIFICATION BY HOME SUPERVISORS (MONETARY, SUPERVISORY OR REGULATORY):

Certification issued by the authorities of the country of origin of the applicant or its promoter noting that it is duly registered and authorized to exercise the banking business in that country, as well as its authorization to conduct the banking business in or from Panama or establish a Representative Office in Panama.

In case the applicant operates as a bank in its country of origin, or if the applicant is part of a financial conglomerate which includes banks operating in its country of origin, the Superintendency of Banks may require a certification by the foreign Banking Supervisory Entity of such country, indicating that such entity will carry out a consolidated cross border supervision of the applicant if the Banking License is granted in Panama.

5. PARTICULARS OF THE APPLICANT OR ITS PROMOTER, AND ITS SHAREHOLDERS:

Detailed and accurate information as to domicile, address, nationality (national identity document and/or passport) and qualifications of the applicant, its shareholders or promoter, and its Directors and Officers, as well as stock ownership by its Directors and Officers.

If the shares of the applicant or its promoter are constantly traded in the Stock Exchange, the information required shall apply to the five (5) shareholders with the largest number of shares.

6. RESUMES OF THE PERSONS RESPONSIBLE FOR THE BANK:

Resumes of the officers, directors, executives and administrators responsible for the banking office in Panama, including banking, commercial and personal references, indicating their source, in order to confirm these or to request additional information.

7. ECONOMIC GROUP:

The applicant and/or promoter shall provide information about the Economic Group to which it belongs, particularly any corporation having control over the applicant and/or its promoter, its components, track record; family relation, property, control or management; directors, officers and responsible personnel they may have in common.

8. CAPITAL:

The applicant shall submit evidence that it has the minimum initial capital required for a Bank to operate in Panama, to wit, Three Million Dollars if it is applying for an International License, and Ten Million Dollars if it is applying for a General License. The capital destined for the subsidiary in Panama shall be made up of additional capital funds provided by the Head Office, and separated from the capital of its Head Office.

9. CAPITAL DISTRIBUTION:

Percentage of the applicant's or its promoter's participation in the paid-up capital of the office to be established.

10. LEGAL REPRESENTATION:

a) In the case of banks organized under foreign law: names of the two individuals designated as the Bank's General Attorneys-in-Fact, both of them shall be residents of Panama and at least one of whom shall be a Panamanian citizen.

b) In the case of banks organized under Panamanian Laws: name of the person who will act as Legal Representative of the bank to be established, as designated in the respective Articles of Incorporation.

11. BALANCE STATEMENT AUDITED BY A CERTIFIED PUBLIC ACCOUNTANT AND FINANCIAL STATEMENTS:

Balance Statement of the applicant and/or its promoter dated no less than ninety (90) days prior to the application. Comparative audited Financial Statements for the two last years, accompanied by reports on portfolio classification and maturity structure of assets and liabilities, as well as the applicant's or its promoter's position in the market of origin, according to major financial indicators (total assets, portfolio, deposits and equity) and its most recent rating by its supervising authority.

12. REGISTRATION AND AUTHORIZATION OF AUDITORS:

Certification by the Technical Board of the Ministry of Commerce & Industries of the Republic of Panama or the appropriate foreign authority noting that the CPA firm auditing the applicant's and/or its promoter's Financial Statements is duly authorized to exercise said profession.

13. REPORTS BY INTERNATIONAL RATING AGENCIES:

Information available on recent ratings of the applicant or promoter, or the Financial Group by Rating Agencies, according to internationally recognized rating standards.

14. YEARBOOK AND OTHER PUBLICATIONS:

Most recent Yearbooks and other publications containing information about the applicant and/or its promoter, or the Financial Group to which they belong, their organization, changes in corporate name, mergers or consolidations, operation turnover, domestic and foreign banking offices (subsidiaries, branches, representative offices and agencies), relations with other financial institutions, and general information on business results, as well as profit, growth and risk indicators for assets, liabilities and equity.

15. PROPOSED ACTIVITIES TO BE DEVELOPED/BUSINESS PLAN:

Description of the plans the applicant intends to develop (short, medium and long-term objectives) once the License is granted, indicating the Bank's likelihood of success and its contribution to the Panamanian economy.

16. FEASIBILITY STUDY:

Financial projections of the applicant, and projected organizational functions and anticipated income-yield capacity of the bank.

17. PUBLICATION OF NOTICE:

Within fifteen (15) days after filing the application, a notice shall be published during three (3) working days in a newspaper of national circulation containing the following information:

- a. Name of License applicant.
- b. Name of applicant's directors and officers.
- c. Applicant's business background.
- d. Names and national identity card numbers or passport numbers of the Bank's directors, officers and executive officers, including their titles.

18. OPPOSITION TO OBJECTIONS:

Should any objections from the general public be filed within fifteen (15) days following the date of the last publication referred to above, the applicant shall be entitled to refuting the same within fifteen (15) days after the objections are served.

19. PUBLIC REVIEW OF FINANCIAL STATEMENTS:

The applicant's audited Financial Statements shall be available for review by the public at the Superintendency of Banks' offices.

TEMPORARY PERMIT. Having complied with the requirements for applying for a licence, the Superintendent shall issue a temporary permit with the sole aim of enabling the applicant to register its Articles of Incorporation at the Public Registry of Panama using the word "Bank" or any derivatives, in any language, while the application for the permanent licence is processed. The temporary permit shall be granted for a ninety-day term.

PERMANENT LICENCE. Once the applicant company is registered at or qualified by the Public Registry, while the temporary permit is in effect and having complied with the minimum capital requirements, in the case of an international licence, the petitioner shall apply for a permanent licence for the company with the required security deposit. These provisions shall also apply to applicants with other types of legal organizations.

Once the documents and corresponding requirements are analysed, the Superintendent shall have the authority to issue or deny the licence by means of a considered resolution and he shall personally notify the applicant of the resolution within one hundred and twenty days following receipt of the application for a permanent licence.

This term may be extended if the Superintendent deems it is necessary by virtue of the particular circumstances of an application.

PUBLICATION OF THE LICENCE APPLICATION. Once the applicant's documents are received and satisfactorily analysed, the Superintendency shall publish a notice containing the following information in a newspaper with a national circulation, for three working days:

1. The name of the petitioner for the licence.
2. The name of the directors and officers of the petitioner.
3. The business background of the petitioner.
4. The names, identity cards or passport of the bank's directors, officers and executives, specifying their posts.

The audited financial statements of the petitioner for the year prior to its presentation shall be made available to the public at the offices of the Superintendency.

Persons with justifiable grounds for opposing the granting of the licence sought shall disclose them in writing to the Superintendency and shall file supporting documents, if any, within fifteen days from the date of the last publication herein referred.

Justifiable reasons shall be deemed to be those relating to the economic capacity or good character of the petitioner, of the entity seeking a banking licence, of the directors, officers or executives mentioned in the notice, and in general, such

verifiable circumstances which would render unsuitable the establishment of the new banking entity in Panama. The Superintendency shall not be obliged to pass judgment on said oppositions and objections. In any event, the petitioner shall have the right to refute the objections to the granting of a banking licence within fifteen days from the date on which it receives notification of them from the Superintendency.

PRELIMINARY AUTHORISATION FOR INTERNATIONAL BANKING BUSINESS. Foreign banking entities without a licence to operate from Panama may apply to the Superintendency for preliminary authorisation to carry out international banking business with the purpose of anticipating any interruption to their operations due to force majeure or any natural disasters affecting them. This authorisation shall eventually enable them to manage transactions which are to be perfected, completed and take effect abroad from an office established in Panama pursuant to an international licence.

The preliminary authorisation shall comply with the requirements set forth in this Chapter and in the regulations which further its execution. A subsequent international banking licence shall be approved on a permanent basis after the following requirements are complied with:

1. Confirmation by its foreign supervisory authority that the applicant's business has been effectively interrupted in its country of origin.
2. Confirmation from the National Bank of Panama or the Caja de Ahorros that they have received the transferred funds required as security deposit for this type of licence.
3. Evidence that it has the minimum paid-in or assigned capital required of banks with international licences.

This authorisation shall be renewed on an annual basis and under no circumstances shall the preliminary authorisation be considered equivalent to a licence to carry out banking business from Panama. The approval and renewal of the preliminary authorisation are subject to charges for special services as established by the Superintendency.

ATTORNEYS-IN-FACT OF BRANCHES OF FOREIGN BANKS. Branches of foreign banks shall appoint a minimum of two attorneys-in-fact, both individuals to be residents of Panama and one of whom shall be a Panamanian citizen.

MINIMUM PAID-IN CAPITAL. The minimum amount of paid-in or stated capital net of any losses required to request and hold a banking licence is ten million dollars for a general licence, and three million dollars for an international licence. The bank may not at any time reduce its capital to a level below the required minimum amount.

In the case of an international licence, two hundred and fifty thousand dollars of the paid-in or stated capital shall be held on deposit as security at the National Bank of Panama or at the Caja de Ahorros. The deposit shall accrue interest at market rates agreed between the depositors and any official bank. This security shall be established exclusively and solely in favour of the Superintendency, for any

purpose specified by it, therefore the deposit shall not be subject to attachment, embargo or any other preventive measures by third parties.

The Superintendency shall have the power to amend the minimum amount of paid-in or stated capital pursuant to an agreement.

CAPITAL ADEQUACY FOR BANKS HOLDING INTERNATIONAL LICENCES. Banks with international licences who are subject to host-country supervision by the Superintendency shall at all times comply with the adequacy ratio for funds required by their home-country supervisor.

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