

DECREE NUMBER 18-2002

THE CONGRESS OF THE REPUBLIC OF GUATEMALA

WHEREAS:

In agreement with the third paragraph of Article 133 of the Political Constitution of the Republic of Guatemala, the Bank Superintendence, organized according to law, is the organ that exercises the overseeing and inspection of banks, credit institutions, financial businesses, bond entities, insurance companies and others established by law.

WHEREAS:

Among other attributions it is the responsibility of the Bank Superintendence to fulfill and see that laws, regulations, agreements and applicable resolutions are fulfilled, in order that the entities subject to overseeing and inspection keep adequate liquidity and solvency that allows swift action and the fulfillment of obligations, evaluation and adequate maintenance of coverage, distribution and risk level of operations, in lieu of the protection of public interest that trust said entities with their savings.

WHEREAS:

That if, the Superintendence of Banks in the recent past was fortified through legal reforms, the technological and structural changes experimented by the country's financial system, and the influence of the tendencies of the international financial markets that demand effective, congruent supervision with said changes.

WHEREAS:

That the financial groups, that have, as a matter of fact, conformed within the country's financial system, lack specific regulation for the development and supervision of activities, which increases the risks that at a determined point in time can affect the stability of the banking system, therefore it is necessary to establish a regulatory frame that propitiates an adequate system of supervision of them in a consolidated manner.

WHEREAS:

That for the adequate fulfillment of the constitutional and legally assigned functions to the Superintendence of Banks, a regulatory frame that endows the supervision organ with the ability to develop overseeing and inspection work, among others, in a preventive manner, as well as the authority to sanction is necessary.

WHEREAS:

That article 119 k) of the Constitution of the Republic of Guatemala establishes that it is a fundamental obligation of the State to form capital, savings and investment.

THEREFORE:

In the exercise of the attributions conferred by article 171 a) of the Constitution of the Republic of Guatemala:

DECREES:

The following:

LAW OF FINANCIAL SUPERVISION

CHAPTER I SUPERINTENDENCE OF BANKS

ARTICULE 1. Nature and objective. The Superintendence of Banks is an organ of the Central Bank, organized according to the present law; eminently technical, that acts under the general administration of the Monetary Board and exercises the overseeing and inspection of the *Banco de Guatemala*, banks, financial groups, credit institutions, bond entities, insurance companies, general deposit warehouses, Exchange houses, financial groups and controller businesses of financial groups and other entities that the laws decide.

The Superintendence of Banks has the complete ability to acquire rights and obligations, possessing the necessary functional independence for the fulfillment of its goals, and to oversee that the persons subject to its overseeing and inspection fulfill their legal obligations and observe the normative agreements applicable as to liquidity, solvency and patrimonial liquidity.

ARTICULE 2. Supervision. For the effects of this law, supervision is understood as the overseeing and inspection of the entities referred to in the previous article, made by the Superintendence of Banks, the objective being the adequate fulfillment of their activities and work according to the legal and regulatory norms and other agreements that are applicable, as well as the risk evaluation assumed by the supervised entities.

The supervision operations exercised by the Superintendence of Banks do not imply, in any case, the assumption of responsibilities by them or their authorities, officials or personnel, for the measures taken by the entities subjected to their supervision, nor does it guarantee a good end to said measure, which will always be at the responsibility and risk of the entity itself, of its administrators and its shareholders.

ARTICULE 3. Operations. In order to fulfill the objective the Superintendence of Banks will exercise, regarding the persons subject of their overseeing and inspection, the following operations:

- a) Fulfill and make fulfill the laws, regulations, agreements and applicable resolutions;
- b) Supervise in order to maintain adequate liquidity and solvency that allows them to opportunely and completely fulfill their obligations, and adequately evaluate and maintain the coverage, distribution and risk level of its investments and contingent operations;
- c) Rationally dictate the instructions that have a tendency to correct the deficiencies or irregularities that it would find;

- d) Impose the sanctions that correspond according to the law;
- e) Exercise overseeing and inspection with the most ample attributions of investigation and free access to all sources and information systems of the supervised entities, including books, registries, reports, contracts, documents and any other information, as well as the proofs that back up the operations made by the supervised entities.

Every society, business or private person that lends to the entities subject to overseeing and inspection by the Superintendence of Banks, computing, accounting, legal, of custody, of intermediation of values or other operations services, have the obligation of allowing access to their installations to persons named by the Superintendence of Banks, as well as all the information, documents, registries or proof that back up the operations, negotiations, contracts or affairs that have a relationship with the supervised entity to which it lends its services;

- f) Directly request that any judge from the first instance court of the civil or penal branches, the precautionary measures that they deem necessary in order to fulfill their role of overseeing and inspection where there would be a negative response, impediment or delay on behalf of the corresponding entity or stock company, business or private person hired to render services enumerated in the previous clause, which will be decreed without the need of a previous audience;
- g) Require information on any of their activities, acts, operations of trust and their financial situation, whether it is individually, or when it proceeds, in a consolidated manner;
- h) Perform its overseeing and inspection based on consolidated supervision;
- i) Evaluate the policies, proceedings, norms and systems of the entities and, in general, make sure that they count on the integral processes of risk administration;
- j) Realize recommendations of a prudent nature tending to identify, limit and adequately administrate the risks assumed in their operations, constituting the reserves of appraisal that would be necessary to cover the risk of irrecoverable funds and to keep enough patrimony regarding said risks;
- k) To watch over the general and uniform fulfillment of accounting operations, according to the norm issued by the Monetary Board;
- l) To watch over the fulfillment of the general agreements issued by the Monetary Board that norm the operations of trust;
- m) To watch over the fulfillment of the issued norms by the Monetary Board so the entities provide the public with enough faithful and opportune information on their activities and their financial situation, in an individual manner and, when it corresponds, in a consolidated manner;
- n) Publish enough faithful and opportune information on the financial situation of

- the entities subject to their overseeing and inspection, individually or consolidated;
- ñ) Norm the minimum requirements that the entities subject to their supervision must demand from their external auditors or auditing firms when performing the external audits themselves, in a general and opportune manner;
 - o) Keep registries of banks, financial stock companies, financial groups, controlling businesses, responsible businesses, general deposit warehouses, Exchange houses, insurance and bond companies, and other entities, that according to the law, are subject to the overseeing and inspection of the Superintendence of Banks; of the directors, superior officials and legal representatives of the referred entities, insurance agents and others that are necessary for the fulfillment of its goals;
 - p) Request from the corresponding official the liquidation or bankruptcy declaration of entities subject to its overseeing and inspection, in the cases where it proceeds according to the law;
 - q) Provide the statistical information or data of financial matters required by the Monetary Board of the *Banco de Guatemala* or a competent tribunal;
 - r) Participate and form part of the organisms, associations, entities and international forums of supervision, as well as the ability to subscribe and adhere to the issued declarations made by these, according to law;
 - s) Exchange information with other entities of supervision, national or foreign, for supervision purposes;
 - t) Censure, before a competent authority, the facts that may have delinquent character, about which there is knowledge based on their activity, therefore they are authorized to provide information that identifies the depositors or investors, when it is required judicially;
 - u) Propose rules, regulations and other norms that the Monetary Board must dictate, in matters of its competence, according to law;
 - v) Dictate the necessary agreements so the supervised entities remit reports, data, antecedents, statistics and other documents on their financial situation; determining the term and form or means by which said information should be remitted to them; and,
 - w) Exercise the other functions that correspond to them according to law, regulations and other applicable agreements.

CHAPTER II ORGANIZATION OF THE SUPERINTENDENCE OF BANKS

ARTICLE 4. Direction and legal representation. The Superintendent of Banks is the superior administrative authority of the Superintendence of Banks. Exercising his

legal representation, to act judicially as well as extra judicially in the scope of his competence; therefore, he has the faculties to execute the acts, grant and revoke powers and celebrate contracts that are ordinary money orders of the Superintendence of Banks, according to its nature and objective, those derived from it and of those related to it.

ARTICLE 5. Nomination. The Superintendent of Banks is named by the President of the Republic for a four year term, selected from a list of three candidates proposed by the Monetary Board, with a favorable vote of three fourths of the total of the members of said Board.

In case of death, resignation, abandonment, definite impediment for the exercise of the charge of Superintendent of Banks, naming a substitute proceeds for the finalization of the predecessor's term, according to the process indicated in the previous paragraph.

ARTICLE 6. Eligibility Requirements. The Superintendent of Banks must be originally Guatemalan, be in the free exercise of his/her civil rights, over thirty years of age, a person of recognized integrity and reputation, as a minimum, academic degree of Bachelor in the auditing and accounting, economic or juridical and social sciences; in the last case, having an academic accreditation in the economic or financial area. In all cases the person must present notorious competence in banking matters or financial supervision.

They will enjoy the same prerogatives and immunity that the Ministers and Secretaries of the Presidency of the Republic enjoy.

ARTICLE 7. Impediments. Persons who can not be named for the Charge of Superintendent of Banks:

- a) The directors of organizations with a political, gremial, business or union character;
- b) The relatives within the fourth degree of consanguinity and second affinity with the President or Vice-president of the Republic, as well as the Ministers or Vice ministers of State or of the members of the Monetary Board, and relatives within the fourth degree of consanguinity and second of affinity of the authorities of the *Banco de Guatemala* and of the Superintendence of Banks;
- c) The directors, administrators or shareholders who possess ten percent (10%) or more of the share property of any of the entities subject to the overseeing and inspection of the Superintendence of Banks and their relatives within the fourth degree of consanguinity and second of affinity;
- d) Those who are debtors of recognized default;
- e) Those who have antecedents of bankruptcy or insolvency, as well as persons that are subject to court for processes of these matters before competent judges, and persons who have existing condemning sentences against them for

defrauding or bankruptcy;

- f) Those who have been condemned for crimes that imply lack of integrity; and,
- g) Those who for whatever reason are legally incapable of holding said charge.

ARTICLE 8. Exclusivity of functions. The Superintendent of Banks has the obligation to dedicate himself or herself full time to the complete service of the Superintendence of Banks and its functions are incompatible with the exercise of any other public or private office, whether it is remunerated or not.

ARTICLE 9. Attributions. The Superintendent of Banks will have the following attributions:

- a) Administrate the Superintendence of Banks;
- b) Establish the organizational structure that allows the Superintendence of Banks to fulfill its objective;
- c) Dictate the agreements necessary for the development ordered by the internal administration of the Superintendence of Banks;
- d) Delegate, when it is deemed pertinent, their administrative and technical duties in the authorities and officials in the Superintendence of Banks;
- e) Propose to the Monetary Board the nomination of the superintendent and directors of the Superintendence of Banks;
- f) Name and remove the rest of the officials and employees of the Superintendence of Banks;
- g) Submit for the approval of the Monetary Board the annual judgment of the Superintendence of Banks;
- h) Inform the Monetary Board, trimesterally, when it is required or when the Superintendent deems it necessary, on the financial situation of the entities subject to the surveillance and inspection of the Superintendence of Banks. Also, in the month of February, or when the Congress of the Republic requires it, must report them or the legislative commission which he/she determines, over the financial situation of the banking system;
- i) Resolve the written petitions of the entities subject to the surveillance and inspection of the Superintendence of Banks, within the term of thirty (30) days following the date of reception of the same;
- j) Function as an ex-official advisor, with a voice, but without a vote, in the Monetary Board sessions;
- k) Demand and receive sworn affidavits in order to accredit the organizers of new banking entities, shareholders, members of an administrative council or the board of directors, general managers or their equivalent, of the entities subject

to surveillance and inspection of the Superintendence of Banks; and,

- l) Exercise the rest of the attributions, functions and faculties that correspond according to the law.

ARTICLE 10. Temporary Substitution. In case of impediment or temporary absence, the Superintendent of Banks will be substituted by one of the intendants that the Monetary Board designates.

ARTICLE 11. Causes of Removal. The Superintendent of Banks will be removed by the President of the Republic when any of the following situations arises:

- a) Having been convicted in a criminal trial for crimes that imply lack of integrity. In case a prison sentence is dictated they will be temporarily out of commission for the exercise of their attributions and faculties, and will be substituted by the intendant designated by the Monetary Board, while said situation is at hand; and,
- b) Having been declared by a competent court in a state of interdiction or bankruptcy.

Notwithstanding the previously mentioned, the Superintendent of Banks will be immediately removed of his charge as President of the Republic, at the request of the Monetary Board, decision made by them with a favorable vote of three fourths of the total members, when they are responsible of their actions evidently opposite of the objective, nature, function and interest of the Superintendence of Banks, or other justified causes.

ARTICLE 12. Vacancy. If there would be a vacancy in the charge of Superintendent of Banks without having named a successor, the intendant will act as the Superintendent of Banks, until a new nomination has been made by the Monetary Board.

ARTICLE 13. Incompatibility. The Superintendent of Banks and their sub-ordinates can not be directors, officials, employees or advisors of the entities subject to the surveillance and inspection of the Superintendence of Banks, nor external auditors, associates or members of auditing firms that render services to said entities.

ARTICLE 14. Authorities and officials. Authorities of the Superintendence of Banks, besides the Superintendent of Banks, are the intendants, who must fulfill all of the same qualifications required to occupy the office of Superintendent of Banks.

Officials of the Superintendence of Banks are the directors, sub-directors, advisors, supervisors and inspectors.

ARTICLE 15. Legal protection. A criminal process can not be initiated against the

Superintendent of Banks and the Intendants of the Superintendence of Banks, without the Supreme Court of Justice declaring that it is sustained. Except the case of flagrant crime.

The authorities, officials and employees of the Superintendent of Banks, against who the process is made, trials or suits derived from acts and decisions adopted according to the law in the exercise of their attributions, functions or obligations, have the right to be covered by the Superintendence of Banks for their expense and cost that would be necessary for their defense.

The declared in the previous paragraph will be applied to those authorities, officials and employees of the Superintendence of Banks, even when they are no longer in the exercise of said office, as long as the processes, trials or suits that are derived of acts and decisions adopted according to the law in the exercise of the attributions, functions or obligations that would correspond to them.

The Monetary Board, at the proposal of the Superintendence of Banks, will issue the regulation in which they will determine the mechanism which must be implemented, to the effects of the declared in the present article.

ARTICLE 16. Work Relations. Work relations between the Superintendence of Banks and its employees will be subject to the internal regulations which will be issued by the Monetary Board at the proposal of the Superintendent of Banks and, supplementary, by the agreements contained in the Work Code.

ARTICLE 17. Proposal of the Superintendence of Banks and inspection quotas. The Superintendent of Banks, will present a budget proposal of income and expense project to the Monetary Board, for their approval, with a month's prior notice to the date the accounting year begins.

The expense budget of the Superintendent of Banks will be covered by annual quotas that must pay the entities subject to surveillance and inspection, according to the agreed in the specific laws or, in its defect, according to the determined by the Monetary Board. Said quotas will be approved by the Monetary Board.

The contribution of the quotas of inspection will be made effective, the latest, the last work day of the months of March, June, September and November of each year, in equal parts.

The entities subject to surveillance and inspection of the Superintendence of Banks that do not make their contributions, referred to in the present article, in the terms and quantities that correspond, a pending balance will be applied, a late fee equivalent to one and one half the weighted average interest rate of the banking system published by the Superintendence of Banks, in the month corresponding to said payment.

ARTICLE 18. Budget execution. To verify the correct budget execution, the Monetary Board will be able to order the contracting of external auditing that will review the financial operations and budget operations of the Superintendence of

Banks, selected by a term proposed by a commission integrated by members of the Board itself. The auditing must be concluded and the report must be presented by the Monetary Board within the two (2) months following the closing of each accounting year.

CHAPTER III SPECIAL CASES

ARTICLE 19. Litigious Affairs. The knowledge and resolution of the litigious affair between third parties and the entities subject to surveillance and inspection of the Superintendence of Banks, corresponds to the ordinary courts.

CHAPTER IV REFUTATION MEANS

ARTICLE 20. Appeals recourse. The resolutions of the Superintendent of Banks regarding the functions of surveillance and inspection will be enforced but will admit appeals recourse before the Monetary Board.

The appeals recourse will be interposed within a term of ten (10) days, as of the day following notification of the resolution dealt with, and must be presented in writing before the Superintendence of Banks, expressing the motives of inconformity, who will send it up within (5) days following its reception, with its antecedents, to the Monetary Board.

The resolutions of the Superintendence of Banks that count on the approval of the Monetary Board, according to the law, are non-appealable, nor those that the Superintendence of Banks issues to execute resolutions of the Monetary Board itself, on specific cases.

The interposition of the appeals recourse has no suspension effects, therefore the appealed resolution is of immediate fulfillment and enforced, without prejudice to the agreed in the Law of Banks and Financial Groups.

The Monetary Board, at the request of the party, can agree to the suspension of the effects of the objected resolution, in case the execution would cause grave prejudice to the appealing entity.

The Monetary Board will resolve the appeal recourse within a thirty (30) day period as of the date of reception.

CHAPTER V FINAL AGREEMENTS

ARTICLE 21. Transitory. The period for the Superintendent of Banks, currently in office, will conclude on September thirtieth, (30) two thousand two.

ARTICLE 22. Regulations. The Monetary Board must issue the necessary regulations for the adequate application of the current law.

ARTICLE 23. Current. The present Decree was approved by more than two thirds of the total number of congress persons that integrate the Congress of the Republic; will be published in the official newspaper and will be enforced as of June first, two thousand two.

PASS ON TO THE EXECUTIVE BRANCH FOR PUBLICATION AND FULFILLMENT.

GIVEN IN THE PALACE OF THE LEGISLATIVE BRANCH, IN THE CITY OF GUATEMALA, ON THE TWENTY-FIFTH DAY OF APRIL OF TWO THOUSAND AND TWO

**JOSE EFRAIN RIOS MONTT
PRESIDENT**

**RUDIO LECSAN MERIDA HERRERA
SECRETARY**

**AURA MARINA OTZOY COLAJ
SECRETARY**

SANCTION DECREE FROM CONGRESS NUMBER 18-2002

NATIONAL PALACE: Guatemala, May tenth, two thousand two.

PUBLISH AND ENFORCE

PORTILLO CABRERA

Division General
EDUARDO AREVALO LACS
Minister of Government

EDUARDO WEYMANN
MINISTER OF PUBLIC FINANCES

*Carlos Enrique González
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SECRETARY GENERAL
PRESIDENCY OF THE REPUBLIC

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