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THE CONGRESS OF THE REPUBLIC OF GUATEMALA

WHEREAS:

That in Guatemala the current banking legislation dates from 1945 and 1946, when it issued, among others, Decree Number 215 of the Congress of the Republic, Organic Law of the *Banco de Guatemala*, therefore it is convenient to reform the mentioned legal frame of the changes that have been generated in the financial markets and of the modern practices of the implementation of the monetary and financial policy.

WHEREAS:

In light of financial development, it becomes necessary to issue appropriate norms so that the country can count on a modern Central Bank, whose autonomy is strengthened, with the end of exercising monetary control and use of the most convenient instruments to achieve the fundamental objectives of the bank.

WHEREAS:

That the established in the general level of prices, as a fundamental objective of the *Banco de Guatemala*, is the best contribution it makes to promote the creation and the maintenance of the most favorable monetary, exchange and credit conditions for the orderly development of the national economy, as well as strengthen the correct function of the financial system of the country, therefore it is necessary to consecrate this fundamental objective in said Law.

WHEREAS:

That it is essential to incorporate changes to the banking legislation that translate into important elements for the strengthening of the measures of the monetary policy, in a modern and dynamic environment; it will be important and fundamental every time the Central Bank implements a process of transparency and account

rendering before society, referring to the measures adopted for the achievement of its fundamental objective.

THEREFORE:

In the exercise of the attributions conferred in Article 171 clause a) of the Constitution of the Republic of Guatemala.

DECREES:

The following:

ORGANIC LAW OF THE *BANCO DE GUATEMALA*

TITLE I

OBJETIVE AND THE FINANCIAL AND ACCOUNTING ASPECTS

CHAPTER I

OBJECT, NATURE AND OBJETIVE

ARTICLE 1. **Object.** The present law has as its main objective to norm pertinent structure and functioning of the *Banco de Guatemala* of referred article 132 of the Political Constitution of the Republic of Guatemala.

ARTICLE 2. **Nature.** The *Banco de Guatemala*, as the Central Bank of the Republic, who within the context of this law could be named, indistinctly, the Bank or the Central Bank, is a decentralized, autonomous entity, with juridical personality, personal and real property, with full authority to acquire rights and contract obligations, of an indefinite period and domiciled in the Territorial Division of Guatemala.

ARTICLE 3. **Fundamental objective.** The *Banco de Guatemala* has as its fundamental objective, to contribute to the creation and maintenance of the most favorable conditions for the orderly development of the national economy, for

which, it will propitiate the monetary, exchange and credit conditions that promote stability in the general level of prices.

ARTICLE 4. Functions. The *Banco de Guatemala* has, among others, that determine the present Law, the following functions:

- a) To be the exclusive issuer of the national currency;
- b) Procure the maintenance of an adequate level of liquidity in the banking system, through the use of the previewed instruments of the present Law;
- c) Procure the good functioning of the payment systems;
- d) Receive the banking float in deposits and legal deposits to which this law refers;
- e) Administer the international monetary reserve, according to the guidelines dictated by the Monetary Board; and,
- f) The other functions compatible with the nature of the Central Bank that are assigned by legal mandate.

The functions referred to in the present article will be exercised without impairment of reaching the fundamental objective established in article 3 of this Law.

CHAPTER II

GUARANTEE FUNDS AND FINANCIAL AND ACCOUNTING ASPECTS

ARTICLE 5. Guarantee Fund. The *Banco de Guatemala* counts on a Guarantee Fund constituted by the contributions made by the State for the creation of the Central Bank, by the capitalization authorized at the moment the present law is enforced, and by the capital coming from the Values Regulation Fund, according to the previewed in article 75 of this law.

The Guarantee Fund can be increased with the net excess which is referred to in clause a) of article 8 of the present Law, as well as by contributions from the State.

ARTICLE 6. The Guarantee Fund can not be embargoed. The Guarantee Fund of the *Banco de Guatemala* is neither transferable nor susceptible to embargo.

ARTICLE 7. Accounting year and its result. The accounting year and its result in the Central Bank correspond to the duration of a calendar year.

For each accounting year, the excess or net deficiencies of the *Banco de Guatemala* will be integrated to the sum of the products minus the net operative expenses perceived or realized; within said expenses the derived cost of the execution of the monetary, exchange and credit policy determined by the Monetary Board will be included.

ARTICLE 8. Assignment of the net excess. The net excess derived from the operations of the *Banco de Guatemala*, in any accounting year, will be distributed in the following order:

- a) A percentage of the net excess must be assigned to increase the Guarantee Fund of the Central Bank, until it reaches an equivalent level of five percent (5%) of the added amount of the liabilities of the Central Bank at the end of the accounting year in which the excess is generated. For the purposes of this calculation, the amount added to the liabilities of the *Banco de Guatemala* must always be the sum of the balances of:
 - i) The numerary national account;
 - ii) The titles issued by the *Banco de Guatemala*, in circulation;
 - iii) The certificates of deposit at issued terms; and,
 - iv) The deposits constituted in the *Banco de Guatemala*.
- b) Another percentage of the net excess will be destined for the increase in the general reserves of the Central Bank until it reaches an equivalent amount to that of the Guarantee Fund; the general reserve can be used only to compensate the net operative deficiencies of the Central Bank; and,
- c) Any net residual excess, after meeting the amounts established in clauses a) and b), will be transferred to the Executive Organism through the

Ministerio de Finanzas Públicas (Roughly equivalent to the Department of the Treasury), within the month of the finalization of the accounting year, excess that will become a part of the General Income and Expense Budget of the State of that fiscal year.

The distribution of the net excess of the *Banco de Guatemala* must be decided by the Monetary Board in the month following the closing of the accounting year.

ARTICLE 9. Assignment of the net deficiencies. If after covering the operation expenses, the income of the *Banco de Guatemala* is insufficient to cover the cost of operation of the monetary, exchange and credit policy determined by the Monetary Board, the resulting fault will be applied in the following order:

- a) Charge to the General Reserve Account; and,
- b) If the balance of the General Reserve Account does not have enough available funds or extraordinary assets to totally or partially cover the net deficiencies, these will be absorbed by the State, the Monetary Board in a term that does not exceed thirty (30) days after finalizing the accounting year will begin the corresponding procedure before the Executive Organism through the *Ministerio de Finanzas* (Roughly equivalent to the Department of the Treasury), so that the amount the deficiencies not covered ascend to, will be included in the project of the General Budget of Income and Expense of the State of the following accounting year, in that case the *Ministerio de Finanzas Publicas* (Roughly equivalent to the Department of the Treasury), must provide to cover said net deficiencies with treasury bonds or other financial instruments that said *Ministerio* counts on, which will accrue market interest rates and that will be negotiated by the *Banco de Guatemala* in the secondary national and international market.

ARTICLE 10. Excess or net deficiencies of the Central Bank through appraisal of non-liquid assets. The excess or net deficiencies of the *Banco de Guatemala* by appraisal of assets or liabilities expressed in foreign currency, derived of the variations of the exchange rate of the Quetzal, will not be considered

as a part of the products or operative expenses. In that sense, these will be registered periodically and separately in accounts of the General Balance designated 'Asset Account of Differential Exchange' or 'Liabilities Account of Differential Exchange', according to where it corresponds.

The excess or net deficiencies of the *Banco de Guatemala* by appraisal of the monetary gold, that forms part of its assets, derived from the fluctuation of international prices of the market of said metal, will not be considered a part of the products or operative expenses. In that sense, they will also be periodically registered in accounts designated, 'Asset account of reevaluation of assets' or 'Liabilities account of reevaluation of assets', as it corresponds.

When the accounting year is closed, the balances of the assets and liabilities of differential exchange and of reevaluation of assets will be compensated among themselves, and the net result will be registered in the 'Reserves for Appraisal' account that form part of the General balance of the *Banco de Guatemala*.

ARTICLE 11. Elaboration of Financial Statements. For the elaboration of financial statements of the *Banco de Guatemala* the norms and principles of generally accepted accounting will be observed, as well as the international adopted standards by the Monetary Board as proposed by the Superintendence of Banks.

ARTICLE 12. External Auditing. The financial statements of the *Banco de Guatemala* must be dictated and certified annually by an external auditing firm of recognized experience and reputation, for the effect the Monetary Board will authorize the hiring of the above-mentioned.

TITLE II
MANAGEMENT, ADMINISTRATION AND EXECUTION

CHAPTER I
MANAGEMENT

ARTICLE 13. Monetary Board. The Monetary Board, integrated according to the Political Constitution of the Republic of Guatemala, exercises the supreme management of the *Banco de Guatemala*.

The Monetary Board is integrated by the following members:

- a) The President, who will also be president of the *Banco de Guatemala*;
- b) The Ministries of Public Finance, of Economy and of Agriculture, Livestock and Feeding;
- c) An elected member by the Congress of the Republic;
- d) An elected member by the commerce, industry and agricultural business associations;
- e) An elected member of the presidents of the administrative councils or boards of directors of the private, national banks; and,
- f) An elected member of the Supreme Council of the University of *San Carlos* of Guatemala.

The last three members will be in power for only a year.

ARTICLE 14. Qualities. Without prejudice of the proposed by article 132 of the Political Constitution of the Republic of Guatemala, the members of the Monetary Board must be Guatemalan of the included in article 144 of the constitutional normative body cited, be of recognized honorability and act in the best national interest and of the fulfillment with the fundamental objective of the Central Bank.

ARTICLE 15. Substitution. The elected members of the Monetary Board who will substitute those who will finish their period must be elected within thirty calendar days (30) prior to the expiration of said period.

ARTICLE 16. Vacancy. In case the vacancy, death, withdrawal, incapacity, removal or other permanent impossibility for the exercise of the position of a member of the Monetary Board, a new member will be designated or elected, according to the case, to complete the respective period.

ARTICLE 17. Replacement. All the members of the Monetary Board will have substitutes, except the President who will be substituted by the Vice-President and the ministers of state will be substituted by their respective vice ministers, according to the designation made by each one of the ministers. In the case of absence or temporary impediment of a title member of the Monetary Board, he /she will be substituted by a replacement.

The substitute members of the Monetary Board, when they are not substituting the elected title holders, can attend the sessions, with voice but without vote.

ARTICLE 18. Impediments. Persons who can not be elected substitutes or title members to the Monetary Board:

- a) Persons less than thirty years of age;
- b) The presidents, directors or employees of banks, except title members and elected substitutes for the banks;
- c) Persons who are not solvent or are bankrupt, while they have not been rehabilitated;
- d) Those who have been sentenced for crimes that implicate lack of probity;
- e) Those who for whatever reason are legally incapacitated to perform their functions;
- f) Directors of organizations of political character;

- g) Those who hold positions or public jobs remunerated, whether they be by popular election or designation by any of the branches of the state or the municipalities, except positions of teaching staff;
- h) The relatives within the fourth degree of consanguinity and second of affinity of the President of the Republic, the Vice-president of the Republic and the past members of office; and,
- i) Two or more persons who are relatives within the fourth degree of consanguinity or second of affinity; or who are part of the same administrative council of a mercantile company. The exceptions for the prohibitions of clauses f), g) and i) of the present article, are the title members and elected substitutes by the Congress of the Republic and the past members of office, as well as their substitutes.

ARTICLE 19. Loss of Quality. When any of the impediments mentioned in the previous article is made evident or overcomes, the Monetary Board, with prior substantiation of the case according to the due process regulations, must make a statement regarding it, in which case the member will lose his quality when he/she is notified of the corresponding resolution.

ARTICLE 20. Removal. The President, the Vice president and the elected members of the Monetary Board will only be removed for the following reasons:

- a) When and of the abovementioned impediments in article 18 of this law is made evident, and the Monetary Board did not make the statements of the lost quality;
- b) When the person would be responsible for fraudulent or illegal acts or operations, or evidently opposed to the fundamental objectives and attributions of the Central Bank; and,
- c) For a condemning sentence dictated in a criminal process.

The removal causes must be denounced by the Superintendence of Banks before the Congress of the Republic, when it is about the elected members of said organism, or before the President of the Republic when it is about any of the other

members, so that, with previous substantiation of the case according to the regulations of due process, resolve on the removal.

Added to the above, the President or Vice President of the *Banco de Guatemala* can also be removed according to the decided in Article 60 of the present law.

ARTICLE 21. Sessions. The Monetary Board will determine the periods of its ordinary sessions, as a minimum they must celebrate at least two monthly. Also, they may have extraordinary sessions as many times as they deem necessary.

The sessions will be convened by the President or Vice president when he substitutes him, or when at least three members require it.

The President of the Monetary Board will preside the sessions, and in his absence, the Vice President will. The Monetary Board will convene validly with the attendance of at least five of its members and its resolutions will be adopted with a favorable vote of the majority of the present members, except those decisions that require a qualified majority. In no case will absentee voting be admissible.

ARTICLE 22. Permanent Advisors. The General Manager of the *Banco de Guatemala* and the Superintendent of Banks will be permanent advisors in the Monetary Board sessions, which, also, will designate other permanent advisors that it deems strictly necessary. The permanent advisors will participate with a voice, but no vote, in the sessions of the Monetary Board.

ARTICLE 23. Occasional Advisors. At the request of one of the members of the Monetary Board, they can invite any other qualified person to participate, with a voice but not a vote, in the deliberations of a specific subject being dealt with. The invited person will remain in the session of the Monetary Board only the time necessary for said deliberation.

ARTICLE 24. Daily Expense Allowance. The participation of title members, substitutes, and permanent advisors in the sessions of the Monetary Board, will give them the right to receive a daily expense allowance, which will be established by the Board itself.

The daily expense allowance of the occasional advisors will be regulated by the Monetary Board.

ARTICLE 25. Interested Assistants. When any of the attending parties to the sessions of the Monetary Board would have any personal interest in the discussion or resolution of a determined subject, or their relatives or partners within the fourth degree of consanguinity or second of affinity, they must withdraw from the session before the subject is dealt with and must remain away until a decision has been reached. If the person does not withdraw voluntarily, any other member of the board may invite the person to withdraw at the moment the matter is dealt with. For this effect, the reason for withdrawal must be indicated to sustain the presumption of the interest said member of the Monetary Board might have with the indicated subject. The withdrawal must be stated in the corresponding act.

ARTICLE 26. Attributions. The Monetary Board will have the following attributions:

- a) To determine and evaluate the monetary, exchange and credit policy of the country, including the programmed goals, taking into account the national and international economic environment;
- b) To watch the liquidity and solvency of the national banking system;
- c) Regulate the relative aspects of banking float and the legal deposit, according to the present law;
- d) Regulate the chamber of banking compensation or any other instrument or mechanism that pursues the same ends as itself;
- e) Authorize, as proposed by the General Manager, the investment policy of the international monetary reserves;
- f) Establish the necessary reserves to strengthen the patrimony of the bank;

- g) Approve the Income and Expense budget of the *Banco de Guatemala* and the Superintendence of Banks;
- h) Approve or modify the administrative structure of the *Banco de Guatemala*, as proposed by the General Manager;
- i) Name and remove the General Manager and other authorities and high-ranking officials of the Bank;
- j) Approve the financial statements of the Bank, annually;
- k) Annually approve the work memoirs of the Central Bank, for publication;
- l) Issue the regulations that according to this law and other laws correspond to it;
- m) Approve the decisions, norms or legal instruments that are submitted to the consideration of the Superintendence of Banks or, in its case, the *Banco de Guatemala*; and,
- n) Exercise the other attributions and authority corresponding to it, according to this law, the Monetary Law and other applicable legal agreements.

The attributions referred to in the present article will be exercised without impairment to reach the fundamental objective established in Article 3 of this Law.

ARTICLE 27. Liability. The Monetary Board will exercise the functions with absolute independence and under exclusive liability. Every act, resolution or omission of the Monetary Board that contradicts the legal agreements, or that implies the purpose of causing harm to the Central Bank, will incur on all the present in the respective sessions, in personal liability and solidarity with them, the state and third parties, for damage and injury that they may have been caused. Of this liability, the members of the board who would have voted against, and the other attendees who would object, in the deed of the session in which the matter was dealt.

Anyone who divulges any confidential information on matters dealt with or to be dealt with before the Monetary Board, or that would take advantage of the

information for personal goals or to harm the State or the Central Bank or third parties will incur in the same liability.

The member or members of the Monetary Board that vote against a measure adopted by the majority of members of said Board can amend their vote, which must explicitly be stated in the deed. Also, the deed will state the name or names of the members of the Monetary Board that did not attend the session where said measure was taken, as well as those who did attend but stepped out when the decision was made.

CHAPTER II PRESIDENCY

ARTICLE 28. Nomination and eligibility. The President and the Vice president of the Monetary Board, as well as of the *Banco de Guatemala*, are named by the President of the Republic, for a period of four years, as of the first nomination made based on the current Law.

The President and Vice-president must be persons of recognized honorability and of manifest preparation and competence in economic matters and finance.

ARTICLE 29. Replacement. In the case of absence or temporary impediment of the President, he will be replaced by the Vice-President. If the absence of the President were permanent, a new nomination will be issued, in which case the nominee will conclude the period of the replacement.

ARTICLE 30. Attributions. The President of the Monetary Board and the *Banco de Guatemala* will have the following attributions:

- a) Propose the monetary, exchange and credit policy to the Monetary Board, including programmed goals, as well as measures and action that cooperate with its effective execution;

- b) Take care of the relationships with the authorities and organisms of the State, particularly the Executive Branch, and make sure of the coordination of the economic, financial and fiscal policies of the State, with the monetary, exchange and credit policy, for the acquisition of the fundamental objective of the *Banco de Guatemala*, for which he will attend the general cabinet and the specific meetings convened;
- c) Approve the monetary policy report to which Article 61 of the current law refers;
- d) Watch over the correct execution of the monetary, exchange and credit policy determined by the Monetary Board;
- e) Exercise the main legal representation of the *Banco de Guatemala*, judicial as well as extra judicial;
- f) Delegate his/her representation on the Vice-President;
- g) Grant powers in the name of the Central Bank, to represent it and to act in the administrative and/or jurisdictional ambit, consequently to the deeds and decisions adopted by the Monetary Board;
- h) Authorize with his/her signature, together with the General Manager of the *Banco de Guatemala*, the bills issued by the Central Bank;
- i) Direct and promote the release of the deeds of the Monetary Board, according to the stated in article 63 of the present law;
- j) Resolve the matters that are not reserved to be decided by the Monetary Board; and,
- k) Exercise the rest of the attributions that legally correspond.
- l)

The attributions referred to in the present article will be exercised without impairment to reach the fundamental objective established in Article 3 of this Law.

ARTICLE 31. Incompatibility. The positions of President and Vice-president are incompatible with the exercise of any other position public or private, whether it be remunerated or *ad honorem*, with the exception of those educational or teaching positions and of those related to the management of the *Banco de*

Guatemala and of the monetary, exchange and credit policy derived by legal power of attorney or regulations and other applicable positions issued by the Monetary Board.

CHAPTER III ADMINISTRATION

ARTICLE 32. General Management. The General Manager will have the responsibility of the administration of the *Banco de Guatemala* and will answer to the President of the institution and before the Monetary Board on the correct and efficient operation of the Bank.

In the case of absence or temporary impediment of the General Manager, the Monetary Board will designate an authority of the institution to substitute the position, of the immediately inferior hierarchy. The General Manager, or whoever replaces him/her, must have the same qualities as those required for the President of the Bank.

ARTICLE 33. Representation. The General Manager will exercise the legal representation of the *Banco de Guatemala*, judicially and extra-judicially, in those matters not reserved for the President of the bank; therefore, all deeds will be executed and contracts subscribed by him that are of an ordinary nature from the Central Bank, according to the nature and objective, derived from him and related to him. In that position, he is empowered to grant, the declared in clause g) of article 30 of the current law, without injury, the necessary powers that would be necessary.

ARTICLE 34. Attributions. The General Manager will have the following attributions:

- a) Preparing of matters that must be submitted for consideration before the Monetary Board and decide, with the President, the order in which the sessions will be proposed;

- b) Permanently watch the direction of the institution and its offices, the observance of the laws and regulations applicable and the fulfillment of the resolutions of the Monetary Board;
- c) Organize the publication of the monetary policy referred to in Article 61 of the current law;
- d) Propose before the Monetary Board the nomination of superior officials;
- e) Name and remove the officials and employees of the Bank;
- f) Watch over the correct administration of the international monetary reserves, according to the guidelines dictated by the Monetary Board;
- g) Prepare the project of the Income and Expense Budget of the *Banco de Guatemala* and watch over its correct application;
- h) Contract professional services considered necessary for the good operation of the Central Bank;
- i) Authorize the publication of the Income and Expense Budget of the *Banco de Guatemala* in the official newspaper;
- j) With a signature, authorize the financial statements of the Central Bank,
- k) With a signature, jointly with the President of the *Banco de Guatemala*, authorize the issue of bills by the Central Bank;
- l) With a signature, authorize documents and values issued by the Central Bank; and,
- m) Exercise the rest of the attributions that correspond to those agreed by law, regulations and other agreements applicable issued by the Monetary Board.

The attributions referred to in the present article will be exercised without impairment to reach the fundamental objective established in Article 3 of this Law.

ARTICLE 35. Incompatibility. The position of General Manager of the Central Bank is incompatible with the exercise of any other position, public or private, remunerated or *ad honorem*, with the exception of positions for educational purposes and those related with the administration of the *Banco de Guatemala* and

the monetary, exchange and credit policy or those derived from legal power or regulations and other positions applicable issued by the Monetary Board.

ARTICLE 36. Responsibility. Every deed, resolution or omission of the General Manager that contravenes the legal agreements, or that implicate the purpose of harming the Central Bank, will incur in personal liability and solidarity with himself, the State and third parties for damage and injury caused.

ARTICLE 37. Labor relations. The labor relationships between the *Banco de Guatemala* and its employees will be regulated by the internal regulations issued by the Monetary Board as proposed by the Manager and, supplemented, by the agreements of the Work Code.

ARTICLE 38. Technical Formation and preparation of personnel. The *Banco de Guatemala* will promote the formation and preparation of qualified technical personnel in economic matters, particularly in monetary and financial issues.

CHAPTER IV EXECUTION COMMITTEE

ARTICLE 39. Execution Committee. The *Banco de Guatemala*, through an Execution Committee, will execute the monetary, exchange and credit policy determined by the Monetary Board.

The Execution Committee is integrated by the President of the *Banco de Guatemala*, who at the same time coordinates, and by the authorities of the *Banco de Guatemala* designated by the Monetary Board. Said Committee will count on the technical advisors designated by the Monetary Board as proposed by the President. The Vice-president of the *Banco de Guatemala* will coordinate the Committee in the absence of the President.

ARTICLE 40. Attributions of the Execution Committee. The Execution Committee has the following attributions:

- a) Use of monetary policy approved by the Monetary Board;
- b) Report in the next session of the Monetary Board, through its coordinator, regarding the monetary, exchange and credit policy adopted by them; and, -
- c) Exercise the other attributions of the Monetary Board assigned to execute the monetary, exchange and credit policy.

The attributions referred to in the present article will be exercised without impairment to reach the fundamental objective established in Article 3 of this Law.

ARTICLE 41. Sessions. The Execution Committee will have sessions, as a minimum once a week or whenever it is convened by the coordinator. The other aspects of work will be determined by the approved regulation by the Monetary Board as proposed by the President of the *Banco de Guatemala*.

The meetings of the Execution Committee will be recorded in deeds, to which the Monetary Board will have access.

ARTICLE 42. Responsibility. Every act, resolution or omission of the Execution Committee that contravenes the agreements of the Monetary Board and others of legal character, or that imply the purpose of causing harm to the Central Bank, will involve everyone present in the session, in personal liability and solidarity with himself, the State and third parties, for harm and injury caused.

Of this liability the members who voted against and those attendees who declared their objection, in the deed of the session where the matter was dealt with are exempt of liability.

The same liability is incurred on those who divulge any information of confidential character on matters dealt with or to be dealt with by the Execution Committee, or

that take advantage of any information for personal gains, or in detriment of the State, the Central Bank or third parties.

TITLE III MONETARY STABILIZATION

ONLY CHAPTER MONETARY POLICY INSTRUMENTS

ARTICLE 43. Banking Float. The banking deposits are subject to banking float, which will be calculated in national or foreign currency, as a percentage of the total of said deposits. This banking float must remain constant as deposits immediately demandable in the *Banco de Guatemala*, of cash funds in the till of the Bank, and when the circumstances allow, the liquidity investments of titles, documents and values, national or foreign, according to the regulations that for the effect the Monetary Board issues.

Equally they are subject to banking float in other liable operations, contingents or services offered by banks, including the operations derived by trust where the bank participates as fiduciary, when with these operations, at the judgment of the Monetary Board, prior to the report of the Superintendence of Banks, the banking float is avoided.

The banking float is not subject to embargo.

ARTICLE 44. Legal Deposit. The liable, contingent or service operations made by the entities that, without being a bank, conform a financial group, as well as financial companies, are subject to inspection and vigilance by the Superintendence of Banks that do not form part of a financial group, will be subject to a legal deposit when the Monetary Board, prior report from the Superintendence of Banks, decides that the operations constitute funds raised from resources of a similar nature to those indicated in the previous article. Said legal deposit will be

calculated in national or foreign currency, as a percentage of the total amount of said operations, that should constantly maintain a form of deposit of immediate receivable in the *Banco de Guatemala*, or of the liquid investments of titles, documents or values, national or foreign, according to the regulations that for the effect are issued by the Monetary Board.

The legal deposit is not subject to embargo.

ARTICLE 45. Regulation of the banking float and of the legal deposit.

The Monetary Board will regulate the banking float and the legal deposit, generally and uniformly. The regulations will fundamentally contain the following aspects:

- a) Composition and constitutional form in national or foreign currency;
- b) Percentage. When the Monetary Board determines the modification of the same, said modification will gradually apply and will notify with prudent anticipation;
- c) Computation base;
- d) d) Computation period, which will not be less than (14) calendar days;
- e) Position, for which calculations, the entities dealt with could normally compensate the deficiencies of float or of the legal deposit, in one or more days of the computing period, with the excess of float or legal deposit, as it corresponds;
- f) Limits of the intensity or of the frequency of the deficiencies of float or legal deposit in the computation period; and,
- g) Remuneration, when the Monetary Board deems it convenient, of a part or the total of the banking float or the legal deposit. In no case will it be over the average weighted liable rate that prevails in the banking market.

ARTICLE 46. Operations of monetary Stabilization. The *Banco de Guatemala* will be able to issue monetary stabilization bonds or other securities, place them and acquire them on the market, as well as receive term deposits, in national and foreign currencies. For the issue of stabilization monetary bonds or

other securities, the *Banco de Guatemala* must count on the previous approval of the Congress of the Republic.

The *Banco de Guatemala* will be able, also, to perform open market operations only in the secondary values market, through the negotiation of securities issued by the *Ministerio de Finanzas Públicas* (equivalent to the Department of the Treasury), through the decentralized or autonomous markets, through the municipalities or through other issuers of the public sector, titles that for said effect must be defined as eligible by the Monetary Board. The estimation of the cost in which the *Banco de Guatemala* will incur due to the implementation of the monetary, exchange and credit policy, derived of the bonds issues, the titles or the reception of the term deposits, must be included in the Income and Expense Budget of the Institution, that is approved annually by the Monetary Board according to clause g) of Article 26 of this law.

The relevant cost to which it refers in the previous paragraph must be informed every semester to the Congress of the Republic, by the *Banco de Guatemala*.

ARTICLE 47. Purchase and sale of Foreign Currency. The *Banco de Guatemala* will be able to purchase and sell foreign currency.

TITLE IV OPERATIONS OF THE BANK

CHAPTER I CREDIT OPERATIONS

ARTICLE 48. Last Instance Lender. Based on the monetary, exchange and credit policy determined by the Monetary Board, the *Banco de Guatemala* will grant credit to the banks of the system, only to resolve temporary deficiencies of

liquidity, taking into account that for this the Superintendent of Banks must present a report on the equity situation and the portfolio of the requesting bank.

The credit amount can not be higher than fifty percent (50%) of the equivalent of the computable equity of the bank in question, who must guarantee it with a credit pledge or a mortgage. The term of said credit can not exceed thirty (30) calendar days, which, at the reasonable request of the bank at hand can be extended for half the original term. The interest rate to be applied on the credit must be higher than the average applied on active operations of the Bank at hand. Up to a maximum of two (2) credits can be granted to the same bank in a period of twelve (12) months, as long as they are granted in two non consecutive months within said period.

The Superintendence of Banks must inform the Monetary Board, in a term that is not in excess of ten (10) working days after the granting of the credit, of the causes that originated the liquidity shortages, as well as the quality and situation in which said guarantees are found that endorse the credit.

CHAPTER II

INTERNATIONAL OPERATIONS

ARTICLE 49. Cooperation and integration. The Monetary Board will be able to authorize the Central Bank to subscribe cooperation agreements and monetary integration agreements with central banks, associations of central banks and other similar entities.

ARTICLE 50. Operations with international institutions. The *Banco de Guatemala*, with international banking institutions, will perform the operations that correspond according to the international conventions subscribed and ratified by the Republic of Guatemala, and with the legal dispositions that would be dictated over the subject.

ARTICLE 51. Financing. The *Banco de Guatemala*, prior authorization by the Monetary Board, can obtain and concede financing and perform other operations that correspond to the nature of the Central Bank, with other central banks, with multilateral financial organisms or with foreign financial institutions.

When some of the indicated operations in the previous paragraph imply the assumption of loan or other forms of debt, the *Banco de Guatemala* must count on the prior approval of the Congress of the Republic.

ARTICLE 52. Correspondent Operations. The *Banco de Guatemala*, prior authorization of the Monetary Board, can act as an agent or correspondent with other central banks, international banking institutions and of other foreign financial institutions and naming said entities as their agents or foreign correspondents.

TITLE V RELATIONS WITH THE STATE

ONLY CHAPTER FINANCIAL RELATIONS

ARTICLE 53. Advisor and financial agent. The central bank will exercise the function of advisor, in matter of competence, and financial agent of the state.

ARTICLE 54. Official banking operations. The Executive Branch, the autonomous, decentralized institutions and, in general, the entities and state offices, except for legal mandate stating the contrary, will perform financial operations, in foreign and national currency, in the country as well as outside, through the Central Bank.

If the circumstances advise, the Monetary Board can authorize the entities referred to in the present article to fulfill financial operations in any banking entity, according to the guidelines of said Board.

ARTICLE 55. Official Deposits. The financial resources of the Executive Branch, and of the autonomous, decentralized institutions and in general, of the entities and state offices form the Income and Expense General Budget of the State, except for legal mandate stating the contrary, will be deposited in the *Banco de Guatemala*.

The guarantee deposits in favor of the state or any of its offices and every type of judicial deposit, except for legal mandate stating the contrary, will also be deposited in the *Banco de Guatemala*.

Notwithstanding the above, the Monetary Board will regulate the conditions under which the entities referred to in the present article will be able to constitute deposits in the banking system whose resources are destined to cover operations of ordinary bills of exchange.

The Comptrollership of the Nation, under strict responsibility, will watch that the state entities under its jurisdiction fulfill with the agreed in the first two paragraphs of this article.

The Central Bank will not pay interest on the deposits referred to in this article. Any entity of the State that according to the law can manage or administrate its financial resources outside of the Central Bank has the obligation of permanently coordinating its investment policy with the *Banco de Guatemala* to cooperate in reaching the fundamental objective of the monetary policy.

The Central Bank will be able to guard titles, documents and valuable objects belonging to the State.

ARTICLE 56. General Account of the National Treasury. The bank will open a general cash desk account for the National Treasury, in which it will accredit all the availability of the Executive Branch.

The transfers of the funds of this account and other accounts will only be made possible by order of the competent official, with a visa from the Comptrollership of the Nation.

ARTICLE 57. Opinions. As long as the Executive Branch or any public entity has the purpose of operating credit operations abroad, or when they negotiate the hiring of loans in the interior of the country, they must solicit the opinion of the Monetary Board.

The opinion of the Monetary Board is founded in the incidence of the contemplated operation over the balance of payments, over the volume of the circulating means and over the acquisition in the mid and long terms, of the fundamental objective of the Central Bank.

ARTICLE 58. Liabilities Limitations. When the Central Bank acts as a financing agent of the State it will not assume any financial obligation of the State nor of any other derived nature of breach, on behalf of the State, the main payments, interest, commissions or any other financial commitment or of any other nature.

ARTICLE 59. Obligation to inform. The state entities under strict liability must provide the Central Bank when it is required and within the terms stipulated, the information or documentation required for the completion of the fundamental objective and functions. In particular the *Ministerio de Finanzas Públicas* (equivalent to the Department of the Treasury) and other entities of the state that the Monetary Board points out, and with the end of managing monetary liquidity on behalf of the *Banco de Guatemala*.

The officials or authorities of the office of the state in question that do not fulfill the agreed in the present article are subject to the stipulated in article 419 of the Penal Code.

TITLE VI TRANSPARENCY IN THE INFORMATION

ONLY CHAPTER RENDITION OF ACCOUNTS AND THE DISCLOSURE

ARTICLE 60. Report to the Congress of the Republic. The President of the *Banco de Guatemala* will appear before and render the detailed report before the Congress of the Republic, during the months of January and July of every year. In the month of January, they must render accounts on the acts and policies of the Central Bank in the precedent, with emphasis on the fulfillment of the fundamental objective of the Bank, as well as explain the objectives and policies previewed for the current year. In the month of July, they must render accounts of the monetary, exchange and credit policy in the current year.

Derived from the appearance of the President or the Vice-president of the *Banco de Guatemala*, the Congress of the Republic can, if the rendered report is unsatisfactory, with a qualified vote of two thirds of its members, ask for the removal of the official in question, in which case he must formally and immediately resign.

ARTICLE 61. Publication of the report of the monetary policy. The *Banco de Guatemala*, every semester, will publish a monetary policy report that contains an explanation of the operations fulfilled to reach the fundamental objective of the Bank.

ARTICLE 62. Disclosure of the information of the *Banco de Guatemala*.

The *Banco de Guatemala* must disclose monthly, every second weekend of the month, in the wide coverage media what the Monetary Board deems pertinent, its general balance corresponding to the previous month, including explanatory notes and a detail of the administrative spending. Also, the bank must make known to the public once a year, as a minimum, the analytical financial statements, verified by an independent auditor and the position of the reserve assets and liabilities and commitments in foreign currency.

The bank must divulge a report with the most relevant aspects of the national economy, annually, as a minimum. Also, it must divulge the main macroeconomic statistics of monetary, exchange and credit character, the balance of payments, as well as the work memoirs of the Central Bank, the monetary program, the evaluation of the execution of the monetary, exchange and credit policy and others deemed necessary by the Monetary Board, that determine the periodicity with which to divulge information, and therefore the bank must establish the mechanisms to make the pertinent information known.

ARTICLE 63. Disclosure of the performance of the Monetary Board.

With the objective of maintaining convenient disclosure of the Monetary Board performance, the President must decide on the publication of the detailed report of said meetings when it has implications regarding monetary, exchange and credit policy, or when it affects the general conditions of liquidity of the economy of the country. The summary must include the arguments in favor and against the resolved. The disclosure will be careful to protect the confidentialities that due to its nature might affect the development of the markets.

ARTICLE 64. Publication of resolutions. The bank must publicize in the official newspaper and in another newspaper, the resolutions that are issued by the Monetary Board, for what it determines for the monetary, exchange and credit

policy or other resolutions that are of general observance for the entities watched and inspected by the Superintendence of Banks and that affect third parties.

The other resolutions that must be observed by the entities subject to the watch and inspection of the Superintendence of Banks will be notified legally to said entities.

TITLE VII SANCTIONS

ONLY CHAPTER DEFICIENCIES

ARTICLE 65. Fault in the banking float. When the position of banking float referred to in the present law shows fault, the Superintendence of Banks will communicate it in writing to the directors or managers of the bank referred to and will impose an infraction on the amount of the fault, equivalent to one and a half of the maximum active rate of nominal interest that the bank with a fault in its float applied during the time of computing the float.

If the fault persists for more than three consecutive periods, or appears during six (6) different periods within the twelve (12) months from the date of the first communication, the bank will be prohibited from trying to lend or invest until it maintains minimum banking floats in at least three (3) consecutive periods, without detriment to the bank making its imposed fines by the Superintendence of Banks according to the previous paragraph, for which, the Central Bank with a surcharge for the account of float with the fine, which it will add to the Savings Protection Fund.

If the Bank in question does not regulate its position of float within a period of two months (2) from the date which, according to the agreed in the previous paragraph,

it no longer requires new loans or investments, the Superintendence of Banks must inform the Monetary Board of this circumstance, including the report on the causes of irregularity, with the purpose of, if it is proceeding, adopt the corresponding legal measures.

For the imposition of the fine referred to in this article due process must be observed.

ARTICLE 66. Fault of Legal deposit. When the position of legal deposit referred to in the present law shows fault, the Superintendence of Banks will advise the directors or managers of the entity in question, in writing and will impose a fine over the amount of the fault, equal, in the case of businesses that are part of a financial group, a one and a half active rate maximum in nominal interest that the financial group's bank with the fault in the legal deposit has applied during the computing period of the legal deposit and, in the case of the financial company that does not form a part of a financial group, a one and a half active rate maximum in nominal interest that the financial company with the fault in its legal deposit had applied during the period of computing the legal deposit.

If the fault would persist for more than three (3) consecutive periods, or would show up during six (6) different periods within twelve (12) periods as of the date of the first advisory, the entity will be prohibited from making new asset operations until it has had three (3) consecutive periods of minimum legal deposits, without detriment to the bank making its imposed fines by the Superintendence of Banks according to the previous paragraph, for which, the Central Bank with a surcharge for the account of float with the fine, which it will add to the Savings Protection Fund.

If the entity in question does not regulate its position of legal deposit in a period of two (2) months as of the date in which, according to the agreed in the previous paragraph, it will no longer make new active operations, the Superintendence of

Banks must inform this circumstance to the Monetary Board, including a report on the causes of the irregularity, with the end, if it were proceeding, to adopt corresponding legal measures.

For the imposition of fines referred to in this article due process must be followed.

TITLE VIII

GENERAL, TRANSITORY AND FINAL DISPOSITIONS

CHAPTER I

GENERAL DISPOSITIONS

ARTICLE 67. Legal protection. The members of the Monetary Board, authorities, officials and employees of the *Banco de Guatemala*, who are served with a sentence, process or suit derived from actions or decisions adopted according to law in the exercise of their attributions, functions or obligations, have the right to have the Central Bank cover their expenses and costs necessary for their defense.

The agreed in the previous paragraph will be applied to members of the Monetary Board, authorities, officials and employees of the Central Bank, even when they are no longer exercising their positions, as long as the processes, trials or suits presented derive from actions or decisions adopted according to the law in the exercise of their attributions, functions or obligations as they would correspond.

The Monetary Board, as proposed by the *Banco de Guatemala*, will issue a regulation in which it determines the mechanism implemented, for the effects of the agreed in this article.

ARTICLE 68. Inspection quota. The *Banco de Guatemala* will pay the Superintendence of Banks, for watching over and inspecting, the difference in the

sum of quotas paid by the other entities subject to supervision and the total amount of the budget of the Superintendence of Banks.

ARTICLE 69. Costs. The *Banco de Guatemala* will perceive rates or commissions for the services it renders in the exercise of its functions, as well as fees when it functions as a fiduciary.

When it is about services the Central Bank must lend and it is not qualified to render or is inconvenient to hire; the Bank will be able to hire individual or juridical persons that it deems convenient.

ARTICLE 70. Banking Compensation. The banking floats, as well as other funds that are deposited by the banks in the *Banco de Guatemala*, or in other entities that are hired for that effect, will serve as a base for the system of compensation of checks, through a compensation chamber.

The Monetary Board will regulate the compensation chamber, whether it is public or private, and it will correspond to the Superintendence of Banks to watch that the participants in said chamber fulfill with the established regulation.

ARTICLE 71. Forbidden Operations. The *Banco de Guatemala* is strictly forbidden:

- a) To transfer results for exchange differentials;
- b) Concede loans to individual or juridical persons, except to the banks in the system according to article 48 of the present law;
- c) Grant financing, guarantees or collateral to the state or its decentralized or autonomous entities;
- d) Purchase real estate, with the exception of those that are necessary for the normal functioning, as well as keep movable property or real estate that it acquires judicially or extra judicially, which it must sell in a period that does not exceed two years as of the date of acquisition. If this were not possible in the specified time, the bank will be obligated to offer it at public auction in

the time, manner and other considerations established by the Monetary Board in the regulation issued for that effect;

- e) Purchase stock, except those issued by the international financial organisms where the *Banco de Guatemala* participates in representation of the Republic of Guatemala;
- f) Acquisition in the primary market of values issued or negotiated by the state and its decentralized and autonomous entities;
- g) Direct or indirect participation of any commercial, agricultural, industrial or any other type of business;
- h) Pay or cover any overdraft in which the banking float accounts of the banking entities of the country would incur;
- i) Pay or cover any overdraft in the monetary accounts of the state, its offices or of the decentralized or autonomous entities; and,
- j) Fulfill any operation not authorized by this law, except those that although they are not prohibited, were compatible with the nature of the Central Bank and necessary for the fulfillment of its fundamental objective.

ARTICLE 72. Franchise. The *Banco de Guatemala* possesses complete tax exemption for the internment in national territory, of metals that serve for the coin minting, as well as for the internment of bill forms for the bank and finished metallic coin.

The importation in exemption is subject to the established procedures for the laws of the Republic, and will be made with complete exemption of the fiscal and consular rights.

ARTICLE 73. Assets not subject to embargo. The assets of the Central Bank are not subject to embargo.

CHAPTER II

TRANSITORY DISPOSITIONS

ARTICLE 74. Transitory. The *Banco de Guatemala* must cancel, as of the date this law is enforced, the deposit accounts of state entities constituted in the Central Bank, that register more than six (6) months without movement and whose resources com from the General Income and Expense Budget of the State.

The balance of said accounts will be transferred to a Common Fund account and must be included in the General Income and Expense Budget of the State for the following fiscal year.

ARTICLE 75. Transitory. On the date the present law is enforced, the assets and liabilities of the Regulation of Values Fund referred to in Decree Number 215 of the Congress of the Republic, Organic Law of the *Banco de Guatemala*, will be transferred to the Central Bank, and the capital of said fund will be destined to be a part of the Guarantee Fund referred to in the present law.

ARTICLE 76. Transitory. The importation of bills, coin and metals that as of January 1, 1992 would be fulfilled by the *Banco de Guatemala*, that are pending, will be exempt of taxes in the terms referred to in article 132 of Decree number 215 of the Congress of the Republic, and therefore, the Central Bank will formalize the finalization.

ARTICLE 77. Transitory. The goods, rights and obligations as well as the administrative and judicial assets and contracts, acquired, stated incurred or begun and subscribed, by the *Banco de Guatemala* created according to Decree Number 215 of the Congress of the Republic, Organic Law of the *Banco de Guatemala*, will be maintained and conserved unalterable for the following legal effects, as of the date the present law is enforced.

ARTICLE 78. Transitory. The files of any nature, petition, request and matters of any order that are in process or pending substantiation in the *Banco de Guatemala*, created by Decree Number 215 of the Congress of the Republic, Organic Law of the *Banco de Guatemala*, will be followed up and resolved according to the foreseen according to the decree referred to in the present article.

ARTICLE 79. Transitory. The accounting registries of the *Banco de Guatemala*, created according to Decree Number 215 of the Congress of the Republic, Organic Law of the *Banco de Guatemala*, and will continue to be used by the Central Bank referred to in the present law.

ARTICLE 80. Transitory. The bills and edited and minted coins, by the *Banco de Guatemala*, created by Decree Number 215 of the Congress of the Republic, Organic Law of the *Banco de Guatemala*, that have not been placed in circulation and those that conform the current monetary circulation of the republic, in the first case will be considered legally edited and minted and in the second case will continue to circulate in the national territory and will have legal course and unlimited legal tender, while they are not legally substituted by the bills and coins issued by the *Banco de Guatemala* referred to in this law.

ARTICLE 81. Transitory. The authorities, officials and employees of the *Banco de Guatemala*, created by Decree Number 215 of the Congress of the Republic, Organic Law of the *Banco de Guatemala*, referred to in the present law and, therefore, as of the date it is enforced, will continue to maintain and therefore, conserve the work relationship unalterable.

ARTICLE 82. Transitory. The transfer of financial resources to the *Banco de Guatemala* on behalf of the official entities, which derive from the application of article 55 of the current law, will be regulated by the Monetary Board.

ARTICLE 83. Transitory. The state, through the *Ministerio de Finanzas Públicas* (equivalent to the Department of the Treasury) must absorb the accumulated cost of the monetary, exchange and credit policy reflected in the Central Bank balance at the closing of the previous fiscal year prior to the date of enforcing the current law. For the effect, the Superintendence of Banks with the assistance of international specialists in the Central Bank will audit to determine the adjustments required for the balance of the *Banco de Guatemala* in order to establish the real patrimony. Said audit will be made in a period no greater than three (3) months as of the date of enforcing of this law. In a term of three (3) months as of the date of the conclusion of the audit, the *Ministerio de Finanzas Públicas* (equivalent to the Department of the Treasury) will issue long term titles of public debt, with an interest rate of zero.

ARTICLE 84. Transitory The period for which the President and Vice-President of the Monetary Board were named and the *Banco de Guatemala*, currently in power, will conclude on the thirtieth (30) of September of two thousand two.

CHAPTER III FINAL DISPOSITIONS

ARTICLE 85. Annulment. Decree Number 215 of the Congress of the Republic, Organic Law of the *Banco de Guatemala* will be annulled. Also, all agreements of any nature that are opposed to the current law are annulled.

ARTICLE 86. Qualified Majority. The current law was approved through a favorable vote of two thirds of the total of congress representatives that make up the Congress of the Republic, and for its reform, will require a qualified majority.

ARTICLE 87. Regulations. The Monetary Board must issue the necessary regulations for the adequate application of the present law.

ARTICLE 88. Currency. The present Decree will be Publisher in the official newspaper and will be enforced as of June 1, two thousand two.

PASS ON TO THE EXECUTIVE BRANCH FOR SANCTION, PROMULGATION, AND PUBLICATION.

GIVEN IN THE PALACE OF THE LEGISLATIVE BRANCH, IN THE CITY OF GUATEMALA, APRIL TWENTY-THIRD, TWO THOUSAND TWO

**JOSE EFRAIN RIOS MONTT
PRESIDENT**

**RUDIO LECSAN MERIDA HERRERA
SECRETARIO**

**AURA MARINA OTZOY COLAJ
SECRETARIO**

SANCTON DECREE OF CONGRESS NUMBER 16-2002

National Palace: Guatemala, May tenth, two thousand two

PUBLISH AND ENFORCE

PORTILLO CABRERA

General de Division
EDUARDO AREVALO LACS
Minister of the Home Office

*Carlos Enrique González
Vice minister of investment and competition
Person in charge of the Office*

EDUARDO WEYMANN
Minister of the Treasury

*Lic. J. Luis Mijangos C
Secretray General,
Presidency of the Republic.*

Publishe in the Official Newspaper on May 13, 2002.