

**DECREE-LAW NUMBER 208**  
**ENRIQUE PERALTA AZURDIA,**  
**Chief of the Government of the Republic**

**WHEREAS:**

That the function of the State is to promote the economic development of the country, for which it is convenient to issue legal propositions that allow the creation of financial entities, in order to provide businesspersons with the necessary resources for the founding of new firms and the growth of existing ones;

**WHEREAS:**

That it is necessary to propitiate the creation of modern credit institutions that efficiently complement the function of the commercial and mortgage banks, which have operational limitations for reasons of their own nature;

**WHEREAS:**

That through the creation of modern financial institutions we can stimulate a greater investment of capital that is currently in asset; and that in the same manner savings and investment be stimulated on behalf of the public;

**WHEREAS:**

That it is convenient that all institutions receive public funds to grant credit operations that are subject to the same orientation, control and surveillance;

**WHEREAS:**

That the Monetary Board, through its technical organisms, has elaborated, studied and approved a law project that corresponds to the voiced objectives; and the Bankers Association of Guatemala has given a favorable opinion, offering suggestions, product of the experience of the banks within the system,

## **THEREFORE:**

In use of the faculties conferred by articles 3 and 27 of the Fundamental Letter of Government, In Council of Ministers,

## **DECREES:**

The following:

### **LAW OF PRIVATE FINANCIAL COMPANIES**

**Article 1.-** (Paragraph reformed by Article 1 of Law Decree 10-86) The financial companies are banking institutions that act as specialized financial intermediaries in investment banking operations, promoting the creation of productive businesses through fund raising and channeling of internal and external resources in mid and long term range investments; they invest them in these companies, either directly acquiring stock or shares; or indirectly, granting credit for their organization, growth and development, modification, transformation or fusing as long as it promotes the development and diversification of the production.

Only the authorized institutions according to this law can operate as financial stock companies and use within their name, in their commercial name or in the description of their business, 'finance company' or other names derived from said term, that qualify their activities to be of this particular nature. The institutions, to which this particular law refers, can not grant credit, nor in any other way finance businesses domiciled outside of the countries that form the Central American Economic Community.

**Article 2.-** The Private Financial Companies must be constituted as stock companies and will regulate and present their objectives, functions and operations according to the present law, the banking laws, and the general legislation of the Republic in whatever is applicable to them and with the propositions and instructions that the Monetary Board and Superintendence of Banks issue in application to said laws and their regulations.

**Article 3.-** (Paragraph reformed by Article 122 of Decree 19-2002 of the Congress of the Republic.) For the constitution of Financial Companies the requirements prescribed by the Banking and Financial Groups Law will be met, and for their authorization must follow the procedures that said law describes for the creation of new banks. In case any doubt should arise as to the nature of the financial institution, the Superintendence of Banks can make an inspection or investigation as it considers convenient and demand, with that objective, the presentation of books or documents of the person or entity that it represents.

**Article 4. -** (Reformed by Article 123 of Decree 19-2002 of the Congress of the Republic) The financial stock companies are subject to the jurisdiction of the Monetary Board and to the surveillance and inspection of the superintendence of banks, being subject to the expressed in article 111 of the Banking and Financial Groups Law.

**Article 5. -** The financial companies could perform the following operations that promote the development and the diversification of the national products:

- a) Promote the organization, modification, growth, transformation and fusion of companies or businesses;
- b) Subscribe, acquire, maintain a portfolio and negotiate stock or shares in any of the businesses referred to in the above clause, as long as they are stock companies or of limited liability;
- c) (Reformed by Article 1 of Decree 51-72 of the Congress of the Republic.) Issue titles and values on their own whose objective is to raise funds from the public to finance asset operations contemplated in the present law. The characteristics of the issues, such as term deposits, interest rates, types of titles or values or others, to which it refers in this clause, will be approved by the Monetary Board in each case.
- d) Placement of payable issued by third parties and loan its guarantee for the payment of capital and interest. The monetary board signals in a general manner the conditions in which it must loan this type of guarantee.

- e) Act as Fiduciary;
- f) Act as an agent and common representative of debtors;
- g) Purchase, maintain a portfolio, sell and in general operate with public and private values of the Central American Economic Community;
- h) Offer credit at mid and long terms;
- i) Offer loans with document guarantees that derive from operations of sales of real estate in installments, when they refer to businesses that can be financed by this type of institutions;
- j) Offer credit for initial studies and basic projects whose investment of productive character will be made in the territory of Guatemala;
- k) Offer acceptance and endorsement and guarantee of credit titles;
- l) Obtain, with prior authorization of the Monetary Board, concessions for the best way to take advantage of natural resources, with the objective of transferring them to the businesses that promote them. The Monetary Board will set a deadline and the conditions in which the transfer must be made;
- m) Financing scientific investigations that contribute to the development of new productive activities and in that case obtain the respective patents. The Monetary Board will set maximum limits of investment in this class of operations; and,
- n) Realizing the rest of the financial operations comprised within the nature and functions that are signaled in the first article of the present law.

**Article 6.-** In order to adequately insure the creditors and debtors with the financial companies, the Monetary Board will establish the general character, special regimen of guarantees for credits granted and for the obligations that guarantee it.

**Article 7.-** (Annulled by article 6 of Decree No. 24-95 of the Congress of the Republic)

**Article 8.-** The Monetary Board will determine the minimum, effectively payable capital, that the financial companies must have to be constituted. In no case will said capital be less than one million *quetzales*.

**Article 9.-** (Reformed by Article 2 of Decree 51-72 of the Congress of the Republic) The Financial companies must have a proportional deposit for the amount of obligations it has in the *Banco de Guatemala*, at least the minimum amounts established by the Monetary Board.

For the effect, the Monetary Board will fix the minimum percentages taking care of the term of the obligations that integrate the computable liability.

These percentages can not be less than the following:

- a) For the obligations that come to maturity in a term over thirty days, thirty five percent (35%);
- b) For obligations that come to maturity in a term over thirty days up to a year, ten percent (10%).

Exclusively for the ends of this article, computable liabilities, are all the obligations whose expirations occur within a term no longer than a year, except the operations of contingent passive and the obligations that come for title issue and values to which it refers in clause a) of article 10 of the present law, as long as a special regulation for the payment of said obligations is established, to guarantee its liquidity. The Monetary Board can authorize the investment of the deposit of valuables to be made immediately.

**Article 10.-** The financial companies will make their operations with their own capital and capital reserves and, will also, with the obtained resources through:

- a) The issue of titles and values referred to in clause c) of article 5 of the present law, with general guarantees or specific to its portfolio;
- b) The obtaining of credits in the country or abroad. In the latter case, prior authorization must be had from the Monetary Board;

- c) The placement of shares, titles and values of businesses;
- d) The other financial operations that are for the proper function of the determined nature and objectives in article 1 of this law.

**Article 11.-** Financial Companies are forbidden to:

- a) (Reformed by Article 3 of Decree 51-72 of the Congress of the Republic) Issue credits with a maturity of no less than three years, except the established in clause i) of article 5 of this law, or when it is for the financing of productive work for businesses where there is direct participation or whose activities are taxed in favor of Financial Companies. In these cases, with the exception of credits that are issued to Financial Companies, must adjust to the conditions, requirements and limitations that are generally fixed by the Monetary Board.
- b) (Annulled by Article 21 of Decree Number 26-99 of the Congress of the Republic).
- c) Open and close monetary, savings and long-term accounts;
- d) Accept obligations and direct liabilities or third party accounts of any type, in excess of the amount determined by the Monetary Board, generally and regarding capital and capital reserves;
- e) Concede bonds and collateral outside of the regulated layout issued by the Monetary Board;
- f) (Annulled by Article 21 of Decree Number 26-99 of the Congress of the Republic).
- g) Acquire more than 25% of paid capital of the businesses in property referred to in clauses a) and b) of article 5 of the present law. However, when it is about new businesses made up of stocks, the financial companies could acquire in property of said businesses, prior to the favorable opinion of the Superintendence of Banks, which will fix the investment conditions and the form in which the financing company will un-invest until it reaches the limit of 25% above-mentioned;

- h) Acquire real estate, except those that destine the installation of their offices or dependencies and those that need a previously approved development plan by the Monetary Board;
- i) Exploitation on their own of mines, metallurgy plants, mercantile and industrial establishments, rustic plantations, without prejudice of the faculty of possessing shares, obligations, stock or other titles of said businesses; except those received in payment of credits or for the insurance of the already established, in which case they may continue the exploitation with the authorization of the Monetary Board and without exceeding the limits signaled by article 14 of this law;
- j) Commercialize merchandise of any genre, without prejudice of operations of this class on account of businesses promoted or financed by this institution on their own.

**Article 12.-**The issue of obligations of third parties, where there is intervention of the issue of financial companies, borrowing or not a guarantee, will be subject to the following rules:

- I. A technical study of the activities must precede the issue whose financing is destined to the issue, and a financial study of the issuing company, which will be made by a competent expert, and the second by an economist or an accountant. Also, a balance will be formulated by the issuing entity, which must be certified by an accountant.
- II. The financial company will have the availability of the necessary faculties to prove the financial situation of the issuing entity, as well as the regularity of issue and the rest of the data that assures the owners and itself of the effectiveness of the promised rights in the titles.
- III. The financial company can not begin the placement of the issue to the public, understanding by this the stock exchange transactions or in the offices of the banking institution that

intervenes in issue, or by agents of the same, without before having fulfilled the following requirements.

a) Elaboration of a prospect, which must be distributed profusely. Said prospect will contain, at least, all identification data of the issuing entity and of the financial company that would intervene in the issue and, in its case, offer a guarantee, as well as the latest financial statements of both, certified by an accountant. The original prospect will be authorized under oath, with the signatures of the persons who by law are authorized to sign the issued titles, and with the signature of the manager or legal representative of the financial company that intervenes in the issue, even in the cases where their intervention does not represent a guarantee and must be legalized as an annex of the written issue.

An extract of the prospect must be published in one of the newspapers of major circulation of the country;

b) Granting of the deed of issue;

c) Deposit a legalized copy of the deed of issue and a copy of the printed prospect in the Superintendence of Banks, for its registry, if the documentation is arranged according to law;

d) When the titles are guaranteed with the special affectation of goods, it will be necessary to also be accompanied by a certification released by the Property Registry when it deals with real estate, and by a fiduciary institution in other cases, that accredits the real existence of said guarantees and the regularity of the constitution.

IV. – The placement of issue to the public can not be initiated without prior authorization of the Superintendence of Banks.

V. – The obligations issued with the intervention of financial companies, in the terms of this article, will be reputed, for all the legal effects, authorized for public sale, without requiring any additional authorization, or the fulfillment of other formalities or administrative paperwork.

**Article 13.-** When the financial companies guarantee payment of capital or interest of obligations issued by third parties, they will also have the following rights and obligations, not including those reserved in the corresponding bequests:

- I. They will, at all times, have the obligation to pay any creditorships due belonging to the Issuing Company, subrogating the rights of the creditors.
- II. They will also have the right to previously buy or amortize the issue accordingly, when the issuing company had expressly reserved that right in the issue deed. The purchase or amortization will take place depositing the excess profits tax corresponding to the state bank, in favor of the possessors of the titles, subrogating the financial institution in the rights and stocks of the possessors. In this case, the financial company will give notice of the possessors' titles for three publications in a one month period in the Official Newspaper (*Diario Oficial*) and in any other major circulation newspaper. The corresponding shares will be exercised, lacking the respective titles, through a certified copy of the issue deed and proof of deposit referred to in the previous paragraph.
- III. The issuing company will have the right to reserve themselves the designation of a permanent auditor, whose fees will be paid by them, with the right to suspend the execution of the bequests of the board of directors of the issuing company and operations that damage the interest of the guarantor financial company of the issued liability.
- IV. They will assume the charge of common representative of the holders of the guaranteed obligations, with the attributions that the issue deed establishes, the regulation lay-outs that the Monetary Board and the law dictate for it.
- V. In the case of payment default of the main obligation or interests, they will be entitled to exercise their rights of procedure against

the debtor, without prejudice of the right of the possessor of the obligations to exercise individual actions against the debtor or against the financial company that guarantees the issue. Once action for the recovery of the debt has been established by the Financial Company, any other actions promoted against the debtor or that are promoted thereof by the possessors of the obligations, will be suspended until the initial process is resolved by the financial company; the possessors conserving their rights and actions against them. The financial company will exercise the action according to the arrangements of the banking laws or the common laws, at choice. The executive title will be a legalized copy of the issue deed and a certified affidavit by the accountant of the financial company, on the balance of the debtor or titles and coupons of the obligations.

The financial company will be obligated to cover the face value of the circulating obligations and their interest that are not due, in the moment of total payment reception of the charge or of the adjudication, in their own name, of the goods that guarantee the issue, unless that by adjudication of payment, the lien remains in favor of the possessors of the obligations, case in which the financial company will be obligated to continue paying the service of the debt and redeeming the obligations that are in circulation at the moment the sale of the goods takes place, that have been adjudicated to them.

In any case, the guaranteed obligations by the Financial Company must be paid on the date they are due.

**Article 14.-** (Reformed by Article 124 of Decree 19-2002 of the Congress of the Republic) Article 54 of the Banking and Financing Groups Law will not be applicable to Private Financial Companies, regarding the extraordinary assets. However, when a financial company is adjudicated or would receive real estate as

payment, it must transfer the property by selling it or for any other title, within a three year period, unless through a petition to the Monetary Board, it would resolve to extend said period for another two years, maximum. On the contrary, the established in the last three paragraphs of cited article 54 will be applied.

**Article 15.** (Reformed by Article 125 of Decree 19-2002 of the Congress of the Republic) Article 45, clause f) of the Banking Law and Financing Groups will not be applicable to Private Financial Companies.

**Article 16.-** (Reformed by Article 1 of Decree 11-88 of the Congress of the Republic) The private or state banking institutions will participate in the promotion, organization, founding, developing and other activities of Financial Companies, in the conditions and percentages that the Monetary Board determines according to the present law and the Banking Law.

Equal determination will be necessary for the acquisition case of shares for the Financial Companies in any other banking institution. The members of the Directory or Administrative Council and the members of the banking institutions can be members of the Directory or Administrative Council of the Private Financial Companies in which said institutions have direct participation. Equally, the members of the Directory or Administrative Council of Banks in which they have direct participation. The Monetary Board will be able to regulate this proposal.

**Article 17.-** They are exempt form official paper taxes and revenue stamp taxes on the issue, purchase and sale of titles, value or documents that obligate the Financial Companies or that have a guarantee, when the taxing corresponds to doing so. (Paragraph added by Article 4 of Decree 51-72 of the Congress of the Republic) The interest produced by titles and values that are referred to in clause c) of article 5 of this law are not subject to Income Tax.

## **TRANSITORY ARTICLES**

**Article 18.-** The businesses that were established and authorized prior to the issue of the present law and whose names, objectives and functions will give them the character of financial companies, must register in the Superintendence of Banks within 30 days of the date that this law is enforced.

The Superintendence of Banks will make the corresponding qualification and will set the ninety day period so that these businesses, at their choosing, decide if they opt to adapt their organization and functioning to the established precepts in this law, or on the contrary, suppress within their name or social reason, in their commercial name or in the description of their business, the word 'financial' or other denominations derived of said term; that qualify their activities.

If the first alternative is chosen, the Superintendence of Banks must be notified within the established period by said authority, the Business in reference will also be obligated, in its case, to gather the necessary capital to complete the minimum signaled in Article 8 of this law, in the period of no more than one year. If the affected business chooses the second alternative, it must notify the Superintendence of Banks within a fixed term and together with that present a legalized copy that prove the fulfillment of the ordered for said case by the Superintendence of Banks.

The breach of any of these bequests will be motive for the imposition of sanctions established in Articles 103, 104 and 105 of the Banking Law.

**Article 19.** The present law will prevail over any other law, or regulation whose bequest is opposed to it.

**Article 20.-** This law will be enforced as of the day of its publication in the *Diario Oficial* (Official Newspaper).

Given in the National Palace: in the city of Guatemala, on the twelfth day of May of nineteen sixty-four. Publish and fulfill.

ENRIQUE PERALTA AZURDIA, Chief of the Government of the Republic, Minister of National Defense.

The Minister of the Home Office, LUIS MAXIMILIANO SERRANO CORDOVA.

The Minister of Foreign Relations, ALBERTO HERRARTE GONZALEZ.

The Minister of Agriculture, CARLOS HUMBERTO DE LEON.

The Minister of Communications and Public Works, JOAQUIN OLIVARES M.

The Minister of Economy, CARLOS ENRIQUE PERALTA MENDEZ.

The Minister of Public Education, ROLANDO CHINCHILLA AGUILAR.

The Minister of Finance and Public Credit, JORGE LUCAS CABALLEROS M.

The Minister of Public Health and Social Assistance, ALFONSO PONCE ARCHILA.

The Minister of Work and Social Assistance, JORGE JOSE SALAZAR VALDES.

**The present law and its reforms were published in the *Diario Oficial*, (Official Newspaper) as follows: Decree of Law Number 208 May 5, 1964; Decree Number 51-72 of the Congress of the Republic August 16, 1972; Decree of Law Number 10-86 January 10, 1986; Decree Number 11-88 of the Congress of the Republic May 24, 1988; Decree Number 24-95 of the Congress of the Republic May 10, 1995; Decree Number 26-99 of the Congress of the Republic September 3, 1995; Decree Number 19-2002 of the Congress of the Republic May 15, 2002.**