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THE CONGRESS OF THE REPUBLIC OF GUATEMALA

WHEREAS:

That the economic and social development of the country requires a trustworthy, solvent, modern and competitive banking system, through which to channel the savings toward investment, contributing to sustainable growth of the national economy, and that according to the process of opening economies, must be capable of inserting itself adequately in the international financial markets.

WHEREAS:

That currently the banking system demands a modern regulation that allows the continued development to operate more efficiently and to lend better services to the customers, taking into account the global tendencies and the development of international financial markets.

WHEREAS:

That the banking system has developed corporate structures that, even when they have a positive economic function for the country, they lack specific regulation; aspect which could induce said tendencies to assume excessive risks, in its detriment, as well as to the detriment of the system itself, but fundamentally for the users of said structures, and therefore, for the national economy, so it is necessary to establish norms that provide the pertinent to financial groups and the mechanisms of consolidated supervision according to international practices.

WHEREAS:

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

THEREFORE:

In the exercise of the attributions conferred by article 171, clause a) of the Political Constitution of the Republic of Guatemala.

DECREES:

The following:

LAW OF BANKS AND FINANCIAL GROUPS

TITLE I

GENERAL DISPOSITIONS

ONLY CHAPTER

ARTICLE 1. Object. The present law has the objective regarding the creation, organization, fusion, activities, operations, functioning, suspension of operations and liquidation of banks and financial groups, as well as establishing and closing branches and representation offices of foreign banks.

ARTICLE 2. Denomination. For the effects of the present Law, the name '*banco'* (bank) refers to the banks constituted in the country and to the branch offices of foreign banks established here.

ARTICLE 3. Intermediation of banking financing companies. The authorized banks according to this law or specific laws can intermediate financial banking, consisting of the habitual, public or private, activities that consist of fund raising, or any instrument representative of itself, the public, such as the reception of deposits, placement of bonds, titles or other obligations destined to the financing of any nature, without the juridical form mattering that adopt said fund raising and financing.

ARTICLE 4. Exceptions. The entities that receive deposits or contributions of its associates and third parties, such as cooperatives, mutualist companies,

community development associations, associated community businesses, non governmental associations and private development organizations, among others and that are regulated by a special law, are exempt of the dispositions of this law. In any case, said entities will be obligated to present periodic or occasional reports, required by the Superintendence of Banks.

ARTICLE 5. Legal Regimen. The banks, financial companies, savings and loans banks for housing, financial groups and businesses that make-up the latter, and the representation offices of foreign banks will be regulated, accordingly, by specific laws, by the present law, by agreements issued by the Monetary Board, and in whatever is applicable, by the Organic Law of the *Banco de Guatemala*, the Monetary Law and the Financial Supervision Law. The matters not foreseen in these laws will be subject to the general legislation of the Republic in whatever is applicable.

The administrative deeds and resolutions dictated, by the Monetary Board as well as the Superintendence of Banks in application of laws and regulations herein indicated, observing due process, will be of executive action and immediate application.

TITLE II
CONSTITUTION, AUTHORIZATION, CAPITAL AND ADMINISTRATION OF BANKS

CHAPTER I
CONSTITUTION AND AUTHORIZATION

ARTICLE 6. Constitution. The national private banks will be constituted as stock companies, with arrangement by the general legislation of the Republic and observing the established in the present law.

The foreign banks will be able to:

a) Establish branches in the Republic; and,
b) Register representation offices only for the promotion of business and the granting of financing in the national territory.

For the effect, the interested foreign bank must name a legal representative to operate the representation office that it establishes in the country. Said legal representative must register in the registry established by the Superintendence of Banks and remit this information periodically or occasionally as required, relative to the business the office would make in the national territory.

The Monetary Board will regulate the requirements, paperwork, and proceedings for the registry of offices of representation of foreign banks.

ARTICLE 7. Authorization. The Monetary Board will grant or deny the authorization for the constitution of banks. The authorization of a bank can not be made without prior opinion of the Superintendence of Banks. The testimony of the constituent deed, with the certification of the resolution of the Monetary Board, related to said authorization, will be presented to the Mercantile Registry, who based on the documents will proceed without further ado to make the definite registration.

Also, it corresponds to the Monetary Board to grant or deny the authorization for branch establishments of foreign banks. Authorization can not be established for branch foreign banks without prior opinion of the Superintendence of Banks. For the effect, it must consider, among other aspects, that in the country of the home office of the bank there exists supervision with international standards; that the supervisor of the home office bank grant their consent for the establishment in the country where the branch corresponds, and that for the effect exchange institutional information among the supervisors of both countries.

For the corresponding opinion, the Superintendence of Banks must be assured, through the investigations that it deem convenient, about the fulfillment of the following requirements;

a) That the feasibility study presented is ample and sufficient for the founding of the establishment, operations and negotiations of the entity whose authorization is requested; study that will include their strategic plans;
b) That the origin and amount of capital, financing bases, organization, administration, reasonably ensure the savings and investment;
c) That the economic solvency, seriousness, honorability and responsibility of the founding partners ensure an adequate financial endorsement and the prestige of the entity;
d) That the economic solvency, seriousness, honorability and responsibility, as well as knowledge and experience in the banking, stock exchange, and financing of the organizers, the members of the council of administration and the proposed administrators, assure an adequate negotiation of the entity;
e) That the affiliations, associations and corporate structure, to their judgment, do not expose the future entity to significant risks or avoid an effective supervision of the activities and operations on behalf of the Superintendence of Banks; and
f) That the other paperwork, requirements and procedures established by applicable norms are fulfilled.

The requirements, paperwork and procedures for the constitution and authorization of banks, the establishment of branches of foreign banks and the registry of registration offices of foreign banks will be regulated by the Monetary Board.

The Monetary Board in any case must, without any responsibility and with a prior report from the Superintendence of Banks, and observing due process, revoke the authorization granted when it is proved the petitioners have presented false information.

If the bank in question were registered definitely in the Mercantile Registry and the extreme falsehood referred to in the previous paragraph were proved, the Monetary Board must, with a prior report from the Superintendence of Banks, and without any responsibility, revoke the authorization granted and requested to said Registry to proceed, without any responsibility, to cancel the corresponding registration.

ARTICLE 8. Procedures. The request to constitute a bank, establish a branch of a foreign bank, must be presented to the Superintendence of Banks, indicating that according to this law, the entity wants to constitute, establish or register, accompanied by information and documentation that establish the respective regulations.

The Superintendence of Banks, in the case of banks and branches of foreign banks will order, at the expense of the interested parties, the publication in the official newspaper and in another widely circulated newspaper in the country, of the requests of authorization presented, including the names of the organizers and future shareholders, with the purpose of whosoever is considered affected can speak their opinions before competent authorities. The juridical persons can participate as organizers or shareholders of the banks, as long as the structure of ownership allows the precise determination of the identity of the individual persons who are the final proprietors of shares in a succession of juridical persons. For the effects, clause c) of article 7 of this law, the interested parties must provide the Superintendence of Banks with the list of individual shareholders that possess more than five per cent of paid capital of said juridical persons, as well as any other information of said Superintendence considered necessary to obtain. For the effects of the previous computation, the shares of the spouse and minor children will be added.

The Monetary Board, as proposed by the Superintendence of Banks, will regulate the terms observed in the process of presented requests to constitute a bank,

establish a branch of a foreign bank or register an office of representation of foreign banks.

ARTICLE 9. Beginning of operations, opening and transfer. The banks and branches of foreign banks, with previous authorization of the Superintendence of Banks, will begin operations within a period of six months as of the date of notification of the authorization for the constitution or for the establishment, on behalf of the Monetary Board, term that, before a reasonable request, can be extended by the Superintendence of Banks, one time only, for an equal or lesser term. The lack of initial operations within the established term will automatically void the authorization granted, and the Mercantile Registry must cancel the registration, for the effect, the Superintendence of Banks must present the pertinent to said Registry. The opening, transfer, closing of branches or agencies of national banks, as well as branch agencies of foreign banks already established in the country, can be made without more process than to advise the Superintendence of Banks in writing, at least one month prior. When the entity is subject to a regularization plan, the opening, transfer or closing of branches or agencies will require the previous authorization of the Superintendence of Banks.

ARTICLE 10. Modifications. The modification of the constitutive deed of national banks or the agreement of the home office for the establishment of branches of foreign banks that operate in the country will require authorization of the Monetary Board, with prior opinion of the Superintendence of Banks. The modification of the indicated instruments that derive exclusively of the gains of authorized capital will not require the authorization of the Monetary Board.

ARTICLE 11. Fusion, absorption and acquisition. The fusion and absorption of banking entities, or the acquisition of stocks of a banking entity for another of similar nature, as well as the cession of a substantial part of the balance of a banking entity, will be authorized or denied by the Monetary Board.

Authorization can not be granted without prior opinion of the Superintendence of Banks. The established in this article will be regulated by the Monetary Board.

ARTICLE 12. Use of name. Only the authorized banks according to law can use the words ‘bank’, ‘banker’, ‘banking operations’ or other derived terms within their names or commercial names or business names or denomination.

ARTICLE 13. Impediments. Persons who can not act as organizers, shareholders, or administrators of the forming bank are:

a) The members of the Monetary Board, as well as officials of the *Banco de Guatemala* and of the Superintendence of Banks that intervened in the study and process of authorization;
b) Minors;
c) Those who have declared bankruptcy or are insolvent, while they have not yet been rehabilitated;
d) Those who are debtors of recognized persons in default;
e) The directors and administrators of banks in the process of collective execution by requirement of the Monetary Board or of the Superintendence of Banks;
f) The condemned for culpable or fraudulent bankruptcy;
g) Those who were condemned for crimes that imply lack of probity;
h) Those who have been condemned for illegal deeds related to money laundering or embezzlement;
i) Those who have been removed from public office or administration, or managers of banking or financial institutions; and,
j) Those who for any reason are legally incapable.

The Superintendence of Banks will watch over the due fulfillment of the agreed in this article, and therefore, will open the corresponding investigation to the possible infraction thereof, so when it proceeds, it will deny the participation of the person or persons who have any of the above-mentioned impediments.

ARTICLE 14. Foreign Banking. The national banks can establish branches abroad. For this, the Superintendence of Banks can authorize requests for the establishment of branches for national banks abroad, as long as in the host country there is supervision according to the international standards that allow the consolidated supervision to take place. In the specific regulation, issued by the Monetary Board, on the particular, it will demand the consent of the supervising authority in the host country for information exchanges.

It is the obligation of the national banks to inform the Superintendence of Banks; and they in turn inform the Monetary Board, when they establish branches or offices abroad, as well as over the operations and actions that they perform.

CHAPTER II
CAPITAL

ARTICLE 15. Social Capital. The social capital of the national banks is divided to represent by shares, those which are nominative.

ARTICLE 16. Minimum initial paid Capital. The minimum amount of the initial paid capital in the banks and branches of foreign banks constituted or established in the national territory, will be fixed by the Superintendence of Banks based on the mechanism of approval by the Monetary Board, which could be modified by the Monetary Board, whenever the board deems convenient. The minimum amount of initial paid capital will be revised by the Superintendence of Banks, at least for a year, who will publish the amount of initial paid capital determined. Said capital should be totally covered in cash.

ARTICLE 17. Amount of capital. Without injury to the assumptions, where it is proceeding to demand an obligatory amount of corporate capital to avoid insolvency or illiquidity situations, the banks and the branches of foreign banks, can increase the authorized capital, which it must inform to the Superintendence of Banks within the five days following said increase. In the case of national banks,

the shares that represent said amount must be nominative. All payments corresponding to the increase in capital, in both cases, must be made totally in cash.

ARTICLE 18. Capital of foreign bank branches. The paid capital of foreign bank branches must enter, take root and stay effectively in the country and can not be withdrawn without prior and express authorization from the Monetary Board.

The foreign banks that obtain authorization to establish branches in the country respond without limitation, with all its goods, for the operations that it brings about, and that is how it must accredit it. The Monetary Board will regulate the concerned in this article and at the withdrawal from the country of foreign bank branches.

ARTICLE 19. Acquisition of shares. The persons, who directly or indirectly acquire an equal or greater than five percent (5%) participation in paid capital in a bank, must count on the authorization of the Superintendence of Banks, who will verify the fulfillment of the requirements of the shareholders of new banking entities. It will proceed equally in the case of those shareholders of the bank that increase the amount of participation in shares in excess of the indicated percentage. If the authorization is not accounted for, the bank can not admit the shareholders, or in their case, can not register nor recognize their participation in shares for the excess of the percentage above indicated. The Monetary Board will regulate the established in the present article.

The banks must, in the month of January of every year, present the information to the Superintendence of Banks that contains the integration of their shareholders, as well as the amounts, percentage of participation of each one of the corporate capital holders in each, in any moment, referred up to December 31 of the previous year, without harm or injury, at any moment, require the information to the date it deems convenient.

The names of the members of the boards of directors or administrative councils or management of the banking entities must be published by them, in disclosure means available to the general public.

The banking entities must have registry of nominative shares, which allow the identification, at any moment, of who the shareholders of the entity are.

CHAPTER III
ADMINISTRATION

ARTICLE 20. Administrative and managerial councils. The banks must have an administrative council integrated by three or more managers, who are responsible for the general administration of the businesses themselves.

The members of the administrative council and the general managers, or who those holding the position, must accredit that they are solvent, honorable persons with knowledge and experience in the banking and financial business, as well as in the administration of financial risks.

The changing of members of the administration council and general managers must be made known to the Superintendence of Banks within the fifteen days following their nomination, for the verification of the fulfillment of the established in the previous paragraph. If the Superintendence of Banks verifies that one or more of the persons nominated do not reunite the established requirements, they will order the bank to find new nominations, no later than sixty calendar days following the notification of said Superintendence. If not, the objected nominations will be ineffective.

ARTICLE 21. Duties and attributions of the Administration Council. The Administration Council, without harm or injury of the other legal and contractual agreements that are applicable, will have the following duties and obligations:

a) Be responsible for the liquidity and solvency of the bank;
b) Define the financial and credit policy of the bank and control its execution;
c) To watch over the implementation and instruction to keep the functioning and execution, the policies, systems and processes that are necessary for the correct administration, evaluation and risk control;
d) To watch that the asset and contingent operations do not exceed the established limits presented by law;
e) Know and decide whatever is necessary for the fulfillment and execution of the measures of any nature that the Monetary Board or the Superintendence of Banks, in the frame of their respective competition, decided in relation to the bank;
f) Know the monthly financial statements and approve the annual financial statements of the banking entity and the financial group, whatever the case, which should be endorsed by internal auditing and annually, by the report of external audits, with the corresponding opinion and notes on the financial statements. As well as decide over the derived recommendations of these; and,
g) In general, fulfill and ensure the fulfillment of the agreements and regulations that are applicable to the bank.

ARTICLE 22. Responsibilities. The members of the Administrative Council and the General Managers will be civilly, administratively and criminally responsible for their actions or omissions in the fulfillment of their duties and attributions.

Every act, resolution or omission of the members of the administrative council that contravene the legal or regulation agreements or cause harm and injury to the bank, will have them incur in responsibility on themselves and with third parties, and will respond unlimitedly before them with their personal property.

Those who can prove a dissident vote in the deed of the session where the matter was dealt with are exempt of the responsibility.

ARTICLE 23. Impartiality in the deliberations. When any of the assistants of the sessions of the administration council or credit committee of a bank have any personal interest in the discussion or resolution of a determined matter, or individual or juridical persons involved would have interest to them by relation of property administration or any other reason dully regulated by the Monetary Board, can not participate in the discussion or resolution, nor influence at any moment on them, and must withdraw from the respective session during the discussion of the matters, leaving proof within the deed. The resolutions that contravene this precept will be nullified and will not produce any results.

ARTICLE 24. Impediments. The members of the administrative council or general managers of a national bank or administrators of a foreign bank branch can not be members of the administrative council, general managers or officials, and employees of any other bank. The exceptions to this article are the members of the administrative council and general managers of businesses that form part of the same financial group.

For the members of the administration council and general managers the impediments of article 13 of the present law will be applicable, which are established for the organizers, shareholders and administrators proposed for the new banks, except the agreed in article a) of the cited article for members of the Monetary Board.

ARTICLE 25. Restrictions for relatives. No bank can hire the services of persons that are related to members of the administrative council, general manager and other officials of the same, within the fourth degree of consanguinity or the second of affinity, as officials or employees of said bank. However, the Monetary Board can require that the respective bank, to make exceptions to this

restriction when it esteems that it is not in detriment to the good standing and functioning of the bank.

ARTICLE 26. Administrator of foreign bank branches. It will not be necessary for foreign bank branches to be administered by an administration council, but they must have one or more administrators domiciled in the country, responsible for the direction and general administration of the businesses of the branch, authorized to act in the country and execute operations that correspond to the nature of the branch in question. The administrators of the branches of foreign banks that operate in the country will be subject to the same impediments, and in the applicable, will have the same duties and attributions of national administrators of banks.

TITLE III
FINANCIAL GROUPS

CHAPTER I
AUTHORIZATION AND ORGANIZATION

ARTICLE 27. Authorization and organization of financial groups. Financial group is the grouping of two or more juridical persons that realize activities of a financial nature, of which one is to be banks, among which there is common control through relations of property, administration or use of corporate image, or also without these relations, according to agreement, who decide common control. The business that has shareholders that are businesses of different financial groups, without the possibility of determining which of these exercises control over it, will form part of a group with which it must consolidate financially, according to what the accounting norms establish.

Financial groups must organize under the common control of a controlling business constituted specifically in Guatemala for this purpose, or of a responsible business

of the financial group, which will be the bank; in this last case, according to the organizational structure authorized by the Monetary Board, with prior opinion of the Superintendence of Banks, according to the request founded that for the effect they present to the interested parties.

When there is a controlling business, the financial groups will be integrated by this and by two or more of the following businesses: banks, financial companies, exchange houses, general deposit warehouses, insurance companies, trust companies, specialized issue companies or credit card administration, financial leasing businesses, factorage businesses, stock companies, off shore companies and others qualified by the Monetary Board. When the common control is had by a responsible business, the financial groups will be integrated by them and one or more of the previously mentioned businesses.

It corresponds to the Monetary Board to authorize the conformation of financial groups, with prior opinion of the Superintendence of Banks. Each and every one of the businesses that integrate the financial groups will be subject to the consolidated supervision on behalf of the Superintendence of Banks.

ARTICLE 28. Consolidated Supervision. Consolidated supervision is the watching over and inspection made by the Superintendence of Banks over a financial group, with the objective of the entities that make it up, adequate their activities and functioning to the legal norms, regulations and other dispositions that are applicable, and the risks that the businesses of said group assume, that can affect the bank, are evaluated and controlled on the basis of global and business. For these effects, the Superintendence of Banks will have access to the information of operations and activities of the financial group, on a basis of business and consolidated, guarding the identity of the investors and depositors according to the established in the present law.

ARTICLE 29. Authorities of businesses of financial groups. Only businesses that form part of a financial group can:

a) Act as a whole before the public;
b) Use denominations equal or similar, a common corporate image, symbols, visual identification or visual identity, which identify them before the public as members of the same group, or use their own business name or denomination. In any case, they must add the expression 'Financial Group' and the denomination of said group; and,
c) Use the business name or denomination, in their commercial name or in the description of their business, the expression 'Financial Group' or others derived of said terms.

ARTICLE 30. Presumption of the existence of financial groups. The existence of financial groups are presumed when, among the businesses indicated in article 27 of this law, their exists a relationship of affinity and of interest, such as: the activities of a financial group, the common presence of shareholders, members of administration councils or boards of directors and main officials or executives; the granting of credits of significant amounts, in relation to the property of the borrower or without adequate guarantees; the possibility of exercising the right to veto businesses; the frequent assumption of shared risks; that allow the deduction of the existence of common control among them.

For the effects of the presumption of the existence of financial groups, the Superintendence of Banks will qualify it. The businesses that declare that they are not within the above situation must prove it before the Superintendence of Banks, prior to an audience conceded by it.

ARTICLE 31. Declaration of the existence of financial groups. The Superintendence of Banks, according to the agreed in the previous article, and once the process is exhausted, it must, if that were the case, declare the existence of a financial group of fact, which will be obligated to conform as such, according to

the present law, within a term of six months as of the date in which it was notified to the businesses of the group with the corresponding resolution. The Superintendence of Banks, at the justified request of the interested parties, can extend the term for the same period, once only.

CHAPTER II
CONTROLLING BUSINESS OR RESPONSIBLE BUSINESS

ARTICLE 32. Constitution. The controlling business must be constituted as a stock company with nominative shares and observe the established in the present law. Its exclusive social objective will be the management, administration, control and representation of the financial group. The functions of the controlling business will be regulated by the Monetary Board. The controlling business can only invest in shares of businesses that are indicated in articles 27 and 38 of the present law, and can not perform operations that are of said businesses.

In no case will the controlling business be able to participate in the capital of a business of a different nature in the businesses that integrate the financial groups and businesses of support of bank draft, according to this law.

The controlling business will watch that the member businesses of the financial groups fulfill the agreements of the present law, relative to financial groups, and over those matters issued by the Monetary Board. The prior, without harm of the responsibility of each one of the member businesses of the group have regarding the fulfillment of the indicated agreements.

When the organizational structure of the financial group does not include the constitution of a controlling business, the bank as a responsible business of the group will have the same attributions and obligations of the controlling business, established in the previous paragraph, without harm or injury of the responsibility

that each one of the business members of the group have regarding the fulfillment of the agreements established in the present law.

ARTICLE 33. Authorization. The Monetary Board will grant or deny the authorization for the constitution of the controlling business. The authorization for the constitution of the controlling business will not be granted without prior opinion of the Superintendence of Banks. The testimonial of the constitutive deed with the certification of the resolution that for the effect the Monetary Board has issued, will be presented to the Mercantile Registry, who based on said documents will proceed, without any more paperwork, to perform the definitive registry. The paperwork of this authorization, and everything regarding the social deed, impediments, administrative council and management, titles of shares and transfer of shares, will be regulated by the dispositions that regulate banks, where it applies.

The Superintendence of Banks, at the cost of the interested parties, will order the publication in the official newspaper and any other of greater circulation in the country, give the authorization requests presented, including the names of the organizers, shareholders, with the finality that those who are considered affected can make use of their rights before a competent authority.

ARTICLE 34. Fusion, incorporation and separation. The fusion of controlling businesses, and the incorporation or separation of a business from a financial group will be authorized or denied by the Monetary Board. The fusion, incorporation or separation indicated can not be authorized without prior opinion of the Superintendence of Banks.

ARTICLE 35. Participation in the businesses of the group. The controlling business must maintain an active participation of shares of more than fifty percent (50%) of paid capital in each one of the businesses of the group that allow an effective control over them.

The shareholders of the businesses that integrate a financial group can exchange their participation in shares in the other businesses that make up the financial group, through shares of the controlling business, or in its case, the responsible business.

CHAPTER III
REGIMEN OF SPECIALIZED BUSINESSES IN FINANCIAL SERVICES AND BUSINESSES OF SUPPORT FOR BANK DRAFT

ARTICLE 36. Specialized businesses in financial services. The specialized businesses in financial services, that are part of the financial groups, will be subject to the consolidated supervision on behalf of the Superintendence of Banks. Each one of these businesses must have as an exclusive social objective, one or more of the following:

a) Issue and administrate credit cards;
b) Operations of financial leasing;
c) Factorage operations; or,
d) Others that the Monetary Board qualifies, with prior opinion of the Superintendence of Banks.

ARTICLE 37. Financing of operations. The businesses referred to in the previous article could finance their operations with the resources from their own capital, banking credit and of the creation and placement of value titles in stock exchange public offer, as long as they are not susceptible to anticipated redemption, that is created in series and that the titles have the same characteristics when they form part of the same series, and other sources of financing that are authorized by the Monetary Board.

ARTICLE 38. Businesses of support for the bank draft. The businesses of support for the bank draft are those that, without assuming a credit risk, lend the

bank the services of automated teller machines, electronic data processing of the automated teller machines and other qualified services by the Monetary Board, with prior opinion of the Superintendence of Banks. The investments of controlling businesses or the banks in businesses of support of bank draft will be authorized by the Monetary Board, with prior opinion from the Superintendence of Banks, and the controlling business or bank, whatever the case, must consolidate financial information of the businesses of bank draft support within their financial statements, according to the countable corresponding norms.

ARTICLE 39. Accounting Norms, of information and external auditing. The Monetary Board must generally norm the accounting operations, the information that must be disclosed to the public and the minimum requirements that must be incorporated in the hiring and extent of the external audits of the businesses referred to in this chapter; also, that the external audits must be dully registered in the registry that for the effect is managed by the Superintendence of Banks.

ARTICLE 40. Special Regimen. The businesses referred to in the present chapter, which are not part of a financial group, will not be subject to the watch or inspection of the Superintendence of Banks; however, they will be obligated to provide all the information and periodic or occasional reports to the supervisor of that entity, as requested. Also, they will be obligated to allow the Superintendence of Banks the free access to all the sources and information systems so that it can verify the information provided by them, by a bank or the businesses that form part of the financial group that offers those services.

TITLE IV
THE BANKS, THEIR OPERATIONS AND SERVICES
ONLY CHAPTER

ARTICLE 41. Operations and services. The authorized banks according to this law can operate in national or foreign currency and offer the following services:

a) Liable operations:
   1. Receive monetary deposits;
   2. Receive term deposits;
   3. Receive savings deposits;
   4. Create and negotiate bonds and/or promissory notes, with prior authorization of the Monetary Board:
   5. Obtain financing from the *Banco de Guatemala*, according to its Organic Law;
   6. Obtain national and foreign banking credits;
   7. Create and negotiate convertible debenture;
   8. Create and negotiate ancillary liabilities; and,
   9. Operate repurchase agreements as reported.

b) Asset operations:
   1. Issue credit;
   2. Discount documents;
   3. Issue financing operations of letters of credit;
   4. Concede advance for exportation;
   5. Issue and operate credit cards;
   6. Financial leasing;
   7. Factorage;
   8. Invest in values titles issued and/or guaranteed by the state, for the authorized banks according to this law or by private entities, In the case of investment in values titles issued by private entities, they will require prior approval by the Monetary Board;

9. Acquire and conserve the proprietorship of real estate or property, as long as they are for personal use, without harm of the foreseen in numeral 6, above;

10. Constitute deposits in other banks of the country and in foreign banks; and,

11. Operations of repurchase agreements as reporter.

c) Trust operations:

1. Collect and pay an alien account;

2. Receive deposits with option to financial investments;

3. Purchase and sell values titles by alien account; and,

4. Serve as a financial agent, taking charge of the service of debt, payment of interest, commissions and amortizations.

d) Contingent liability:

1. Issue guarantees;

2. Lend collateral;

3. Issue bonds; and,

4. Issue or confirm letters of credit.

e) Services:

1. Act as fiduciary;

2. Purchase and sell foreign currency, as cash or documents;

3. Open letters of credit;

4. Operations of collection;

5. Funds transfers; and,

6. Rent security boxes.

The Monetary Board can, with prior opinion from the Superintendence of Banks, authorize the banks to make other operations and lend other services that are not contemplated in this law, as long as the same are compatible with the nature of the business.

ARTICLE 42. Interest rates, commissions and surcharge. The authorized banks according to this law will freely pact the interest rates, commissions and

other fees that apply to their operations and services with the customers. In no case will the collection of commissions or expenses for services that do not correspond to the services lent or expenses had, be made.

In all the contracts of financial nature that the banks subscribe, they must expressly declare the equivalent effective annual rate, as well as any changes therein.

ARTICLE 43. Operation hours and services to the public. The banks must operate and lend their services to the public during hours they have determined. The established hours and changes made must be communicated to the Superintendence of Banks, at least five days before these are enforced.

Any interruption or general suspension of operations and lending of services of a bank can only be made with prior communication to the public and authorization of the Superintendence of Banks.

ARTICLE 44. Global proportions in foreign currency. The banks must maintain global proportions among their asset and liability operations in foreign currency, according to the dispositions issued by the Monetary Board.

TITLE V
PROHIBITIONS AND LIMITATIONS

CHAPTER I
PROHIBITIONS

ARTICLE 45. To banks. Banks are forbidden from:

a) To perform operations that imply financing for speculation purposes, in consonance with the agreed in article 342 of the Penal Code;

b) Grant financing to, directly or indirectly, totally or partially, pay the subscription of the assets of the bank, of another bank or in the case of, the businesses that conform the financial group;
c) Admit in guarantee or acquire its own shares;
d) Acquire or conserve the proprietorship of real estate or property that is not necessary for the use of the entity, except when it is adjudicated as extraordinary asset or those that are destined to operations of financial leasing, according to the present law;
e) Transfer for any title, the goods, credits or values of the same entity to their shareholders, directors, officials and employees, as well as individual or juristic persons associated to said persons. The only exception are the bonds and values titles issued by the same entity when they are acquired in the same conditions offered to the public and the shares when they are purchased in the same conditions that are granted to the shareholders;
f) Undertake commercial, agricultural, industrial and mining activities, or others that are not compatible with the banking nature, and participating in any form, directly or indirectly, in businesses that are dedicated to said activities;
g) Simulate financial operations and the rendering of services; and,
h) Operations and lending financial services that the Monetary Board consider incompatible with the banking business.

ARTICLE 46. To businesses of the financial group. To the businesses of the financial group; they are forbidden:

a) Grant direct or indirect financing for the acquisition of shares representative of their capital, of the controlling business, of the responsible business or any other financial business that the group belongs to;
b) Perform financial operations or the lending of services among themselves, in term, amount, guarantee and different commission conditions, similar to those that they would use with third parties. The Monetary Board will regulate the operations that could be held by said entities among themselves; and,

c) Operations and rendering of financial services that the Monetary Board considers incompatible with the financing business.

CHAPTER II
LIMITATIONS

ARTICLE 47. Concentration of investments and contingencies. The banks and financial companies, with the exception of the financial operations that they can make, without any limitation whatsoever, with the *Banco de Guatemala*, and with the *Ministerio de Finanzas Públicas* (equivalent to the Department of the Treasury) can not perform operations that imply direct or indirect financing of any nature, without the juristic form mattering that adopt, as such, but not circumscribed to bonds, promissory notes, liabilities and/or credits, nor issue guarantees or repurchase agreements, that together exceed the following percentages:

a) Fifteen percent (15%) of the computable property in one individual or juristic person, of private nature; or only one business of the State or an autonomous entity.
b) Thirty percent (30%) of the computable property of two or more persons related among themselves or connected that form part of a unit of risk.

For the effects of the proposed in the present law the following definitions are established:

1. Related persons: are two or more individual or juristic persons independent to the banking institution that grants the financing, but maintains a direct or indirect relation among them, by relation of property, administration or of any other nature defined by the Monetary Board.
2. Persons involved: are individual or juristic persons, directly or indirectly related with the banking institution that concede the financing, by relation of property, administration or any other nature defined by the Monetary Board.

3. Unit of risk: is constituted by two or more persons related or connected that receive and/or maintain financing of a bank.

The Superintendence of Banks presumes the existence of the units of risk based on the criteria that include reasons of property, administration, related business strategies and other elements duly established by the Superintendence of Banks. The established in the present article will be regulated by the Monetary Board.

ARTICLE 48. Organization expenses. The banks can compute as organization expenses, up to five percent (5%) of the initial paid capital. Such expenses must be amortized within a period of no more than five years.

ARTICLE 49. Operations with linked persons. The Monetary Board will generally norm, the referred to limiting or regulating the operations that the banks celebrate with their shareholders, directors, officials and employees, and with individual or juristic persons linked to the previously indicated, by relation of property or administration.

TITLE VI
RISK ADMINISTRATION
ONLY CHAPTER

ARTICLE 50. Concession of financing. The banks, before conceding financing, must be reasonably sure that the requiring parties have the ability to generate the sufficient flow of funds to make the opportune payments of their obligations within the term of the contract. Also, they must follow up adequately to the evolution of the ability to pay the debtor or debtors during the term of the financing.

The banks will demand that the petitioners of financing and their debtors, as a minimum, provide the information determined by the Monetary Board through dispositions of general character that it dictates for that effect.

If later to the concession of the financing the bank proves falsehood in the declaration and documentation provided by the debtor or debtors, they can nullify the term and demand the fulfillment of the obligation judicially or extra judicially.

ARTICLE 51. Guarantees. The credits granted by the banks must be endorsed by an adequate fiduciary, mortgage, pledge or a combination of these guarantees, or other movable guarantees, according to the law.

The credits subject to real guarantee can not exceed seventy percent of the value of the pledge guarantees nor eighty (80%) of the mortgage guarantees.

ARTICLE 52. Requirements. In the concession process and during the term of the credit the following must be observed:

a) The bank must require the debtor all the information and access that allows the constant evaluation of their capacity of payment. The Superintendence of Banks could, when it deems it necessary, evaluate the capacity of payment of the debtors, for that effect the bank must ease the information and all the documentation it might require; and,
b) All extensions must be expressed. The credit term will not be extended by a simple wait or due to the fact that the initial payment was made or the total or partial payment of interest is expired.

The extension or cancellation of the obligations in favor of the banks whether they are mortgages or not, could be made by an amendment at the foot of the document, placed by whoever has the legal authority to do so. That amendment with the legalization of the signature of a Notary will be sufficient instrument for the respective registry for the corresponding operation.

ARTICLE 53. Appraisal of assets, contingencies and other financial instruments. The banks and businesses of financial groups that issue financing must appraise their assets, contingent operations and other financial instruments that imply exposing themselves to risks, according to the corresponding norms. The banks and, in their case, the businesses of financial groups, must constitute, against the results of the exercise, the sufficient reserves or provisions, according to the appraisal made. In the case that the reserves or provisions to constitute exceed the maximum legal allowed as an expense deductible for fiscal purposes, such excess could be created directly against capital accounts.

In case of breach, the Superintendence of Banks can order the reclassification of assets and the corresponding constitution of reserves or provisions, without harm of the sanctions that correspond. When the Superintendent of Banks deems, in determined assets, contingencies and other financial instruments exist risk factors that require the constitution of special reserves or provisions additional to the indicated in the first paragraph of the present article, and must order, in each case, the constitution of the same with the purpose of covering the risk in the necessary measure.

The Monetary Board, as proposed by the Superintendence of Banks, will issue norms referred to in the first paragraph of this article, determining the regimen of the classification of assets and of reserves or provisions, taking into account the capacity of payment and the fulfillment of the debtor, for the purposes of the indicated in said paragraph.

ARTICLE 54. Extraordinary assets. Not withstanding the prohibitions and limitations imposed by this law, the banks and, in their case, the other financial group businesses can receive all type of guarantees and acquire real estate, commercial premises, merchandise, assets, credit documents, values, pledges and goods of all kinds, in the following cases:

a) As additional guarantee, for lack of something better, when it were indispensable to ensure the credit payment in their favor, result of operations made previously;
b) When the lack of other means of payment would obligate to accept them as total or partial cancellation of credits in favor of the bank and, also in the case of financial groups, resulting in legally performed operations in the course of business;
c) When they would have to buy them, in order to make credit in their favor, or to ensure the creditorship; and,
d) When they were adjudicated in virtue of judicial action promoted against the debtors.

The assets that they possess and those acquired by the banks according to the above will be known as extraordinary assets, which must be sold in a term of two years, as of the date of acquisition.

Once incorporated to the banks assets, these must be appraised. The Superintendence of Banks can require new appraisals by third parties and the constitution of the corresponding reserves and provisions.

If the sale of extraordinary assets were not made within a term of two years, the banks must be obligated to offer them at public auction immediately after the expiration of the term; in the case there would be no bidders, the auction must be repeated every three months. When the economic and financial conditions require it, the Monetary Board can suspend auctions and can extend the terms referred to in this article, for fixed terms no greater than six months. The sale and application of the profit of extraordinary assets will be regulated by the Monetary Board.

ARTICLE 55. Risks. The banks and the businesses that integrate financial groups must count on the integral processes that include, according to the case, the administration of credit risk, market interest rate, liquidity, exchange, transfer,

operational and others that they are exposed to, that contain information systems and a risk administration committee, all with the purpose of identifying, measuring, monitoring, controlling and avoiding risks.

ARTICLE 56. Administrative Policies. The banks and the businesses that integrate financial groups must count on the current, written policies, relative to the concession of credits, investment, evaluation of the quality of assets, sufficiency of provisions for loss and in general, policies for an adequate administration of the diverse risks that they are exposed to. Also, they must count on the policies, practices and procedures that allow having the adequate knowledge of their clients, with the purpose that the banks and financial groups are not used to make illegal operations.

ARTICLE 57. Internal Control. The banks and businesses that do not integrate financial groups must have an internal control system adequate to the nature and scale of their business that includes the clear and defined dispositions for the delegation of authority and responsibility, separation of position, disbursement of funds, the accountability of their operations, safekeeping of assets and an adequate, independent internal and external auditing, as well as an administrative unit responsible for watching that the personnel fulfills these controls and the laws and applicable agreements.

The Monetary Board, as proposed by the Superintendence of Banks will establish, through norms of general application, minimum requirements that the banks must fulfill related to the material contained in the two previous articles and the present. -

ARTICLE 58. System of risk information. The Superintendence of Banks will implement a risk information system, for which the entities referred to in this law are obligated to provide the information that for the effect will be determined by said Superintendence.

The banks and financial groups, and other entities of financial intermediation will have access to the risk information system, exclusively for credit analysis purposes when requested by the Superintendence of Banks and approved by the Monetary Board.

TITLE VII
ACCOUNTING REGIMEN AND DISCLOSURE OF INFORMATION
CHAPTER I
ACCOUNTING REGIMEN

ARTICLE 59. Accounting Registry. The accounting registry of the operations made by the businesses regulated by the present law must be made, based on the norms issued by the Monetary Board, as proposed by the Superintendence of Banks and, in the applicable, in the generally accepted accounting principles and the international accounting norms.

The Superintendence of Banks can authorize the use of accounting systems, as well as the annotations in relative accounts of values titles, in which case the accounting registries and annotations will have the same probatory value that the law assigns accounting books and values titles. The mode of annotation in the account must apply to all values titles that integrate the same series of determined issue.

The Superintendence of Banks will fix procedures of a general character for the presentation of financial statements and of any other information of the businesses subject to watch and inspection. The accounting registries must faithfully reflect all the operations derived from deed, contracts, operations and services performed and lent to the authorized businesses according to this law.

The accounting registries and the legal documents that endorse it produce faith in the judgment, unless proven otherwise.

ARTICLE 60. Consolidation of financial statements. The consolidation of financial statements of the businesses that integrate the financial group must be made by a comptroller business or by a responsible business, according to the procedures that for the effect the Superintendence of Banks, and in the applicable, with the generally accepted accounting principles and the international accounting norms.

ARTICLE 61. Presentation of information. The banks and the businesses that make up the financial groups must present the detailed information of their operations according to general instructions of the Superintendence of Banks, referred to them at the end of every month and with each accounting year. Also, they will be obligated to provide periodic or occasional information required by the Superintendence of Banks or the Monetary Board. Said information will be verified at any moment by the Superintendence of Banks.

The balances and statements results at the end of every accounting year of the supervised businesses considered individually, and the consolidated financial group, must count on the opinion of an external auditor, that covers the matters fixed by the Superintendence of Banks.

The Superintendence of Banks will determine the general manner of the accounting operations and the minimum requirements that must be incorporated in the hiring and reach the external audits of the businesses subject to surveillance and inspections; also, it will verify that the external auditors are dully registered in the registry that the Superintendence of Banks has for that effect.

To those external auditors who do not fulfill the legal agreements, regulations or contractual that they must observe when rendering services to the entities referred to in the present article, the Superintendence of Banks can cancel their registry.

ARTICLE 62. Disclosure of information of banks and financial groups. The banks must disclose to the public, enough information on their activities and financial position, which must be precise, correct and opportune, according to the general instructions that the Superintendence of Banks communicates.

The controlling business or the responsible business must provide the Superintendence of Banks and disclose to the public, individual and consolidated information of the businesses that integrate the financial group, according to general instructions issued by the Superintendence of Banks.

CHAPTER II
CONFIDENTIALITY OF OPERATIONS

ARTICLE 63. Confidentiality of operations. Except for the obligations and duties established by the norms on money laundering and the laundering of other assets, the directors, managers, legal representatives, officials and bank employees, can not provide information under any circumstance, to any person, individual or juristic, public or private, that would reveal the confidential character of the identity of the depositors of banks, financial institutions and businesses of financial groups, as well as the information provided by the particulars of these entities. From the limitations of the previous paragraph, are the following exceptions, the information the banks must provide to the Monetary Board, the *Banco de Guatemala*, and the Superintendence of Banks, as well as the information that is exchanged between banks and financial institutions. The members of the Monetary Board and the authorities, officials and employees of the *Banco de Guatemala* and the Superintendence of Banks can not reveal information referred to in this article, except through an order by a competent judge.

The infraction of the indicated in this article will be considered a serious fault, and will motivate the immediate removal of those who incur in it, without harm or injury of the civil and criminal liabilities that derive of said act.

TITLE VIII
CAPITAL AND RESERVES
ONLY CHAPTER

ARTICLE 64. Adapting of the capital. The banks and financial companies must maintain a permanent minimum amount of property regarding their credit risk, market and other risks exposure, according to the regulations of general character that for the effect are issued by the Monetary Board, with the favorable vote of three quarters of the total amount of members, with a prior report to the Superintendence of Banks.

The minimum amount of patrimony required for the exposure to the indicated risks and the due considerations will be fixed by the Monetary Board with a favorable vote of three fourths of the members that make it up, at the request of the Superintendence of Banks. Said amount will not be less than ten percent (10%) of the assets and contingencies, both considered according to their risk. The considerations will be determined by regulation of general character of the Monetary Board based on international best practices. In any case, any modification of the required minimum amounts and of the considerations of the risk will apply gradually and will be notified with prudent anticipation.

ARTICLE 65. Computable Patrimony. The computable patrimony of a bank will be the sum of its primary capital plus the complementary capital, deducing from this amount the investments in assets of national and foreign banks, financial companies, insurance companies, bond companies, general deposit warehouses, specialized businesses in financial services and the assigned capital of the branches abroad

The primary capital is made up of the paid capital, other permanent contributions, the legal reserve and the permanent nature reserves form the retained profits and the contributions from the state in the case of state banks.

The complementary capital is made up of the yearly profits, the profits of previous years, the surplus of the write up of assets, other capital reserves, instruments of debt converted to assets and subordinate debt contracted for terms greater than five years. The surplus by write up of assets can not be distributed until the revaluated assets are sold.

The complementary capital will be acceptable as a part of the computable patrimony up to the sum of the primary capital and the subordinate debt whose term of issue will be greater than five years and the surplus for the write up of assets can only be computed by up to fifty percent (50%) of the primary capital for each. The accumulated losses and the circulating year, and the specific reserves of assets determined of doubtful recovery, will be deducted, in first term, of complementary capital, and in case it were insufficient, of primary capital.

ARTICLE 66. Patrimonial position. The patrimonial position will be the difference between computable patrimony and the required patrimony, which must remain computable patrimony of no less than the sum of the required patrimony.

ARTICLE 67. Patrimonial Deficiency. When the computable patrimony is less than the required patrimony there will be a patrimonial deficiency, in which case the process of patrimonial regularization contained in this Law must be followed.

ARTICLE 68. Capital of financial groups. The controlling business or the responsible business must consolidate the financial statements of businesses that integrate the financial group monthly and keep it permanently for at least the legal patrimony minimum, in consolidated form as well as in individual form for each one of its members. The consolidated requirement can not be less than the sum of the patrimonial requirements demanded by the corresponding norms for each one of them.

When any of the businesses that integrate the financial group are lacking the regulations on minimum risk capital, the agreements of capital adapting will be applied, which, in these cases, the Monetary Board issues.

ARTICLE 69. Patrimonial deficiencies of financial groups. The patrimonial deficiency that results from the consolidation process of financial statements of businesses that make up the financial group must be repaired by the controlling entity or responsible business, for which the patrimonial regularization contained in this law, will be applied.

TITLE IX
REGULARIZATION, SUSPENSION OF OPERATIONS AND EXCLUSION OF ASSETS AND LIABILITIES

CHAPTER I
REGULARIZATION FOR PATRIMONIAL DEFICIENCY

ARTICLE 70. Procedure and terms. When a bank or a financial company presents patrimonial deficiency it must inform the Superintendence of Banks immediately; if it does not do so it will be subject to the sanctions foreseen in this Law, without harm of applying other legal agreements that correspond. Also, within the term of five days, following said report; they must present a regularization plan to the Superintendence, for its approval. In case of patrimonial deficiency they must immediately report to the Superintendence of Banks; if they do not report it they must present the plan referred to in the previous paragraph, within the next five days, following the date in which the Superintendence of Banks notifies the bank or the financial company.

The Superintendence of Banks, in a term of five days following the presentation of the plan on behalf of the bank or the financial company, will approve or reject considering it not viable, or will formulate amendments that it esteems pertinent.

If the plan or required amendments were rejected, the bank or financial company must present a corrected plan within the next five days of the date which the Superintendence of Banks will notify them. The Superintendence of Banks, within the five following days of having received the corrected plan, will approve or reject the corrected plan; in the latter case, considering it not viable. In case the corrected plan would be rejected, or if the entity in question does not present one within the established time, they will proceed with the application of the other established measures in this law.

In any case, the bank or financial society must begin the actions that correspond to the repairing of the patrimonial deficiency for the moment of its determination.

The bank or financial society must execute the regularization plan approved by the Superintendence of Banks, within a fixed term by them, which can not exceed three months as of the date of approval. The adopted measure must be maintained as long as the patrimonial deficiency is not repaired.

When an entity is subject to a regularization plan it can not pay dividends or issue loans to its shareholders, general manager or linked businesses or related to it.

The regularization plan must contain a minimum of some or all of the following measures, according to the case:

a) The reduction of assets, contingencies or the suspension of operations subject to the patrimonial requirements;
b) The capitalization of reserves and/or necessary profits to cover the patrimonial deficiencies;
c) The increase in authorized capital and the issue of assets in the amount necessary to cover the patrimonial deficiencies;
d) The payment of their own assets to its creditors, with the consent of these;

e) The contracting of one or more subordinate credits within the structure of the capital of the bank;
f) The sale in public offer of a number of shares of the bank or the financial company which, placed at their nominal value or at a different one, permit the total or partial repair, according to the case, of the patrimonial deficiency, observing the proposed in article 19 of this law. If the bank or financial company does not count with sufficient authorized capital to issue the amount of shares required, then, the authorized capital will be understood automatically, increasing by ministry of the law, in the sum that would be necessary to cover the deficiency; and,
g) The alienation or negotiation of assets and/or liabilities.

When a branch of the foreign bank presents patrimonial deficiencies the Superintendence of Banks will communicate it to the home office, which must repair the deficiency within a thirty day period, as of the date of communication. In case they do not repair the deficiency they will apply the regimen of suspending operations and exclusion of assets and liabilities referred to in the present law, without harm or injury to the agreed in article 18 of the Law.

ARTICLE 71. Reports. The Superintendence of Banks will keep the Monetary Board informed of banks and financial companies that present patrimonial deficiency. The banks and financial companies that are subject to the regularization by patrimonial deficiency must render reports to the Superintendence of Banks on their patrimonial position, with the periodicity that is determined by them.

The banks and financial companies that are subject to regularization by patrimonial deficiency will only be able to open new branches or agencies with the previous approval of the Superintendence of Banks.

ARTICLE 72. Patrimonial Deficiency of financial groups. When a financial group presents patrimonial deficiency, according to the established in article 69 of this Law, the controlling business or responsible business must immediately inform the Superintendence of Banks; and if it does not it will be subject to the sanctions mentioned in this Law, without harm or injury of applying other corresponding legal agreements. Also, the deficiency must be repaired. If the controlling business or responsible business does not regulate the patrimonial deficiency that according to the law is the cause of the total dissolution of the deficient business in question, the Superintendence of Banks will require a competent judge the corresponding dissolution. In the case that it is dealing with a bank or financial company the agreed in Chapter II, of this title, will be applied.

The controlling business or responsible business must present reports to the Superintendence of Banks with the periodicity determined by them, on the consolidated patrimonial position of the financial group or individual of each of the businesses that integrate it.

The Superintendence of Banks will keep the Monetary Board informed of the financial groups that present consolidated patrimonial deficiencies.

ARTICLE 73. Regularization Plans. The banks will also be obligated to present regularization plans with the terms and characteristics mentioned in articles 70 and 71 of this law, when the Superintendence of Banks detects the following:

a) Reiterated breach of the legal agreements and applicable regulations, as well as the instructions of the Superintendence of Banks;
b) Deficiency in the legal float for two consecutive months or for three months during different periods throughout the year;
c) Existence of administration practices that to the judgment of the Superintendence of Banks places the liquidity and solvency situation in grave danger; and,

d) Presentation of financial information that to the judgment of the Superintendence of Banks is not real or that the documentation is false.

ARTICLE 74. Delegate of the Superintendence of Banks. In the cases where the bank is obligated to present a regularization plan referred to in articles 70 and 73 of this law, the Superintendence of Banks could designate a delegate, with the right to veto the decisions the bank could adopt that would hinder the realization plan, during the period of the regularization. The previous does no mean that they would exercise co-administration functions. The delegate of the Superintendence of Banks must attend the sessions of the Administration Council, in case of opposition to the veto; the legal actions that are exercised against the same will not suspend the effects.

During the enforcing of the regularization, the Superintendence of Banks could remove and/or prohibit the exercise of one or more directors or administrators. In this last case, the delegate must immediately convene an extraordinary general assembly of shareholders so that, according to the social deed of the bank in question, they will nominate new members to the administrative council. Equally, they can remove general managers, managers, sub-managers, and any other executives. In any case, the fulfillment or lack of fulfillment of the regularization plan is the responsibility of the administration of the entity.

ARTICLE 75. Causatives of suspension and special regimen. The Monetary Board must immediately suspend the operations of a bank or financial society, in the following cases:

a) When they have suspended the payment of their obligations; and,
b) When the patrimonial deficiency is above fifty percent of the patrimony required according to this Law.

Also, the Monetary Board decides the suspension of operations of the entity in question, for lack of presentation of a regularization plan or the definitive rejection

of the same on behalf of the Superintendence of Banks or the breach of said plan, or for other reasons, duly founded in the report of the Superintendence of Banks. --

ARTICLE 76. Voluntary Liquidation. The voluntary liquidation can not be requested before a judge unless they obtain the previous authorization of the Superintendence of Banks that can only grant it when they have at least integrally satisfied by all the creditors of the entity.

ARTICLE 77. Special Regimen. While during the regimen of suspension, all processes of any nature or cautionary measures that it promotes against the bank or the financial company in question will be suspended. Also, during the suspension the entity can not count on new obligations and will suspend the demadability of its liabilities, as well as the accruing of its interests.

The suspension of operations, in no case, will hold the authorities, officials, entities, organs or institutions that have participated in the adoption measure responsible. --

The drawn checks against the suspended bank will not be included in the operations of the compensation chamber, as of the date in which the decision to suspend operations is made.

CHAPTER II
EXCLUSION OF ASSETS AND LIABILITIES

ARTICLE 78. Board of exclusion of assets and liabilities. The Monetary Board, at the proposal of the Superintendence of Banks, no later than the day after the agreement to suspend operations, must name an Exclusion of Assets and Liabilities Board, made up of three members, who will be relieved, as a certified body or individually considered, to lend bond or guarantee for their actions.

The members of the Exclusion of Assets and Liabilities Board will have all the legal authority to act judicially and extra judicially within the environment of attributions that the law points out. They will also have, the authority required for the execution of deeds and celebrate the contracts that are the turnover of its attributions.

By ministry of the law and for reasons of social interest, the rights that incorporate the actions of the entity in question will be suspended and its directors and administrators will be separated from their positions.

The board of Exclusion of Assets and Liabilities will depend functionally of the Superintendent of Banks, and will present accounts of its actions to the Monetary Board through the Superintendence of Banks.

The Board of Exclusion of Assets and Liabilities must have orderly and proved accounts of his office.

The members of the Exclusion of Assets and Liabilities Board of the bank in question, against whom the process of trials and suits derived of deeds and decisions adopted according to the law in the exercise of their attributions, authority or obligations, is derived to have the right that the *Banco de Guatemala* cover their expenses and costs necessary for their defense.

The agreed in the previous paragraph will be applied to those members of the Board of Exclusion of Assets and Liabilities of the bank in question, even when it is no longer in exercise of said positions, as long as the processes, trials and suits presented are derived of deeds and decisions adopted according to the law in the exercise of attributions, positions or obligations that correspond.

ARTICLE 79. Authority of the Board of Exclusion of Assets and Liabilities. The Board of Exclusion of Assets and Liabilities will be authorized to adopt the application of one or all, without a determined order, of the following measures:

a) Determine the losses and cancel the legal reserves and other reserves with a charge, and in its case, with a charge to the capital accounts:
b) Availability of the exclusion of assets in the balance of the entity suspended, by an excess profits tax equivalent to or above that of the liabilities mentioned in clause c) of this article, and the transfer of these assets to an administrative trust for the elected entity by the Superintendence of Banks; the excluded assets will be taken according to the accounting norms, at their book value, net provisions, reserves and whatever other adjustment that is determined by the Superintendence of Banks; according to the prudent norms and regulations existing.
c) Exclude from the liabilities the deposits up to the amount covered by the Fund for Savings Protection and work benefits. In case the value estimated that the assets in trust mentioned in clause b) of this article allow it, the rest of the deposits in prorating will also be excluded; and,
d) Transfer of liabilities indicated in the previous clauses to another or other banks, who will receive as a counterpart an equivalent amount of liabilities in certificates of participation that for the effect will issue a trust referred to in clause b) of this article, net of the cost of transactions authorized by the Board of Exclusion of Assets and Liabilities. For the transfer no consent from the creditor or debtor will be required. The present article will be regulated by the Monetary Board.

ARTICLE 80. Rights of the creditors. The initiated process and the cautionary measures decreed, that tend to affect the excluded assets, whose transfer would be proposed by the Board of Exclusion of Assets and Liabilities according to this Law, will be suspended.

ARTICLE 81. Participation of the Fund for Savings Protection. The Fund for Savings Protection of will, at the request of the Board of Exclusion of Assets and Liabilities, be able to give contributions, even without counter payment,

to the trust referred to in article 79 of this Law, also they can celebrate purchase-sale agreements over part or the totality of said certificates.

In no case can the total of distributions that the Fund for Savings Protection give be over the amount of the deposits of the suspended bank, covered by the guarantee of said fund.

ARTICLE 82. Definitive Suspension of operations. The Board of Exclusion of Assets and Liabilities, within five days of having concluded the transfer of assets and liabilities referred to in article 79 of this Law, will render a written report to the Monetary Board on the result of its administration.

In equal term, the Monetary Board, at the request of the Superintendence of Banks, must revoke the authorization to operate the entity in question.

ARTICLE 83. Bankruptcy Declaration. The Monetary Board, within a term of fifteen (15) days of having received the report referred to in the previous article, will instruct the Superintendence of Banks so it can require from a First Instance Civil Court, the bankruptcy declaration of the entity in question.

The court that hears the petition must resolve the declaration of bankruptcy referred to in the previous article, within five (5) days as of the date in which the request was received.

For the effects of the indicated declaration of bankruptcy, the court will base its decision on the statement provided by the Superintendence of Banks that results after making the exclusion and transfer of assets and liabilities.

ARTICLE 84. Balance of the operation of trust. Any balance or remnant of value that were left in the trust referred to in article 79 of this law, once the participation certificates were paid, will be transferred to the Fund for Savings

Protection, up to the amount contributed by it to the indicated trust; if there would be any remnant it will be transferred to the judicial liquidation.

TITLE X
FUND FOR SAVINGS PROTECTION
ONLY CHAPTER

ARTICLE 85. Creation and objective. The Fund for Savings Protection is created, with the object of guaranteeing the depositor in the banking system the recuperation of their deposits, in the terms referred to in the present title.

ARTICLE 86. Sources of financing. The sources of financing for the Fund for Savings Protection will be made up of:

a) The quotas that must be contributed by the national banks and the branches of foreign banks, according to article 88 of this law;
b) The proceeds of the investments of the resources of the Fund for Savings Protection, fines and interest;
c) The resources in cash that are obtained in virtue of the process of liquidation of the bank in question, with the motive of subrogation of rights referred to in article 91 of this law;
d) The resources in cash obtained in the sale of assets that would be adjudicated for the Fund for Savings Protection, in virtue of the process of liquidation of the bank in question, with the subrogation of rights referred to in article 91 of the present Law. It is understood that the indicated assets that are adjudicated in payment to the Fund for Savings Protection will not be a source of financing for it, as long as they are not sold and the resources in cash product were perceived in sales;
e) The contributions of the state to cover the deficiencies of the Fund or widen its coverage; and,
f) Other sources that increase the resources of the Fund for Savings Protection.

The resources for the Fund for Savings Protection will not be subject to embargo, neither will they be returnable and can only be applied for the ends foreseen in this Law.

ARTICLE 87. Coverage. The Fund for Savings Protection will cover up to twenty thousand *quetzales* or its equivalent in foreign currency, by an individual or juristic person that has deposits constituted in a private national bank or a foreign branch bank. For said effect the pending interest will be excluded of capitalization, and the joint accounts will be understood as opened by an only person, individual or juristic, except in those in which one of the titleholders are different, in which case they will be covered in the terms of this title.

The amount of coverage must be modified by the Monetary Board when the percentage of accounts of deposits, whose balances are less or equal to the amount of current coverage, is situated below ninety percent of the total of opened deposit accounts in the national and foreign branch banks. For the effect, the Superintendence of Banks will verify the previous extremes and, when given the signaled case, will present the proposal of revision of the amount of coverage that allows that this would completely cover no less than ninety percent of the referred accounts to the Monetary Board.

If the depositor is at the same time a borrower of the bank, both balances must be compensated only for the amounts that are liquid, demandable and of expired term. In the same manner, in the case of opened deposit accounts, jointly, if any of the depositors is a borrower of the bank, the balances must be compensated in the proportion that corresponds to the debtor. In both cases, if after the compensation of merit is made there still is a balance in favor of the depositor, said balance will be restituted up to the maximum coverage amount referred to in this article.

Not included in the coverage referred to in this article are the following deposits:

a) Those of individual or juristic persons linked with the bank in question; and,
b) Those of the shareholders, members of the administrative council, managers, sub-managers, legal representatives and other officials of the respective bank.

The exceptions to the above declared in clauses a) and b), are the deposits of the original shareholders of the banking entities that by specific law were obligated to acquire shares of said entities and that do not hold positions within them.

ARTICLE 88. Formation quotas. The quotas that banks must contribute monthly to the formation of the Fund for Savings Protection, during the first two years of the of the present Law being effective, will be equivalent to a twelfth part of one per thousand of the monthly average of the total of the depository obligations that are registered by said entities, during the immediate, previous month.

The Monetary Board, the first period having elapsed, as referred to in the previous paragraph, and with prior report to the Superintendence of Banks, will, with the favorable vote of three fourths of the members that integrate it, modify said quota. In no case will the quotas be less than the twelfth part of one per thousand, nor greater than the twelfth part of two per thousand, of the monthly average of the total depository obligations. The modification made to said quotas will be gradual, according to the decision of the Monetary Board.

For the calculation of the quotas referred to in the present article, the basis for information of the Superintendence of Banks will be required of the banks.

For the payment of the referred quotas, the *Banco de Guatemala* is authorized so that in the first five days of the following month to which the information corresponds, it will debit the deposit accounts that the banks keep for the effects of banking float.

When a bank does not provide the necessary information for the calculation of the quota, the *Banco de Guatemala* will debit the respective based on the last information provided by the bank, without harm or injury to effectuate the pertinent adjustments when the complete information is required.

If after making the adjustments, the result is a difference that the bank must pay in favor of the Fund for Savings Protection, interest will be calculated over the difference in favor of the Fund for Savings Protection, for the equivalent to the application of one and a half rate maximum interest annually that the same bank must charge in its active operations during the month where the difference corresponds, for the amount of time the payment was pending. In the case that the difference was in favor of the bank, the same will apply to the quotas of the following months until the difference is exhausted.

ARTICLE 89. Suspension of formation of quotas. The obligation of the banks to contribute the formation of quotas for the Fund for Savings Protection will cease, for each bank, when the balance of said contribution reaches five (5%) of the total of its depository obligations. For the effect, the Fund must keep a registry for the quotas of the participating banks.

If for any reason the resources contributed for the Fund for Savings Protection by the bank in question were below the percentage stated above, said bank must begin again with the payment of the formation quotas until it reaches the mentioned percentage.

ARTICLE 90. Administration of the Fund for Savings Protection. The resources for the Fund for Savings Protection will be administered by the *Banco de Guatemala*.

ARTICLE 91. Procedure for payment. The *Banco de Guatemala,* in its quality of administrator of the resources for the Fund for Savings Protection, as

required by the Board of Exclusion of Assets and Liabilities, and in the terms that it indicates, will proceed to make the disbursements that are necessary to make the coverage of the deposits effective, referred to in this title. Said Board can petition the *Banco de Guatemala* that, in its quality of administrator of the Fund for Savings Protection, to make the payments to the depositors of the bank in question.

The depositor that is benefited by the mentioned coverage, by ministry of the Law, subrogates their rights in favor of the Fund for Savings Protection for the amount paid.

The payment the *Banco de Guatemala* makes to its depositors, in its quality of administrator for the Fund for Savings Protection with the motive of the application of this title, is without harm or injury of the rights of those to demand from the corresponding bank, the restitution of the balance of the deposits not covered by said Fund.

The *Banco de Guatemala*, as administrator of the Fund for Savings Protection, is authorized to hire services from the banks it considers convenient, to make the corresponding payments, as well as recognize the commissions or fees for the services in question, with a charge to the Fund for Savings Protection.

ARTICLE 92. Investment. The *Banco de Guatemala*, in its quality of administrator for the Fund for Savings Protection, must invest the resources of said Fund in financial instruments expressed in national of foreign currency, according to healthy and prudent criteria of security, liquidity and profitability that ensure an adequate diversification of investments.

The *Banco de Guatemala* is forbidden to invest the resources obtained by the Fund for Savings Protection in instruments of investment by the banks that contribute to it. The policy of investment of the resources of the Fund for Savings

Protection must be approved by the Monetary Board, at the proposal of the *Banco de Guatemala.*

ARTICLE 93. Supervision. The Fund for Savings Protection will be subject to the watch and inspection of the Superintendence of Banks.

ARTICLE 94. Reports and disclosure. The *Banco de Guatemala* must present the Monetary Board with a trimesterly report of the operations by the Fund for Savings Protection of the previous trimester. The banks are obligated to report to all persons who make depository operations, that the coverage contracted by this law is applicable to the deposits, up to the corresponding amount of coverage, by the individual or juristic person.

ARTICLE 95. Regulation dispositions. The Monetary Board will issue regulatory declarations for the fulfillment of the established in this title.

TITLE XI
SANCTIONS
ONLY CHAPTER

ARTICLE 96. Crime of financial intermediation. A crime of financial intermediation is committed when any person, individual or juristic, national or foreign, without prior authorization according to the present law or specific law to make operations of that nature, makes them habitually, privately or publicly, directly or indirectly, for themselves or in combination with another or other persons, individual or juristic, in self benefit or benefit of third parties, they perform activities that consist of, or are related to, the raising of funds from the public or any other instrument representing money, whether through the reception of monetary species, checks, deposits, down payment, mutual, bonds, titles or other obligations placement, including contingent operations, destining said raised funds to credit businesses or financing of any nature, independently of the juristic formalization,

instrumentation or accountable registry of the operations. In the case of juristic persons, those responsible of this crime are the administrators, managers, directors and legal representatives. The or those responsible for this crime will be sanctioned with incommutable prison of five to ten years, which excludes the application of any of the substitutive measures contemplated in the Penal Processing Code, and with a fine of no less than ten thousand and no greater than one hundred thousand 'fine units', which will be imposed by the competent criminal court.

Simultaneously, the imposition of the indicated fine, said court will order the cancellation of the commerce patent of the individual person, as well as the liquidation of juristic persons referred to in this article according to the procedure established by law; in this last case, once the liquidation is concluded, the Mercantile Registry will cancel the registration.

ARTICLE 97. Financial groups of fact. All businesses that without being part of a financial group acts as if they were a part of them, will be sanctioned by the Superintendence of Banks with a daily fine of five thousand fine units, as of the date of notification of the sanction and until it regulates its situation, without harm or injury, unless two months elapse and the legal situation is not regulated, the regimens of suspension of operation will be applied and/or the liquidation established by this law.

ARTICLE 98. Infractions. The infractions committed by banks, financial companies and businesses integrating financial groups, at the disposition of any of these laws and others that are applicable, to the dispositions that the Monetary Board issues, to its law or constitutive deed, regulations or statutes, to administrative orders or dispositions by the Superintendence of Banks, as well as the presentation of reports, declarations or false or fraudulent documents, obstruction or limitation of the supervision of the Superintendence of Banks, and when they make or register operations to elude the banking float, or that produce

breach of the patrimonial requirements, will be sanctioned by the supervising organ, with the observance of the principles of due process and the right to defense, according to the declared in the present law.

ARTICLE 99. Sanctions. The infractions referred to in the previous article will be sanctioned in the following manner:

a) To banks, financial companies and off shore entities:
    1. In the first infraction, a pecuniary of five hundred to forty thousand fine units according to the gravity of the infraction.
    2. In the second infraction of the same nature of the already sanctioned, an equal or double fine unit of that imposed in the first infraction; and,
    3. In the third infraction of the same nature of the already sanctioned, an equal or double of the fine units signaled in the previous numeral.
b) To other businesses members of the financial groups, whose specific laws do not establish sanctions for the infractions referred to in article 98 of the present law, a sanction of one hundred to ten thousand fine units according to the gravity of the sanction.

The imposition of the previous sanctions is without harm or injury; therefore the Superintendent of Banks can adopt any of the preventive measures that, to his judgment, are necessary for the readjustment of the operations to the limits and conditions signaled in the legal dispositions.

The income produced by the imposed fines according to this article will increase the Fund for Savings Protection.

The Monetary Board will regulate in the referred to the gravity of the infractions and the recurring cycle of them, for the effects of the foreseen in the present article, as well as the number of the fine units that will be applied according to the gravity of the infraction.

ARTICLE 100. Payment of fines. The resolution having been dictated by the Superintendence of Banks, therefore the fine is the corresponding fine imposed, if the entity affected does not arbitrate the recourse of appeals or having been interposed by the Monetary Board will be declared out of place, the following will proceed: in the case of banks and financial companies, the resolution will be of the knowledge of the *Banco de Guatemala* who without more process will debit the float account or legal deposit account, with the value of the fine; in the other cases the fines must be paid in a ten day maximum period, as of the date of the notification of the resolution that imposes them, which will constitute the executive title.

If they are not cancelled in the established term, the Superintendence of Banks will collect in the economic coactive means.

ARTICLE 101. Other measures. The members of the administrative council, the general managers, managers, sub-managers, legal representatives, proxies, auditors and other executives that are responsible of infractions that affect the financial situation, jeopardize the solvency or liquidity of the entities, that tend to hide information, distort the numbers of the financial statements of the entities or avoid that the aspects of these are known or that affect third parties, without harm or injury of presenting the corresponding legal action, they will be sanctioned, with the observance of the principles of due process and the right to representation, at the request of the Superintendence of Banks, by the administrative council, board of directors or their substitutes, of the entity in question, in the following manner:

a) In the first infraction, a written warning;
b) In the second infraction, on a similar action already sanctioned, they must be placed out of commission for one month of exercising his/her functions within the entity; and,
c) In the third infraction, on a similar action already sanctioned, must be placed out of commission for six months to exercise his/her functions within the entity; and,

d) In the fourth infraction, on a similar action already sanctioned, must be removed from their office.

Notwithstanding the above, if the gravity of the fault committed merits it, the Superintendence of Banks can request the administrative council, board of directors, or their substitutes, to immediately remove the persons that this article refers to.

On the sanctions imposed, on behalf of the administrative council, board of directors, or their substitutes, the Superintendence of Banks must be informed in a period of three days as of the date of the notification to the sanctioned party.

ARTICLE 102. Illegal use of the name. All individual or juristic persons who use the business name or denomination, commercial name or description of their business, according to the case, the words '*banco*' (bank), '*banquero*'(banker), '*financiera*' (financial company), '*financiadora*'(financing company), '*operaciones bancarias*' (banking operations), '*grupo financiero*' (financial group) or others derived of said terms, without being authorized by this Law, will be sanctioned by the Superintendence of Banks, with a daily fine of no less than one hundred and no more than five hundred fine units as of the date of notification of the sanction and until the situation has been regulated.

ARTICLE 103. Value of the fine units. The value of each 'fine unit' will be one United States dollar or its equivalent in *Quetzales* at the reference exchange rate established by the *Banco de Guatemala*, current on the date of the imposition of the sanction.

TITLE XII
IMPUGNATION MEANS
ONLY CHAPTER

ARTICLE 104. Recourse of appeal. The resolutions of the Superintendence of Banks related to its functions of surveillance and inspection will be obligatory but will admit recourse of appeal before the Monetary Board.

The recourse appeal will be interposed within a term of ten days as of the date following the notification of the resolution in question, and must be presented in writing to the Superintendence of Banks, expressing the motives for the disagreement, who will present it to the Monetary Board within the following five days of its reception, with their antecedents.

The resolutions of the Superintendence of Banks, approved by the Monetary Board can not be appealed, according to the law, or those that the Superintendence of Banks issues for the execution of the resolutions of the Monetary Board on specific cases that involve the entities in question.

The interposition of recourse of appeal does not have suspensive effects, therefore the resolution appealed is of immediate and obligatory compliance, except the proposed in article 100 of this law. The Monetary Board, by petition of the party, can agree the suspension of the effects of the objected resolution, in the case that the harm or injury caused to the appealing entity was grave.

The Monetary Board will resolve the recourse of appeal within a term of thirty days as of the date it was received.

TITLE XIII
PROCEDURAL REGIMEN
ONLY CHAPTER

ARTICLE 105. Common Right and Ordinary Courts. The executive courts that the banking institutions and businesses of financial groups present will be subject to the precepts of this Law and, in what is provided in them, to the dispositions of common right. The knowledge and the resolution of the businesses and litigious matters between the banks and financial groups, and between them and third parties, correspond to ordinary courts.

ARTICLE 106. Competent judge. It will be a competent judge who will hear the sentences presented by the banks and businesses of the financial groups, where the offices of the main performer are located, where the encumbered goods are located or where they were contracted or where the obligation was to be fulfilled, at the choice of the performer.

The executive trials will be prosecuted by judicial request and the judges will be obligated to watch over the strict fulfillment of the terms for each procedural deed determined by law.

ARTICLE 107. Execution. The executive trials that the banks promote or the businesses integrated by the financial groups, based on the corresponding credit title with real guarantees, will be initiated with a determined day and hour for the sale, and in the same record the intervention will be decreed, if the performer would request it. The day and hour determined will be notified to the persons that legally correspond, in the established by the Civil and Mercantile Processing Code. In case the notification can not be made in the indicated manner by this article in a period of fifteen days, at the request to the creditor, said notification will be made through an edict in the official newspaper and one in a major circulation newspaper in the country. The edict must only contain: a) the identification of the court and of the process; b) the indication of the person who is notified; c) the indication of the

deed and the nature of the process; d) the indication of the term for the defendant to appear in court; e) the name of the judge. The notification will be accredited in the process with the pages of the dailies where the edict was published. The term referred to in clause d) will begin as of the next legal working day of the publication of the edict.

ARTICLE 108. Receiver. The banks and the member businesses of financial groups, in the executions that they promote will have the right to designate and remove the receiver of the goods object of the executive trial. Any other receiver named previously will be immediately removed.

ARTICLE 109. Exceptions. The judge will proceed with the exceptions of prescription or of payment. In the last case the person against whom the judgment is enforced must present:

a) The document issued by the bank that accredits that they have paid the amount that the execution motivates, that must include capital, interest and judicial costs; or
b) Certification of the court of the resolution that approves the payment by consignment.

Any other exception will be rejected, but the executed part will have the right to make it valid through a posterior ordinary trial. This posterior ordinary judgment will not proceed when it is about the executions referred to in article 107 of the present law.

ARTICLE 110. Executive Title. Besides those contemplated in the Civil and Mercantile Processing Code, executive title will be constituted by, without need of recognition, the savings account booklets, certificates of deposit, investment certificates, bonds, values titles, material or represented through the annotations in account, or through proof or representative certificates of said documents, that the banks and financial companies authorize or issue for the proof of reception of money.

Prior to promoting the judicial execution based on said titles, the requirement of payment must be made by a Notary.

TITLE XIV
INSPECTION QUOTAS
ONLY CHAPTER

ARTICLE 111. Inspection Quotas. The banks and financial companies will pay for the services of surveillance and inspection by the Superintendence of Banks, for which it must contribute an annual quota that will be calculated regarding the assets of the institutions, according to the general closing balance of the previous year and, for the new banks and financial companies, according to the general balance with which they begin operations. In both cases, the quota will not exceed one per thousand over the asset of the institutions, deducing from said asset the till and the immediate deposits demandable that in concept of banking float or legal deposit, according to the case, the *Banco de Guatemala* keeps.

TITLE XV
OFF SHORE ENTITIES

ONLY CHAPTER
OFF SHORE ENTITIES

ARTICLE 112. Definition. Off shore entities will be understood, for the effects of this Law, as those entities dedicated mainly to the financial intermediation constituted or registered under the laws of a foreign country, that have their activities mainly outside of said country.

ARTICLE 113. Requirements for their operation. To operate in Guatemala, the off shore entities must obtain authorization of operation to the Monetary Board,

with previous opinion from the Superintendence of Banks, declaring that they form part of a financial group in Guatemala, and accredit the fulfillment of the following requirements:

a) That they unconditionally and irrevocably accept, in writing, to be subject to the consolidated supervision of the Superintendence of Banks of Guatemala, in the terms signaled in article 28 of the present law, and to the norms against money laundering and the laundering of other assets;
b) That they present all the periodic or occasional information that is required by the Superintendence of Banks and by the *Banco de Guatemala*, which can be verified at any moment by the Superintendence of Banks. The information on their assets and contingents must be presented in a detailed manner. The information on their liabilities must be presented in an added manner and without revealing the identities of the depositors or investors;
c) They must accredit before the Superintendence of Banks of Guatemala, that their supervising authorities are authorized in their country of origin to interchange information referring to them;
d) That the supervising banking authorities of the country of origin apply to the international prudential standards, at least as current as those current in Guatemala, relative, among others, to minimum patrimonial and liquidity requirements. If this were not the case, they will be subject to the prudential norms and the liquidity fixed by the Monetary Board, at the proposal of the Superintendence of Banks for these entities, and that can be the same or the equivalent, in any case, to the applied to the domiciled banks in Guatemala;
e) That the controlling businesses or responsible businesses, according to the case, of the financial groups must pledge in writing to cover the patrimonial deficiencies of the off shore entities, in case there are none; and,
f) To communicate, in writing, to their depositors that the deposits that they have received or will receive, are not covered by the Fund for Savings Protection.

The off shore entities that do not obtain authorization of operation or that once authorized, there is breach of the requirements that gave way to the authorization, can not financially intermediate in Guatemala, not directly nor through third parties. Third parties are understood as any individual or juristic person that participates in any phase of procedure that uses fund raising from the public in Guatemala, destined to off shore entities. If they financially intermediate violating the agreed in this paragraph, they will submit to article 96 of this law.

ARTICLE 114. Revocation of authorization of operations of off shore entities. The Monetary Board, with a prior report from the Superintendence of Banks, can revoke the authorization of operation of the off shore entities that do not fulfill one or more of the requirements referred to in article 113 of the present law.

TITLE XVI
TRANSITORY AND FINAL DISPOSITIONS

CHAPTER I
TRANSITORY

ARTICLE 115. Specialized businesses in financial services. To belong to a financial group, the specialized businesses in financial services currently constituted must adapt their social objective to the agreements in article 36 of the present law within the period of six months as of the date it is effective.

ARTICLE 116. Conformation of a financial group. Within the six months after this law is effective, every entity subject to surveillance and inspection by the Superintendence of Banks must report in writing if it belongs or not to a group that acts as a financial group, as well as over the social denomination of the businesses that make up that group.

The businesses that request to making part of a financial group, and obtain authorization, on behalf of the Monetary Board, must completely formalize their conformation to the financial group within a six month period, as of the date the authorization is indicated. The Superintendence of Banks, at the justified request of the interested parties, could extend the term for the same amount of time, once only.

ARTICLE 117. Temporary Ambit of the law. The formed files and the proceedings begun under the sanctuary of the laws that through the present are derogated, will be resolved based on the current law to date in its beginning and also the dispositions of the Law of the Organic Branch, except for those referring to petitions of bank constitution or of foreign bank branches, which will be resolved in agreement of the particular established in the present Law.

As a result of the above, for the proceeding and conclusion of the administrative processes and pending judicial resolutions on behalf of the administrative or competent jurisdictional authority, in which the juridical situation is being void, must apply the legal decisions contained in Decree Number 315, Banking Laws, and Decree Number 5-99, Law for the Protection of Savings, both of the Congress of the Republic, as long as said processes have been initiated under the current cited decrees.

ARTICLE 118. Reduction of concentration of operations with individual or juristic persons. The operations referred to in clause a) of article 47 of the present Law, that in the moment it is current will exceed the limits agreed in the referred clause, must be reduced to a maximum limit permitted of seventeen point five percent (17.5%) within the first six (6) months the law is current, and at fifteen percent (15%) in the following six (6) months. In the case of operations of financial companies that are converted in banks and of the banks that fuse with financial companies, that as a result of said transformation or fusion they present an excess limit of financing to only one individual or juristic person, must adjust the limit of

financing established in the law in the term of one additional year as referred to in the previous paragraph. For this, the entity in question must inform the Superintendence of Banks, no later than fifteen days following the transformation or fusion that originated the excessive limit of financing.

ARTICLE 119. Reduction of concentration of operations with risk units. In agreement with the process for the reduction of concentration of operations of financing with persons related to or linked that form part of the units of risk, begun according to law in the month of September of 1999, the gradualness to reach the established percentages in clause b) of article 47 of the present law will be the following:

BANKS OF FINANCIAL COMPANIES

DATES REAL FIDUCIARY

To 09/30/2002 40% 50% 80% 100%

To 03/31/2003 35% 40% 60% 75%

To 09/30/2003 30% 35% 50% 60%

To 03/31/2004 30% 40% 50%

To 09/30/2004 30% 40%

To 03/31/2005 30%

ARTICLE 120. Adapting the capital. For the application effects of the ten percent of assets and contingencies referred to in article 64 of the present Law, if when it is effective, the banking institutions have less than the required patrimony of ten percent (10%), it will increase zero point five percent (0.05%) every semester, beginning six months after the law is effective.

ARTICLE 121. Transitory. The off shore entities that have been operating in Guatemala must obtain authorization of operation subject to the agreed in this law, within the established terms in article 116 of it.

CHAPTER II
FINALS

ARTICLE 122. The first paragraph of article 3 of the Law of Private Financial Companies is reformed, Law Decree Number 208, which will be as follows: ----------
'For the constitution of Financial Companies will fulfill the requirements prescribed in the Law of Banks and Financial Groups, and for the authorization must follow the procedures that said law signals for the creation of new banks.'

ARTICLE 123. Article 4 of the Private Financial Societies is reformed, Law Decree number 208, which will be as follows: '**Article 4.** The financial companies will be subject to the jurisdiction for the Monetary Board and under the surveillance and inspection of the Superintendence of Banks, subjected to the agreed in article 111 of the Law of Banks and Financial Groups.'

ARTICLE 124. Article 14 of the Law of Private Financial Companies, Law Decree Number 208, is reformed and is as follows: **'Article 14.** Article 54 of the Law of Banks and Financial companies will not be applicable to the Private Financial Companies, related to Extraordinary Assets. However, when a financial company were adjudicated or receives real estate in payment, it must transfer the property by sale or for any other title, within a period of no more than three years, except, at their request, the Monetary Board would resolve to extend said period for two more years, maximum. On the contrary, the established in the last three paragraphs of article 54 will be applied.'

ARTICLE 125. Article 15 of the Law of Private Financial Companies, Law Decree Number 208, is reformed and will be as follows: **'Article 15.** Clause f) of article 45 of the Law of Banks and Financial Groups will not be applicable to Private Financial Companies.'

ARTICLE 126. **Transfer of resources.** The resources that in accordance with the agreed in article 104 of Decree Number 315 of the Congress of the

Republic, Law of Banks, were generated or will be generated with destination for the Fund for Savings Protection referred to in Decree Number 5-99 of the Congress of the Republic, Law for the Protection of Funds, and the resources in observance of the stipulated in Decree Number 4-2002 of the Congress of the Republic, Law of Banks and Financial Groups, were generated or will be generated destined to the Fund for Savings Protection created in the present decree, therefore the *Banco de Guatemala* is authorized for the transfer of said resources to the accounts of this fund, without previous or post proceedings.

ARTICLE 127. Reference. In any agreement in which there is reference to the Law of Banks, contained in Decree Number 315 and Decree Number 4-2002, both of the Congress of the Republic, it will be understood that it is about the Law of Banks and Financial Groups contained in the present decree.

ARTICLE 128. Annulment. The Law of Banks and Financial Groups will be annulled, contained in Decree Number 4-2002 of the Congress of the Republic, as well as the legal dispositions and regulations that oppose the present decree.

ARTICLE 129. Regulations. The Monetary Board must issue the regulations that to its judgment are necessary for the adequate application of the present Law.

ARTICLE 130. National urgency. The present Decree was declared of national urgency and approved in a single debate.

ARTICLE 131. Approval and Currency. The present Decree was approved by a favorable vote of more than two thirds of the congresspersons that integrate the Congress of the Republic, and will be published in the official newspaper and will be effective as of June first, two thousand two.

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

GIVEN IN THE LEGISLATIVE BRANCH PALACE, IN THE CITY OF GUATEMALA, ON THE TWENTY-NINTH OF APRIL OF TWO THOWSAD TWO.

JOSE EFRAIN RIOS MONTT
PRESIDENT

RUDIO LECSAN MERIDA HERRERA
SECRETARIO

MARVIN HAROLDO GARCÍA BUENAFE
SECRETARIO

SANCTON DECREE OF CONGRESS NUMBER 19-2002
National Palace: Guatemala, May thirteenth, two thousand two
PUBLISH AND ENFORCE
Juan Francisco Reyes López
Vice-president of the Republic Acting as President

General de Division
EDUARDO AREVALO LACS
Minister of the Home Office

Arturo Florencio Montenegro
Minister of Economy

EDUARDO WEYMANN
Minister of the Treasury

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

Published in the Official Newspaper, on May 15, 2002.