

ANNEX TO RESOLUTION JM-51-2003

REGULATION OF THE BANKING CLEARING HOUSE

I. LEGAL BASIS, OBJECTIVE AND DEFINITIONS

Article 1. The present regulation was based on the proposed in articles 26, literal d), and 70 of Decree Number 16-2002 of the Congress of the Republic of Guatemala, Organic Law of the *Banco de Guatemala*.

Article 2. The present regulation has as its regular objective the operation of the Banking Clearing House, through which the received checks will be cleared for each bank in the system in charge of the rest of the banks.

Article 3. For the effects the present regulation the following definitions must be taken into account:

- a. **House Administrator:** entity responsible for administrating and directing the processes of clearing compensation.
- b. **Banking Clearing House:** physical or virtual location where the check clearing takes place.
- c. **Non-redeemable Checks:** checks that are not paid by the drawn bank presented in the first ordinary or extraordinary compensation.
- d. **Net Multilateral Result:** sum of the value of all checks in the name of each participating bank minus the sum of the value of all checks it is responsible for, operated or presented in the clearing house.
- e. **Clearing:** procedure by which the net multilateral result is determined that corresponds to each participating bank.
- f. **Clearing agent:** entity that offers each participating bank the service of data processing as well as the transfer of information to the main clearing agent.
- g. **Main Clearing Agent:** entity that centralizes the information of checks and performs the clearing.

II. PARTICIPANTS

Article 4. In the Banking Clearing House the *Banco de Guatemala*, the banks in the system, the main compensating agent and the compensating agents will participate.

Article 5. The Banking Clearing House will operate under the general administration of the *Banco de Guatemala*. Said house can be administrated by the *Banco de Guatemala* or by a private entity that is hired according to the established procedure in the law on this

matter. The administrator of the Banking Clearing House can hire the services of entities that operate as clearing agents; when the administrator is a private entity, said hiring is possible with prior authorization from the *Banco de Guatemala*.

III. CLEARING ACTS

Article 6. The Banking Clearing House will effectuate two ordinary clearing acts on every working day, in the following manner:

- a. First Clearing: in order to compensate the received checks for each bank of the system in charge of the other banks.
- b. Second Clearing: in order to compensate the checks that were not redeemable.

When the circumstances call for it extraordinary compensation can be made, prior to convening from the *Banco de Guatemala*.

IV. OPERATION

Article 7. The banks must cash the checks received at the charge of other banks and those that are issued for the net value of the bilateral conversion, only through the Banking Clearing House, according to the declared in article 21 of the current regulation.

Article 8. When it is about a check exchange, the delegates of the banks must appear personally at the installations of the compensating agent that each banking institution has hired.

Article 9. The checks that are presented for cashing will, on the reverse, have the following annotations: Collect on Clearing Compensation, date and name of the bank that presents it for collection, correlative number referred to in literal a. of article 24 of this regulation and identification of the compensating agent.

Article 10. The clearing will be made according to the currency. In national currency in case the checks are expressed in *quetzales*, and for the equivalent in dollars from the United States of America, in the case that the checks are expressed in foreign currency.

For the clearing of the checks expressed in foreign currency that is not the US dollar, the mechanism of bilateral exchange will be used. For the net result of said exchange, the debtor bank will issue a check for its equivalent in US dollars, using for that effect the reference exchange rate for purchase of the currency in question, published by the *Banco de Guatemala* the immediate previous working day to the respective clearing, which the banking clearing house will present to the creditor bank.

By mutual agreement and through the channels deemed pertinent, the creditor bank must return the value of the check referred to in the previous paragraph to the debtor bank, against the reception of the equivalent in the currency in which the bilateral exchange was made.

Article 11. The drawn bank must return, in second clearing, the checks that were not redeemable, indicating in writing the cause of its return.

Article 12. The checks that are not returned in second clearing will be considered paid.

Article 13. The endorsement represented by the annotation “Collect on clearing compensation”, contained on the checks that are not redeemable, must be cancelled on behalf of the drawn bank before returning said checks.

Article 14. The bank that does not have domicile in its central offices, branches or agencies in the plaza where their clearing agent works, can participate in the clearing process through another bank. For that effect, it must present the administrator a written request that must have the agreement of the bank that it will participate through; clearly specifying that it will assume the corresponding attributions.

Article 15. The Banking Clearing House administrator will designate one of the clearing agents as main clearing agent, who will be responsible of sending the *Banco de Guatemala* the net multilateral result and all the information necessary for the settlement of clearing operations. When the administrator is a private entity, the designation referred to in the present article will require prior authorization from the *Banco de Guatemala*.

Article 16. If a bank does not have checks to clear or, according to the declared in article 43 of the Law of Banks and Financial Groups, were authorized by the Banking Superintendence to interrupt or suspend operations and rendering of services to the public, is not exempt of the obligation of receiving checks under its charge.

Article 17. The banks must observe the norms contained in the Pamphlet for Check Standardization in the National Banking System, which, like an annex, forms part of the present regulation.

Article 18. The banks, the clearing agent and the main clearing agent, in a fortuitous or out of hands case, should have systems and contingency plans that, in their criteria, allow reasonably ensuring the adequate fulfillment of the functions of the Banking Clearing House.

Article 19. The clearing agents, the main clearing agent and the administrator, when it is private, should allow the *Banco de Guatemala* free access to all its sources and information systems in order to supervise.

Article 20. The banks, the clearing agent and the main clearing agent should opportunely report to the administrator, the *Banco de Guatemala* and the Banking Superintendence, those events that significantly affect the normal development of the clearing process.

V. PROCEDURE OF CLEARING AND SETTLEMENT

Article 21. The clearing of checks will be made according to the following procedure:

- a. The banks will transfer to the clearing agent or the main clearing agent, as is deemed convenient:
 - i. The checks that are under the charge of other banks;
 - ii. The information through electronic means, of checks to which the above clause refers; or,
 - iii. The check or checks, or the information of these that the banks issue as a result of the bilateral exchanges.

Regarding clause iii, for statistics purposes of the Banking Clearing House, the banks must transfer to the main clearing agent the information contained in the band of magnetic characters of the checks that endorse the bilateral exchanges weekly and electronically.

- b. The clearing agents or the bank in question will process, per bank, the checks or the information referred to in the previous clause, whose results must be sent to the main clearing agent in the manner required by them.
- c. Based on the information received, the main clearing agent will clear and transfer to the *Banco de Guatemala*, in the manner indicated by them, the net multilateral result.
- d. The *Banco de Guatemala*, in each act of clearing, will determine the sufficiency of funds in the non-remunerated legal reserve accounts of the participating banks, and will let the main clearing agent know that it will proceed to settle. In case some non-remunerated legal reserve account would present insufficient funds, the *Banco de Guatemala* will transfer the necessary funds of the remunerated legal reserve account in the same currency to that bank, and if insufficient funding would persist, will communicate this to the main clearing agent in order to exclude the check clearing in charge of the bank in question, having to then repeat the clearing.

The *Banco de Guatemala* will immediately make the exclusion cases known to the Superintendence of Banks referred to in the previous paragraph.

Article 22. Having concluded the clearing procedure referred to in the previous article, the *Banco de Guatemala* will proceed to settle the corresponding debiting or crediting, according to the case, of the corresponding legal reserve accounts.

Article 23. The differences that the banks establish once the clearing and settlement process of checks takes place should correct themselves bilaterally.

VI. ATTRIBUTIONS

Article 24. The *Banco de Guatemala* should have the following functions:

- a. Assign the correlative number to each bank for their participation in the Banking Clearing House.
- b. Approve the schedule to perform the ordinary clearing operations.
- c. Convene extraordinary clearings when circumstances call for them.
- d. Notify the participants of the Banking Clearing House of the resolutions issued.
- e. Adopt the measures that propitiate the good operation of the Banking Clearing House according to the decisions that for the effect are issued by the Monetary Board.
- f. Settle the net multilateral result derived of the check clearing process.
- g. Opportunely inform the Superintendence of Banks of the infractions that are committed by the participating banks in the Banking Clearing House, against the declared in this regulation.
- h. Approve the design of forms and reports that will be used by the bank clearing.
- i. Supervise the compensation process when it is deemed convenient.
- j. Immediately inform the participants of the Banking Clearing House, when according to Article 75 of Decree Number 19-2002 of the Congress of the Republic of Guatemala, Banks and Financial Groups Law; the Monetary Board has resolved the suspension of bank operations.

Article 25. The Superintendence of Banks will have the following functions:

- a. Watch that the participants in the Banking Clearing House fulfill the present regulation.
- b. Dictate the measures proceeding regarding the infractions of the current regulation.
- c. Petition the *Banco de Guatemala* when the circumstances merit, the convening of extraordinary compensations.

Article 26. The banks of the system will have the following obligations:

- a. Opportunely report to the house administrator and the *Banco de Guatemala* of the name and location of the clearing agent that is hired.
- b. Provide the clearing agents, the name of their delegates and the signature of these, and the *Banco de Guatemala*, the name of the responsible party for the clearing operations.

Article 27. The main clearing agent will have the following operations:

- a. Clear the checks.
- b. Establish controls that reasonably guarantee the preciseness, trustworthiness, opportunity and confidentiality of the information that is generated from the clearing process.
- c. Proposal of the implementation of measures that tend to improve the clearing process to the *Banco de Guatemala*.
- d. Opportunely inform the administrator, the *Banco de Guatemala* and the Superintendence of Banks, the infractions that the participating banks comment in the Banking Clearing House against the declared in this regulation.

Article 28. The clearing agents will have the following functions at their charge:

- a. Establish controls that reasonably guarantee the integrity of the documents and the preciseness, trustworthiness, opportunity and confidentiality of the information generated in the clearing process.
- b. Propose to the *Banco de Guatemala* the implementation of measures that tend to improve the clearing process.

Article 29. The main clearing agent and the clearing agents should present to the *Banco de Guatemala*, for its approval, through the administrator, the related normative instruments of the functions that will have the clearing process under its charge, which must be fulfilled, as a minimum, in the related areas with administrative procedures, operative procedures and contingency plans.

VII. FINAL DECISIONS

Article 30. The resolutions issued by the *Banco de Guatemala* regarding the administration functions of the Banking Clearing House will be obligatory, but will allow the recourse of revocation. Said recourse will be interposed within a period of five (5) days, as of the next day of the notification of the resolution in question, and must be presented in writing to the General Management of the *Banco de Guatemala*, expressing the motives for inconformity, which will be taken upstairs within five (5) days following its reception, with its antecedents, to the Monetary Board.

The Monetary Board will resolve the recourse of revocation within a term of thirty days as of the date of reception.

The resolutions issued by the Superintendence of Banks regarding the operations of vigilance and inspection of the Banking Clearing House will be obligatory, but will admit recourse of appeal before the Monetary Board. Said recourse will be substantiated

according to the foreseen in Articles 20 of the Law of Financial Supervision and 104 of the Law of Banks and Financial Groups.

Article 31. The checks drawn from the banks of which the Monetary Board, according to Article 75 of the Law of Banks and Financial Groups, has resolved the operations suspension, will not accept operations of the Clearing House, as of the moment in which the suspension is decided.

Article 32. The banks of the system must standardize their checks according to the instruction sheet for the Standardization of Checks in the National Banking System, referred to in Article 17 of the current regulation, in a term that does not exceed 180 days as of the first day of enforcing the same.

Article 33. The cases not foreseen in the present regulation will be resolved on behalf of the General Management of the *Banco de Guatemala*. In case of inconformity with the resolved by the General Management, the recourse foreseen in Article 30 of the present regulation will proceed.