

## **SUPERINTENDENCY OF BANKS AND FINANCIAL INSTITUTIONS**

### **GENERAL BANKING ACT**

Revised text set by Decree with Force of Law No. 3,  
of November 26, 1997, published in the Official Gazette  
No. 35,944, of December 19, 1997.

#### **Waiver of Responsibility**

The law and any other regulation translated into English are only referential. The official language for any legal purpose is Spanish as published in the Official Gazette and the Superintendency regulations.

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## I. REVISED TEXT OF THE GENERAL BANKING ACT

### TITLE I

### SUPERINTENDENCY OF BANKS AND FINANCIAL INSTITUTIONS

#### PARAGRAPH 1. ORGANIZATION

Article 1. The Superintendency of Banks and Financial Institutions is an autonomous institution, with full legal capacity, of indefinite duration, that shall be regulated by this Act and relate with the Government through the Ministry of Finance.

Its domicile shall be the city of Santiago and, notwithstanding its condition of public law entity, it shall neither be considered to form part of the Organic Administration of the State nor shall the general or special rules issued or that may be issued for the public sector apply to it and, in consequence, both the Superintendency and its personnel shall be governed by the rules of the private sector, the foregoing to be understood without prejudice to the provisions in article 5.

Article 2. It shall correspond to the Superintendency of Banks and Financial Institutions the supervision of *Banco del Estado*, the banking enterprises, irrespective of their nature, and the financial entities whose control is not otherwise entrusted by the law to a different institution.

The Superintendency shall also be in charge of the supervision of the companies whose corporate purpose consists in the issuance or operation of credit cards or any other similar system, provided the said system considers that the issuer or operator ordinarily assumes monetary obligations to the public or certain sectors or specific groups thereof.

The individuals engaging in such acts in their ordinary course of business and that evade the supervision from the Superintendency shall be penalized in the manner indicated in article 39.

Article 3. An officer with the title of Superintendent of Banks and Financial Institutions shall be the chief executive officer of the Superintendency. The Superintendent shall be appointed by the President of the Republic.

The Superintendent shall be subject to the prohibitions and incompatibilities affecting the members of the Council of the Central Bank, and shall be prevented from requesting loans from the institutions under his supervision, with the exception of the loans he may obtain in his capacity as a contributor to the social security organism to which he is a member.

Article 4. In the event of vacancy, absence or incapacity, the Superintendent shall be substituted by the Intendant. Should there be more than one Intendant, the subrogation shall be effected according to the order of precedence indicated by the Superintendent.

The Intendants shall be subject to the prohibitions, incapacity and incompatibilities established for the Superintendent in the preceding article

Article 5. The personnel of the Superintendency shall be appointed by the Superintendent, who shall therefore designate one or more Intendants and the employees, inspectors, special agents and other persons who, in his opinion, may be necessary to employ, and shall determine their obligations and duties.

The Superintendent shall have the authority to enter into agreements for the rendering of services payable under a fee basis for the performance of specific duties. These contracted persons shall not have, under any circumstances, the legal capacity of employees or that of contributors to the social security organism to which the personnel may be members.

The Superintendent shall enjoy the most ample freedom for the appointment and removal of the personnel, with absolute independence from any other authority. For these purposes, and especially for those regarding the termination of a labor contract, all the Superintendency's staff is of the exclusive confidence of the Superintendent.

In all matters not provided for in this Act or in the Staff Regulations, the General Administration's Regulations shall apply as suppletory statutory rules.

Article 6. The members of the personnel of the Superintendency shall neither apply for loans in the banking enterprises subject to the Superintendency's supervision nor acquire properties of the said enterprises without first having secured a written authorization from the Superintendent; nor shall they receive, either directly or indirectly, from such enterprises or the executive officers or employees thereof, money or objects of value, whether as gifts or otherwise.

Anyone who infringes the prohibitions set forth in this article, and any other persons who may be involved, shall be subject to the penalties established by the laws for the crime of bribery.

Article 7. It shall be forbidden to any employee, delegate, agent or individual who at any title renders services to the Superintendency, to disclose any detail on the reports that he or she may have issued, or provide any information whatsoever to third parties with respect to any facts, businesses or situations of which he or she may have become acquainted with in the performance of his or her duties. In the event this prohibition were infringed, the violator shall be subject to the penalties provided for in articles 246 and 247 of the Criminal Code.

Article 8. The resources for the functioning of the Superintendency shall be provided by the institutions under its supervision.

The quota corresponding to each institution shall be of one sixth of one thousandth per semester computed on the average of their assets in the semester immediately preceding, as it appears from the balance sheets and financial statements submitted by those institutions.

For the purposes of the calculation of the quota that must be contributed by each institution, the properties and items that in the opinion of the Superintendent should be excluded shall not be considered as part of their assets.

The quota shall be paid within the period of ten days after been required.

Article 9. The Superintendent shall collect the funds for the maintenance of the Superintendency that must be contributed by the institutions under its supervision and shall deposit such funds with *Banco del Estado*. From said account he shall draw to pay for the expenses originated by the functioning of the Superintendency.

Article 10. The Superintendent shall be the legal representative and hold both the in and out of court representation of the Superintendency, and shall have authority to perform all the acts and enter into all the agreements that may be necessary or convenient for the accomplishment of its purposes and, within such authority, to freely effect the acquisition and disposal of personal property.

Notwithstanding, the approval of the Minister of Finance shall be necessary for the acquisition of real property.

The Superintendent shall have the right to delegate some of his functions upon the Intendants or other Superintendency officers and, under special circumstances, to confer powers of attorney upon third parties.

The Superintendent shall report to the *Ministerio Público* those wrongful acts he become acquainted with, as a result of the exercise of his supervisory duties in any institution subject to his supervision.

In the event that law suits are filed against the Superintendent because of actions or omissions performed during his term in office, The Superintendency shall provide him with legal assistance. The legal assistance will cover even those law suits filed after the Superintendent has left his office.

Article 11. The Superintendency shall be subject to the control of the *Contraloría General de la República* (the Republic's General Comptroller Office) only with respect to the aspects related to the examination of its accounts.

## PARAGRAPH 2. SUPERVISION

Article 12. It shall be the duty of the Superintendent to seek that the institutions under the Superintendency's supervision comply with the laws, regulations, by-laws and other provisions applying to them, and to exercise the most ample control over all their transactions and business activities.

The supervising authority shall also comprise that of applying or interpreting the laws, regulations and other rules that apply to the enterprises under the control of the Superintendency.

For the above-mentioned purposes, the Superintendent shall have authority to examine, without any restriction whatsoever, and by the means he may deem convenient, all the businesses, properties, books, accounts, files, documents and correspondence of the said institutions, and request from their administrators and personnel all the information and explanations he may consider necessary to make himself familiar with their situation, their resources, the manner in which their businesses are being managed, the acts of their agents, the degree of security and prudence with which their funds have been invested and, generally, with respect to any other matter it is convenient to clarify.

In addition, the Superintendent shall have authority to issue instructions and adopt all measures aimed at the correction of the irregularities he may observe and, generally, those he may deem necessary in order to protect the interests of the depositors or other creditors and of public interest.

The Superintendent shall have the right to exercise the authority conferred upon him by this statute since the start of the organization of an institution under the Superintendency's supervision and until its liquidation has been completed.

Article 13. In order to accomplish the purpose indicated in the preceding article, the Superintendent, either personally or through the inspectors or special agents, shall visit with the regularity he may deem convenient, the institutions subject to the his supervision.

In the inspections carried out by the Superintendency, its personnel may be integrated with that of the company being visited.

Article 14. Notwithstanding the provisions in article 7, and without prejudice to the rules regarding the banking secret contained in article 154, the Superintendency shall be obligated to provide information with respect to the supervised entities to the Minister of Finance and the Central Bank of Chile.

The Superintendency shall also disclose to the public, at least three times each year, information regarding the loans, investments and other assets of the institutions under supervision, and their rating and evaluation in accordance with their degree of recoverability, which information shall be comprehensive of that concerning all the indicated entities. It shall also be entitled, by means of directions of general applicability, to impose to those institutions the obligation to deliver to the public information with respect to those same matters either on a permanent or a from time to time basis.

For the exclusive purpose of permitting an ordinary evaluation of the financial institutions by specialized firms that show a legitimate interest, the Superintendency shall disclose to them the list of the banks' debtors, the balances of their obligations and the guarantees granted. The foregoing shall only apply upon the approval by the Superintendency of their registration in a special registry that shall be maintained for the purposes provided for in this paragraph and in the second paragraph of article 154. The Superintendency shall also maintain permanent and revised information concerning this subject matter for the use of the financial institutions subject to its supervision. The persons whom this information is provided to shall be prevented from disclosing its contents to third parties and, should they do so, they shall be liable to a punishment of from 61 days up to 3 years' imprisonment.

In any event, the banks and financial institutions shall comply with the obligation set forth in article 9 of Law No. 18,045, on Securities Exchange, irrespective of their shares been or not registered in the Securities Register. In the event of non-compliance with the said obligation, the information may be provided by the Superintendency.

The Superintendency shall keep permanently a record of bank's depositors with their single tax roll (RUT<sup>1</sup>).

Article 15. The Superintendent shall set rules of general applicability for the filing of the

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<sup>1</sup> Translation note: In Spanish RUT stands for Rol Único Tributario

balance sheet and other financial statements of the institutions subject to supervision and the manner in which they shall kept their accounting, seeking that the application of such rules permits to reflect the actual situation of the company.

Within his authority, the Superintendent shall be entitled to instruct that the value in which the investments of the institutions supervised are registered be rectified or corrected whenever it is established that the said value does not correspond to the real one. The resolutions issued pursuant to this paragraph may be subject to appeal within the period of 10 days counted from the service of notice thereof, in everything else the procedure established in article 22 being applied. Notwithstanding, for the purposes of the application of the system of monetary adjustment set forth in the Income Tax Act, the valuation guidelines contained in article 41 of the indicated statute shall apply; provided, however, that the Director of the Internal Revenue Service shall have the right to determine that the value that has been established by the Superintendent is to be applied.

Article 16. The Superintendent shall have the right to request from the institutions subject to his supervision any information, document or book that, in his opinion, may be necessary for purposes of control or statistics.

The banks and financial institutions shall publish their financial statements as of March 31, June 30 and September 30 of each year, or as of any other date that may be required, under special circumstances, by the Superintendency, in the exercise of its general powers, in a newspaper of national coverage. The publication shall be effected no later than on the last day of the month following the date the relevant statement refers to.

Simultaneously with the publication of the financial statements referred to in this article, the Superintendency shall have the right to order that the banks and financial institutions publish the information which, in its opinion, may be necessary to maintain the public informed. The instructions issued with respect to this matter shall be of general applicability.

In the case of the financial institutions subject to the supervision of the Superintendency, the balance sheet as of December 31 of each year shall be accompanied by a report prepared by a firm of independent auditors. In these institutions it shall not be necessary that the shareholders appoint inspectors of accounts. The auditors shall deliver a copy of their report with all its annexes to the Superintendency, and the financial institution shall cause it to be published together with the balance sheet. The Superintendency shall have the right to impose to the other institutions subject to supervision that their balance sheets be audited by independent auditors.

The Superintendency shall be entitled to request the submission, up to two times at any time during a given year, of balance sheets referred to certain dates of the calendar year, which, should it be so requested, shall be audited by the independent auditors designated by the Superintendency.

These balance sheets shall be prepared according to the rules of general applicability indicated by the Superintendent, especially with respect to the allowances or write offs he may deem relevant, and shall produce full effect for the applicability of the provisions governing the institutions subject to supervision.

Article 16 bis. Any person, whether a legal entity or an individual who, individually or

jointly and in a direct manner, be the controller of a bank according to article 97 of Law N° 18.045, on Securities Markets, and in addition, owns individually more than 10% of the bank's shares, shall send to the Superintendency reliable information about their financial standing. The Superintendency shall set rules of general application to determine the frequency and content of this information, which shall not exceed what the Securities and Insurance Superintendency requires for the publicly listed stock corporations.

Article 17. The manager of an institution subject to supervision, or the person acting as such, shall provide an account to the board of directors or the relevant directive body at the following meeting held with regard to every communication received from the Superintendent and evidence of that fact shall be included in the minute of the meeting.

In those cases the Superintendent requests so, the communication shall be transcribed in full in the minute.

Article 18. The Superintendent may order the summoning of any individual who may possess information regarding a fact that is deemed necessary for clarification, either with respect to a transaction of the institutions subject to his supervision or the conduct of its personnel, to render testimony under oath. The procedure may be entrusted to an officer of the Superintendency.

The individuals specified in article 361 of the Code of Civil Procedure shall be under no obligation to appear in person and shall render their testimony in writing.

Article 18bis. Pursuing the corresponding supervisory duties and except for the information protected by bank secrecy, The Superintendents of Banks, of Securities and Insurance and of Pension Funds may share any other kind of information. When the information is under reserve, those who receive it shall keep it under the same reserve.

### PARAGRAPH 3. OTHER POWERS

Article 19. The institutions subject to the supervision of the Superintendency that shall incur in a violation of the law governing them, their organic laws, their by-laws or the instructions legally issued by the Superintendent, which do not have assigned a specific penalty, may be admonished, censured or sanctioned with a fine of up to an amount equivalent to five thousand *Unidades de Fomento*<sup>2</sup>. In the event of repeated offenses of the same nature, a fine of up to five times the maximum amount previously indicated may be applied.

Likewise, an admonition, censure or fine of up to an amount equivalent to 1,000 *Unidades de Fomento* may be imposed upon the directors, managers and officers in general who result responsible for the infractions incurred. The fine shall be communicated to the infringer and the general manager of the enterprise.

In addition, the board of directors shall inform the next following Shareholders Meeting of the sanctions imposed upon the company and its officers.

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<sup>2</sup> Translation note: Unidad de fomento (UF) is an indexed unit of account.

Article 20. Whenever a financial institution subject to supervision shall show financial hardship or deficient administration, the Superintendent shall be entitled to impose, by means of a grounded resolution, totally or partially and for the maximum period of six months, renewable for once only for the same period, one or more of the following restrictions:

- 1) The granting of new loans to any individual or legal entity related, either directly or through third parties, to the ownership or management of the institution.
- 2) The renewal of any loan for a period over one hundred and eighty days.
- 3) The release or establishment of a limit to the guarantees to outstanding loans.
- 4) The acquisition or disposition of tangible or intangible properties that correspond to their fixed assets or to their financial investments.
- 5) The transfer of documents in their loan portfolio.
- 6) The granting of loans without security.
- 7) The performance of certain acts or entering into certain agreements or conventions or renewal of those presently in force with the persons indicated in subparagraph 1).
- 8) The granting of new loans or acquisition of financial investments, provided the growth of the aggregate of the loans and financial investments, with respect to the month immediately preceding, exceeds the variation of the *Unidad de Fomento* during the same period.
- 9) The granting of new powers of attorney that provide authority to effect any of the acts indicated in the preceding paragraphs.

It shall be assumed, in any event, that an enterprise shows financial instability or deficient administration when:

- a) Faces any of the situations specified in articles 118 or 122, which make to fear for its financial situation or permit to assume that it presents solvency problems.
- b) Three or more financial statements indicate losses which in the average exceed 10 % of the initial paid up capital and reserves during the same calendar year.
- c) Has resorted to the emergency financing provided by the Central Bank of Chile in three or more months during the same calendar year.
- d) Has paid interest rates to the public which are higher in 20 % or more than the average corresponding to the financial institutions of its same nature, in the course of three or more months during the same calendar year.
- e) Has granted loans to persons related, directly or through third parties, to the ownership or administration of the enterprise under terms and conditions more favorable with respect to period, interest rates or guarantees than those granted to third parties in operations of the same nature, or when it has granted loans to such related persons for amounts in excess of its paid up capital and reserves.
- f) It has entered into agreements for the rendering of services or the acquisition or disposal of assets of any nature with persons related, directly or through third parties, to the ownership or management, and that have been objected on a specific basis by the Superintendency, either prior or subsequently to its entering into.
- g) The independent auditors of the enterprise indicate reservations regarding the management or the entity's stability as an ongoing enterprise.

h) There has been a material non-compliance with the plan referred to in article 31.

Without prejudice to the provisions in article 21, the directors, managers, administrators or agents who, without the written authorization of the Superintendent, adopt a resolution, perform or cause to be performed any of the acts that are prohibited by virtue of this article, shall be punished with from 541 days up to 5 years' imprisonment.

During the period referred to in this article, the removal or resignation of the directors of the institution or the resignation or the termination of the labor contract of its managers, administrators or agents shall produce nil effect, unless such acts have been authorized by the Superintendent.

If during this same period the Shareholders Meeting should be called to resolve with respect to the capital increase of the institution, its merger or the sale of its assets, the Superintendent may modify the period of the call and the number of notices that must be published to that effect.

Article 21. The directors, administrators, managers, agents or employees of an institution subject to the supervision who approve or carry out transactions other than those authorized by the laws, the by-laws or the rules issued by the Superintendency, shall be responsible with their own property for the losses that the said transactions may cause to the enterprise.

Article 22. All the fines established by the laws and that correspond to the Superintendency to apply shall be administratively imposed by the Superintendent to the infringer and shall be paid within the period of ten days counted from the date in which the relevant resolution is communicated. The affected party shall have the right to resort to the Court of Appeals corresponding to the domicile of the enterprise unless it has an office in Santiago, in which case it shall be competent the Court of Appeals with its seat in Santiago. The relevant claim shall be filed within the period of ten days counted from the date in which the fine is paid, provided the said payment has been timely effected. The Court of Appeals shall provide the Superintendent a period of six days to express his opinion, and after that has been accomplished or upon the default to do so been declared, the Court of Appeals shall pronounce the sentence within the period of thirty days, which sentence shall be final and not subject to any further appeal.

There shall also exist the right to oppose, subject to the same procedure, the resolutions issued by the Superintendency imposing the prohibitions or restrictions contained in article 20; those that designate a delegate inspector or provisional administrator, or that renew such designations; that revoke the authorization of existence or decide upon the forced liquidation. In these cases, the objection shall be filed within the ten days following the date in which the resolution is communicated and shall be signed by the majority of the directors of the affected enterprise, even though their duties have been suspended or terminated as a result of the resolution opposed. The effects of the resolution shall neither be suspended by the filing of the claim nor shall the Court of Appeals issue any order whatsoever aimed at that purpose while the claim is pending.

Article 23. The fines applied by the Superintendency shall expire within the period of three years, to be counted from the date in which the performance of the act has been completed or the penalized omission has occurred.

This period shall be of six years if there has been a wishful misconduct, and the wishful misconduct shall be presumed when false or misrepresentations related to the acts performed have been made to the Superintendency.

The indicated prescription periods shall be suspended from the moment in which the Superintendency commences the investigation from which the application of the relevant fine originates.

The proceeds of the fines applied to the institutions subject to supervision by the Superintendency shall be for the benefit of the State. The Superintendent shall periodically pay to the State Treasury the fines not objected as well as those in which the affected party has failed to obtain in its pretension by final sentence. While the claim is pending, the amounts collected by way of fines shall be maintained with *Banco del Estado* in a special account, from which account the Superintendent shall draw in order to effect the corresponding refund in the event any claim is upheld by a final sentence.

Article 24. If a financial institution subject to the supervision of the Superintendency shall have incurred in repeated infractions or fines, shown contumacy in the compliance with the instructions legally issued by the Superintendent or any serious fact occurred to it that make to fear for its economic stability, the Superintendent shall have the right to designate a delegate inspector to whom he shall confer the authority he may indicate to that effect and, especially, delegate upon him the power to suspend any resolution adopted by the board of directors or the agents of the institution.

In those same cases, the Superintendent shall have the right, with the prior consent of the Council of the Central Bank of Chile, whether or not a delegate inspector has been designated, to appoint a provisional administrator to the institution, who shall have all the authority regarding the ordinary conduction of business that the laws and the by-laws indicate correspond to the board of directors, or whomever may act as such, and to the manager.

The designation of a delegate inspector or a provisional administrator may not have a duration over a year. The designation of a delegate inspector may be renewed only for one more year and that of provisional administrator as many times as the Superintendent may deem necessary. The resolutions issued for that purpose shall be grounded and the renewals of the designation of provisional administrator shall have to have the previous consent of the Council of the Central Bank of Chile. The provisional administrator shall have the duties and shall be subject to the responsibilities of the directors of stock corporations.

By a resolution founded in situations originated prior to the designation of the provisional administrator, and only within the first year of the said administration, the Superintendent shall have the right to suspend the applicability of the margins set forth in this statute to the financial institution that was the subject matter of such measure, or to those that have granted loans to it. In no event shall suspend the application of the obligation established in article 65.

Article 25. In the cases in which the Superintendency has designated a provisional

administrator or a liquidator to an institution subject to its supervision, it shall be entitled to secure the services of professional advisors in charge of instituting legal actions seeking the declaration of the criminal and civil liability of the administrators, executive officers and other individuals who, at any title, have acted in the respective enterprise. Likewise, it shall be entitled to secure the services of professional advisors to defend the accusations instituted against the persons participating or who may have participated in the provisional administration or the liquidation of the enterprise.

Article 26. Without prejudice to the authority conferred upon it by this statute, the Superintendency shall have, with respect to the institutions subject to supervision and to the extent it may be applicable, the authority granted by the laws to the Superintendency of Securities and Insurance.

The Superintendency shall have, with respect to the independent auditors contracted by the institutions subject to supervision, the same authority that the Organic Act of the Superintendency of Securities and Insurance and the Stock Corporations Act confer upon them to the said institution.

## TITLE II

### **THE CHARTER OF BANKS (Forming banks)**

Article 27. The banking enterprises shall be organized as stock corporations in accordance with this statute.

The founding shareholders of a bank shall submit a prospectus to the Superintendency, both for the establishment of a new bank and the transformation of a financial company into a banking enterprise. The prospectus shall be accompanied by a business development plan for the first three years of activities.

Upon the acceptance of a prospectus, a provisional certificate of authorization shall be delivered to the founding shareholders, which shall enable them to carry out all dealings leading to the obtainment of the company's authorization of existence and the administrative acts that have as their purpose to prepare its organization and functioning. For that purpose, it shall be considered that the company has full legal capacity since the issuance of the certificate. It may not be requested the authorization of existence of the company after the lapse of ten months counted from the date of issuance thereof.

The founding shareholders of a banking enterprise shall post a guarantee equivalent to ten per cent of the capital of the projected company, by means of a deposit to the order of the Superintendent with any institution subject to the supervision of the Superintendency.

The said founding shareholders shall be obligated to deposit with any of the institutions subject to the supervision of the Superintendency and in the name of the banking enterprise being formed, the funds they receive in payment for the subscription of shares. These funds may only be drawn once the existence of the company has been authorized and its board of directors has assumed its duties. The founding shareholders shall be personally and jointly and severally liable for the refunding of the said funds and their responsibility may be enforced against the guarantee referred to in the previous paragraph.

The founding shareholders may not receive, directly or indirectly, any compensation whatsoever for the work they perform in such capacity.

Article 28. A bank's founding shareholders must fulfill the following requirements:

- a) Possess, either individually or as a group, a consolidated net worth equivalent to the projected investment and, should their consolidated net worth fall below this level, report this situation opportunely.
- b) Not have engaged in serious or repeated acts that could endanger the proposed entity's stability or the security of its depositors.
- c) Not have participated in acts, negotiations or contracts of any nature that are against the laws, regulations or sound financial or commercial practices in force in Chile or abroad.
- d) Not be in any of the following situations:
  - i) Be subject to bankruptcy proceedings;

- ii) In the fifteen years prior to the date of the application for authorization, have been a director, manager, principal executive or majority shareholder, either directly or through third parties, of a bank, insurance company of the second group or pension fund administration company which has been forced into liquidation or declared bankrupt, depending on the case, or put under provisional administration, and which has caused the government or the Central Bank of Chile significant losses. This requirement does not apply if the person participated in the said entity for less than a year;
- iii) Have protested financial documents dating from the previous five years that are considerable in number or value;
- iv) Have been condemned or be under accusation for any of the following crimes:
  - (1) against property or public faith;
  - (2) against administrative probity, national security, tax and customs offences and those included in laws against terrorism and asset laundering;
  - (3) those included in Law N° 18.045, Law N° 18.046, Decree Law (DL) N° 3.500 of 1980, Law N° 18.092, Law N° 18.840, Decree with Force of Law (DFL) N° 707 of 1982, Law N° 4.287, Law N° 5.687, Law N° 18.175, Law N° 18.690, Law N° 4.097, Law N° 18.112, Decree with Force of Law (DFL) N° 251 of 1931, laws on collateral pledge and in this law;
- v) Have received a prison sentence of more than three years and one day or have been barred from holding public office, and
- vi) Have been subject, either directly or through third parties, to any of the following measures against which the period for appeal has expired or the appeals lodged have been rejected under a court order that has come into effect:
  - (1) declaration of forced liquidation or placement of commercial activities under provisional administration, or
  - (2) cancellation of a license to operate or establish a business or removal from any register in which inscription is required in order to operate or make a securities public offering if these measures are a result of an infringement of the law. In the case of a company, the requirements established in this article will be understood to apply to its controllers, partners or majority shareholders, directors, administrators, managers and principal executives at the date of submitting the application. The Superintendency will verify compliance with these requirements and, for this purpose, may request the information it deems necessary and, should it reject the application, must justify its decision in a resolution setting out the grounds. In addition to the signatories of its prospectus, a bank's founding shareholders will be considered to include those with a significant stake in its ownership in accordance with the terms of Article 36.

Article 29. The financial institution organized outside Chile that requests to materially participate in the establishment or acquisition of shares in a Chilean bank, or to establish a branch in accordance with article 32, may only be authorized if in the country where its main office is located there exists a method of supervision which permits to adequately monitor the risk of its operations and, in addition of complying with the provisions indicated under the preceding article, has the prior authorization granted by the supervising entity in the country where its main office is located. Additionally, in order to grant the authorization, the mutual exchange of relevant information with respect to these entities must be possible between the supervising agencies of both countries.

With respect to investment companies or companies of other nature organized abroad, they shall guarantee to the Superintendency, in the manner the latter may have determined, that the provision in the previous paragraph shall be complied with at all times if they have, or subsequently acquire, a significant participation in a bank or financial institution in the country where they are organized or elsewhere.

The rules in the preceding paragraphs shall not apply to the companies referred to in the paragraph above that are organized in a country applying the rules of the Basle Committee, provided they undertake to deliver in the manner and opportunities as it may be determined by the Superintendency, the reliable financial information regarding such companies and their subsidiaries, as such being understood the information issued by the organisms of supervision. Whenever these companies are not subject to the supervision of any organism, or they are not required to deliver to the said organism such information, the information shall have to be certified by independent auditors of international repute. In order to grant the corresponding authorization to these companies, they shall have to guarantee to the Superintendency, in the manner as may be determined by the latter, that the provision in this paragraph shall be complied with at all times if they have or subsequently acquire a significant participation in a bank or financial institution in the country where they are organized or elsewhere.

In the event of non-compliance with the provisions of this article, the Superintendency shall have the right to impose the penalties set forth in the second and last paragraphs of article 36.

For the purposes of this article, significant participation in a Chilean bank shall be considered that which, pursuant to the rules of article 36, requires an authorization from the Superintendency.

Article 30. The Superintendency, within the period of 180 days, may reject the prospectus by means of a resolution grounded in that the founding shareholders do not meet the requirements indicated in the preceding articles. If the Superintendency does not issue a rejecting resolution within the period indicated above, it may be possible to require the application of the positive administrative silence according to the Law No.19.880.

Notwithstanding the foregoing, the Superintendency, in material and exceptional instances related to facts connected with circumstances that, by their nature, may not be convenient to make public, shall have the right to delay for once only its pronouncement with respect to the prospectus for a period of up to 180 days additional to the one indicated in the preceding article. The respective resolution may omit the whole or any portion of its grounds. In such a case, the grounds omitted must be made known in private to the *Ministro de Hacienda*, to the *Banco Central de Chile*, to the *Consejo de Defensa del Estado*, to the *Unidad de Análisis Financiero* or to the *Ministerio Público* whenever applicable.

Article 31. Once the authorization of existence has been applied for and the authorized copy of the public deed containing the by-laws, in which it shall be transcribed the certificate referred to in article 27, has been accompanied, the Superintendent shall verify the effectiveness of the enterprise's capital. Once the above has been demonstrated, the Superintendent shall issue a resolution authorizing the existence of the company and

approving its by-laws.

The Superintendency shall issue a certificate providing evidence of such circumstance and containing an abstract of the by-laws. The certificate shall be registered in the Register of Commerce corresponding the corporate domicile and shall be published in the Official Gazette within the period of sixty days counted from the date of the approving resolution. The same procedure shall be followed with respect to the amendments that may be made to the by-laws or the resolutions approving or ordering the early dissolution of the company.

Upon completion of the procedure indicated in the previous paragraph, the Superintendency shall verify, within the period of 90 days, if the banking enterprise is prepared to commence its activities and, especially, if it counts with the professional and technological resources and the systems and controls to adequately start its business activities. In this very same opportunity, the Superintendency shall discuss the business development plan for the first three years submitted together with the prospectus.

Upon fulfillment of the said requirements, the Superintendency, within the period of 30 days, shall grant the authorization to start up business. Likewise, it shall set a term, not to exceed one year, in order for the enterprise to commence its activities, which authorization shall entitle the company to start its operations, confer the authority and impose the duties set forth in this statute.

During the period of three years referred to in the third paragraph, the Superintendency shall supervise the compliance with the plan, which plan may be amended provided the equity situation of the enterprise is not impaired.

Article 32. The banks organized abroad, in order to establish a branch within the country, shall have to obtain from the Superintendency a provisional certificate of authorization in the manner indicated in article 27.

To obtain a definitive authorization, they shall enclose all the documents that the laws and regulations require for the establishment of a branch of a foreign stock corporation.

The Superintendent shall examine the company's by-laws in order to determine that nothing contained therein is against the Chilean laws, and shall investigate, in addition, for all the means he may deem convenient, if the company is an entity that offers an adequate guarantee in order to be granted the relevant authorization without an undue risk.

After the resolution approving the establishment of the branch has been issued, both the resolution and an abstract of the by-laws, as certified by the Superintendency, shall be registered and published in the manner and within the period referred to in the preceding article. The same shall be done with respect to the amendments to the by-laws of the main office in essential aspects and with the capital increases or other amendments of the Chilean branch, as well as with the resolution approving the early termination or resolving upon the revocation of the authorization.

Once the bringing of the capital into the country has been effected, and evidence with respect to the readiness to start its activities in the manner provided for in article 31 has been provided, the Superintendency shall grant the branch authorization to start its operations.

Article 33. The Superintendent may authorize the foreign banks to maintain representative offices acting as business agents for their main offices, and shall exercise upon them the

same inspection authority granted upon him by this law with respect to the banking enterprises. Under no circumstances shall these representative offices have the right to perform any acts which pertain to the banking business. The authorization may be revoked at any time if the representative office does not comply with this provision or if its maintenance were considered inconvenient.

Article 34. Foreign banks authorized to operate in Chile shall enjoy the same rights as the Chilean banks in the same class and shall generally be subject to the same legal and regulatory provisions, except otherwise been expressly provided by law.

The capital and reserves which they assign to its branch in the country shall be actually brought in and converted into local currency in accordance with any of the methods authorized by the laws or by the Central Bank of Chile. Any increases in the capital or the reserves which do not originate from the capitalization of other reserves, shall have the same treatment as the initial capital and reserves.

No foreign bank shall invoke rights arising from its nationality with regard to the transactions being effected by its branch in Chile.

Any controversy that may arise with regard to the transactions executed by the branch in the country, irrespective of its nature, shall be decided upon by the Chilean courts, in accordance with the laws of the Republic.

For all purposes of the transactions between a branch and its main office abroad, they both shall be considered as independent entities.

The foregoing shall be understood without prejudice to the liability it may attach to a foreign bank, pursuant to the general rules, for the obligations been assumed by the branch it may have established in Chile.

Creditors of obligations assumed in Chile by the foreign bank, who are either Chilean or foreigners with domicile in Chile, shall enjoy a preference upon the assets the bank may have within the country.

Article 35. The Central Bank of Chile may inform, at the request to the Superintendency, on the effects that the authorization of new banks may produce to the stability of the financial system or the adequate compliance with the obligations contained in its Organic Act.

Article 35 bis. Authorization from the Superintendency is required in the following cases: merger of banks; acquisition of assets and liabilities of a bank by another bank or of a substantial part of them, according to the definition of article 138; taking control of two or more banks by the same person or controlling group or a substantial increase of their existing control, provided that in all of these cases the acquiring bank or the resulting group of banks reaches a significant market share.

The Superintendency may deny such authorization by a grounded resolution, only if the Council of the Central Bank of Chile has given opinion in the same way and this report has been approved by the majority of its members in activity.

The report referred to in the preceding paragraph shall be issued within ten working days counted from the day in which it is required. This term shall be extended in the case contemplated in article 19, paragraph three, of the Organic Law of the Central Bank.

In all cases, the Superintendency may condition its authorization to the fulfillment of one or more of the following restrictions:

- a) The effective net worth of the bank or the banks, according to the case, shall be more than 8% of its assets weighted by risk, with a limit of 14%.
- b) The technical reserve of article 65, should be applied since the deposits and other sums treated in that article, exceed one and a half times its paid up capital and reserves.
- c) The limit of the loans granted by a bank to another financial institution in article 84, number 1, penultimate paragraph, will be reduced to 20% of the effective net worth.

The Superintendency may impose either totally or partially the said restrictions, by a grounded resolution. It may also limit its extents up to the amount or percentage of each preceding letter.

The Superintendency shall decide within the term of 60 days about the application referred in the first paragraph.

The resolution of the Superintendency that rejects an application may be claimed according to article 22.

For effect of paragraph first, it will be assumed that a substantial increase of control occurs if the controller obtains the majority or two thirds of the shares.

The Superintendency shall establish, by means of rule of general application, the elements and antecedents that will be considered to determine when a market share is significant, including the percentage of said market share that will make the norms of this article applicable.

Article 36. Due to the higher national interests, no person shall acquire, directly or through third parties, shares in a bank that, either by themselves or added to the ones already in its possession, represent more than 10 % of the bank's capital, without first having obtained the authorization therefore from the Superintendency.

The shares being in the situation referred to in the previous paragraph and whose acquisition has not been authorized, shall lose their voting rights.

If the holder of those shares is a company of any kind, its partners or shareholders shall not be entitled to transfer a percentage of their rights or shares in their company, in excess of 10 %, without first having obtained an authorization from the Superintendency. The transfer without authorization shall deprive the company that is the holder of the bank's shares of the right to vote upon the bank's resolutions. In order to determine the relationship between

two or more companies holding shares in the bank, the circumstances referred to in article 84 No. 2, shall apply. The Superintendency, by means of rules of general applicability, may exclude from the compliance with these obligations to the companies in which, due to its large number of partners or shareholders, or any other reasons, it may be presumed that they do not have a significant influence upon its decisions.

The Superintendency shall only reject that authorization by a resolution setting out the grounds of the rejection if the founding shareholders do not meet the solvency and integrity requirements described in article 28.

The Superintendency shall issue a resolution within the maximum period of fifteen business days counted from the date it has the necessary information to issue a decision. If the Superintendency does not issue a rejecting resolution within the period indicated above, it may be possible to require the application of the positive administrative silence according to the Law No.19.880.

The shares of a bank shall be divested of their voting rights when the person to whom corresponds to apply for an authorization from the Superintendency imposed by this Section has failed to do so and while the relevant authorization remains without having been obtained. If the shares so acquired shall have been registered in the bank's Shareholders Register, or the ownership of the shares or rights in the company holder of the shares in the bank shall have been transferred, as the case may be, the Superintendency shall declare the exclusion of the voting rights and shall communicate its decision to the bank for its compliance with and the corresponding annotation in the Shareholders Register.

Article 37. The banking enterprises are institutions subject to obligatory functioning according to the relevant schedule in effect. No banking enterprise shall commence, suspend or terminate its operations without the prior authorization of the Superintendent.

The banks, prior to the opening of any office within the country, shall inform that fact to the Superintendency. The Superintendency, by means of rules of general applicability, shall determine the information that must be submitted in order to evidence compliance with the necessary requirements for the opening of the office and its registration.

Notwithstanding the foregoing, the institutions that are rated in the last two categories, in accordance with articles 59 et seq., shall require express authorization to effect such opening. In such event, the Superintendency shall issue a pronouncement within the period of 90 days, counted from the date of the filing of the application, and in order to reject it shall be mandatory the issuance of a grounded resolution.

The bank that resolves to close an office shall provide a notice thereof to the Superintendency with at least 90 days prior to the date of the projected closing.

Article 38. It shall correspond to the Superintendent to set, by means of a resolution that shall be published in the Official Gazette, the schedule for the attention to the public in *Banco del Estado de Chile* and the remaining banks, which schedule shall be uniform for all the offices in the same locality.

The banking institutions referred to in the previous paragraph shall work from Monday through Friday each week, both days inclusive, in a single shift in all the provinces of the country, without prejudice to the authority conferred upon the Superintendent to determine

the working hours of such institutions.

He shall be entitled, in addition, and without the restrictions and formalities above-indicated, but under the conditions he may establish, to authorize the banking enterprises to render certain services beyond the days and hours of obligatory attention to the public.

Except with the authorization of the Superintendent provided in the manner indicated in the previous paragraph, the banks and financial institutions shall not be open to the public on Saturdays of each week and on December 31 of each year. In no event shall those days be considered as holidays or non-business days for any legal purposes, except as referred to the payment and protest of bills of exchange.

Article 39. No person, either an individual or legal entity, which has not been authorized to do so by other law, may engage in activities that, according to this statute, correspond to the banking enterprises, and, especially, to accept deposits or receive, in a customary manner, money from the public, whether by way of deposit, loan or any other manner.

No person, either an individual or legal entity, which has not been authorized by law, may engage, whether as principal or on behalf of a third party, in the brokerage of money or loans represented by securities or commercial paper, or any other credit title.

Nor may exhibit in its store or office a sign of advertisement containing, in any language, any expression indicating that it is a bank, a banking enterprise or a financial company, nor may use stamps, signs, certificates, forms, receipts, circular letters or any other writing containing names or other words indicating that the activities of such person are those of banking or financial intermediation. It shall also be prevented from effecting advertising through the press or any other means of publicity in which such expression are used.

It is presumed that an individual or legal entity has infringed the provisions in this article when it has a store or office in which, in any manner, the public is invited to bring money at any title or to which advertising is made by any means for the same purpose.

Infractions to the provisions in this article shall be punished with from 541 days up to 5 years' imprisonment. The Superintendency, in this case, shall place the information at the disposal of the *Ministerio Público* in order to institute the corresponding actions.

In any event, if as a result of these wrongful activities, the public shall suffer a loss of any nature, those resulting responsible shall be punished as authors of fraud.

In the event that, in the opinion of the Superintendent, there may be presumed that there exists an infraction to the provisions in this article, the Superintendency shall have, with respect to the presumptive infringers, the same authority of inspection that this statute confers upon it with respect to the institutions subject to supervision, to that effect being entitled to apply the provisions in article 18.

Any organism, whether public or private, that becomes acquainted of the existence of an infraction to the provisions in this article may file the corresponding report with the Superintendency.

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## TITLE III

### **GENERAL RULES APPLICABLE TO THE BANKS AND THEIR MANAGEMENT**

Article 40. Bank is every special stock corporation that, authorized in the manner provided for in this statute and subject to its provisions, engages in the business of receiving in a customary manner money or funds from the general public, in order to use it to grant loans, discount documents, make investments and effect financial intermediation, obtain a rent out of this money and, generally, perform any other transaction permitted by the laws.

Article 41. The banks are governed by the provisions in this statute and, subsidiarily, by the provisions applicable to open stock corporations, to the extent they may be conciliated or do not contravene it.

The provisions regarding the matters indicated below contained in the Stock Corporations Act shall not apply to the banks:

- a) The requirement of a resolution of the shareholders meeting to constitute guarantees or sureties, either simple or under joint and several responsibilities;
- b) The right of shareholders to advanced withdrawals; and
- c) Consolidation of balance sheets.

Article 42. The by-laws of a bank shall include the following provisions, in addition to those required from all stock corporations:

- 1) The name of the bank, in which it may be omitted the indication that it is a stock corporation.
- 2) The city in the Republic where its headquarters or main office shall be located, and which shall be its corporate domicile, without prejudice to the branches or agencies it may establish in accordance with the law. In that city shall be held the ordinary board of directors' meetings and function the office of the general manager of the enterprise.
- 3) The number of directors of the bank and the name of the members of the ad interim board of directors the shareholders must appoint.
- 4) The name and domicile of the ad interim manager and of the deputy manager who shall replace the latter in the event of absence or incapacity.

Article 43. The direction and administration of the banking enterprises shall be exercised in accordance with the legal provisions applicable to these matters, the by-laws of each bank and subject to the rules issued by the Superintendent.

Article 44. Every election of directors shall be published in a newspaper of the corporate domicile and shall be communicated to the Superintendency, which shall be delivered an authorized copy of the public deed to which the minute of the shareholders meeting or board of directors meeting wherein the designations that have been made must be transcribed.

The appointments to the offices of general manager and deputy general manager shall likewise be communicated and transcribed into a public deed.

Article 45. The board of directors shall hold ordinary meetings at least once a month and all the resolutions adopted shall be recorded in the relevant minutes.

Article 46. The board of directors shall adopt all the actions and issue the instructions as may be necessary in order to be fully and timely informed, with the relevant documentary evidence, of the administration, conduction and situation of the banking institution under its control.

The Superintendency shall have the right to issue instructions aimed at ensuring the due and adequate information of the board of directors.

Article 47. The banking enterprises organized abroad shall not be obligated to have a board of directors for the administration of their business within the territory of the Republic, but shall have to have an agent with ample authority to represent them with all the necessary legal authority.

The responsibilities and penalties that may affect the board of directors or the directors of the banking enterprises shall correspond to or be enforced upon the agent of the branches of foreign banks.

The banking enterprises organized abroad shall have the right to conduct their transactions in Chile, in accordance with their customary practices, provided they do not contravene the provisions that govern the subject matter and do not affect the security of the businesses.

The remittance of the net profits that may be obtained by the banking enterprises organized abroad shall be effected with the prior authorization of the Superintendency and subject to the legal provisions currently in force and the instructions issued by the Central Bank of Chile.

Article 48. The Superintendent or the delegate designated by him to that effect, shall have authority to administratively resolve any problem that may arise at the shareholders meeting, either with respect to the qualification of proxies or any other matter that may affect the legitimacy of the meeting, the resolutions adopted or the directors elected thereby, without prejudice to the right of the interested parties to exercise the actions that may correspond before the ordinary courts.

No matter what the decision of the courts may be, neither the validity of the resolutions adopted with the approval of the directors elected by such meeting, nor the acts performed by virtue of such resolutions, shall be affected by it.

Article 49. The banks shall be subject to the following provisions:

1) The contributions of the shareholders may only consist in cash, that is, the legal currency of Chile. This rule shall not apply in the event of merger of banks or to the acquisition of all assets and liabilities of one bank by another.

For this purpose, it shall be considered as cash contribution the capitalization of money credits owed by the same banking enterprise, provided the Superintendency expressly authorizes each transaction.

2) It shall not be permitted the issuance of founder's stock, shares to compensate for services or shares with privileges or preference. It shall be permitted, however, the issuance

of shares of different series.

3) No limit whatsoever shall be established as to the number of shares each one of the shareholders shall be entitled to vote at the meetings, except for that which may be imposed or authorized by the laws.

4) The board of directors of the banks shall be formed by a minimum of five and a maximum of eleven members and, in any event, they shall be an odd number. They may have, in addition, up to two alternate directors. The directors shall remain in office for 3 years and may be reelected.

In order to reduce the number of directors contemplated in its by-laws, the bank shall have to previously obtain the authorization of the Superintendency, which in granting its approval shall bear into account the shareholding composition of the enterprise and the protection of the minorities' rights.

5) There may not be a director to a bank any person who has been condemned or who is being tried for a criminal offense punished with a main or accessory penalty of suspension or incapacity, either temporary or at perpetuity, to hold a public office.

Nor may be a director any one has been adjudged in bankruptcy and not rehabilitated.

6) No special requirements to be a director derived from nationality or activity shall be established.

7) The office of director of a bank is not compatible with those of member of the Parliament or director or employee of any financial institution, and with that of an employee appointed by the President of the Republic. It is also incompatible the office of director of a bank with that of an employee or officer of any of the entities referred to in subparagraph 10) of this article. These incompatibilities do not affect those persons holding teaching positions.

8) No person shall hold, simultaneously, the office of director and the position of employee in the same bank. This provision shall not prevent a director from carrying out, in a transitory manner and for a period not to exceed 90 days, the duties of the general manager.

9) The member of the board of directors who, without the latter's authorization, fails to attend the meetings thereof for a period of three months, shall cease in his office for this sole circumstance.

10) There may not be shareholders in a bank the State, the services, state-owned institutions, partially state-owned institutions, autonomous organisms, state owned enterprises and, generally, all public services established by law, as well as the enterprises, companies or public or private entities in which the State or its enterprises, companies or centralized or decentralized institutions have made a majority capital contribution or an even capital contribution or have, in equal proportion, or in the same conditions, representation or participation.

11) A bank or financial institution may acquire shares in other bank or financial institution for the only purpose of effecting a merger between the two institutions, provided the following conditions are met:

a) That a prior authorization from the Superintendency is obtained, which authorization shall only be granted when it is demonstrated, at the Superintendency's satisfaction, that the acquiring enterprise has gained the control of two-thirds of the shares issued with voting rights in the company whose shares is about to acquire.

b) That the board of directors of the acquiring enterprise has adopted a favorable resolution

regarding the transaction.

c) The surviving financial institution shall propose a firm public offer for the acquisition of all the shares in the company into which it pretends to merge, at a price not lower than the average of the ones it has undertaken to acquire in accordance with subparagraph a), Once this offer has been effected, the financial institution shall be obligated to acquire all the shares that are offered to it for sale.

d) The effective equity of the merged institution may not be less than 10 % of its assets weighted by risk.

e) The merger must be agreed upon within the maximum period of 180 days counted from the date of the authorization granted by the Superintendency.

f) If the merger were not resolved upon within the indicated period or, if by any reason the negotiation shall fail, the shares acquired for these purpose shall be disposed of within a period not higher than ninety days, counted from the expiration of the period referred to in subparagraph e) or in which the fact that made the negotiation to fail occurred. This latter situation shall be determined by the Superintendency. Should the disposition not be complied with within the period set forth for that purpose, a fine equal to one per cent of the value of the shares not disposed of shall be applied for each day in which the acquiring institution keeps them in its possession.

g) Upon completion of the merger, the shares that should have been delivered to the surviving bank as a result thereof shall become extinguished by operation of the law, and the value paid for such shares shall be deducted from the equity of the merged entity.

In the case of the acquisition of the assets and liabilities of a bank by other bank, a prior authorization of the Superintendency shall be required and subparagraphs b) and d) shall apply, in this last case being understood that the reference to the merged entity applies to the acquiring institution.

12) The banks shall not be obligated to effect again the publication of their balance sheets and profits and losses statements duly audited within the period established by the Stock Corporations Act if they shall have previously done so; but in that case they shall indicate in the adds calling the meeting the newspaper in which they were published and the date in which the publication was effected.

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## TITLE IV

### **CAPITAL, RESERVES AND DIVIDENDS OF THE BANKS**

Article 50. The amount of the paid up capital and reserves of a bank may not be less than the equivalent to 800,000 *Unidades de Fomento*<sup>3</sup>.

If the paid up capital and reserves were in fact reduced to an amount lower than the minimum, the bank shall be obligated to replenish them within the period of one year, which period the Superintendency shall have the authority to extend for justified reasons for up to one more year. Upon failure to replenish them, the authorization to do business shall be canceled.

Article 51. At the time of the execution of the instrument of constitution of a bank or at the time of the authorization granted to a branch of a foreign bank to start its operations, the minimum capital shall be 50% paid. There will be no term to pay the remainder. However, while the bank has not reach the minimum capital indicated in article 50, its effective net worth shall be no less than 12% of its risk weighted assets. This proportion will be 10% when the bank reaches a shareholder's equity of 600.000 *Unidades de Fomento*. For effect of article 118, the presumption of letter b) will refer to the percentage that corresponds according to this article.

Article 52. The resolutions regarding capital increases of the banks that are adopted in accordance with the provisions in article 127 of Law No. 18,046, on stock corporations, shall be approved or rejected by the Superintendency within the period of 30 days. The Superintendency may extend this period, for once only, up to 30 days.

Article 53. Only with the prior authorization of the Superintendent a bank may resolve the reduction of its capital. In no case shall be authorized that the capital be reduced to an amount under the statutory minimum.

Article 54. It is hereby prohibited to the banks to announce in any manner whatsoever their authorized or subscribed capital without indicating, at the same time, the amount of their paid up capital. It is also prohibited to the branches of the banks organized abroad to announce in any manner whatsoever the amount of the capital and reserves of the holding banking institution without indicating, at the same time, the amount of the capital and reserves assigned to the branch operating in Chile.

Article 55. The banks shall be entitled to issue subordinated bonds that, in the event of concurrence of creditors, shall be paid after all the credits of the general creditors have been fully satisfied.

The bonds shall be issued for an average period of not less than five years and shall not be subject to early payment. These bonds may not be acquired by any enterprise subject to the supervision of the Superintendency, or for subsidiaries or companies affiliated with such

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<sup>3</sup> Translation note: Unidad de fomento (UF) is an indexed unit of account

enterprises.

Whenever the board of directors of the bank has to submit an arrangement to its creditors and such arrangement is approved, the subordinated bonds owed by the bank, whether or not matured, shall be capitalized by the operation of the law up to the concurrence of the amount necessary in order for the ratio between the effective net worth and the assets weighted by risk to be no less than 12 %. The conversion in shares shall be effected in the manner set forth in article 127.

In everything else shall apply the provisions in Law No. 18,045, on Securities Exchange.

Article 56. The ordinary shareholders meeting, at the proposal of the enterprise's board of directors, may resolve at the end of each fiscal year the distribution of a dividend that shall be taken from the net profits, the reserve kept to that effect or other funds the laws may authorize.

If a portion of its capital shall have been lost, it shall not be possible to distribute any dividend while the loss remains unremedied.

Nor shall be possible to distribute any dividends on account of fiscal year profits or reserve funds if, as a result of this distribution, any of the ratios set forth in article 66.

Article 57. The banks may not distribute ad interim dividends.

Article 58. The directors or managers of a bank who propose the payment of dividends in violation of the provisions in this title shall be jointly and severally liable to the refund of the dividend distributed under such circumstances.

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## TITLE V

### **RATING OF MANAGEMENT AND SOLVENCY**

Article 59. The Superintendency shall at all times maintain the rating of management and solvency of the banks and financial institutions, effected in accordance with the procedure indicated in the following articles

This rating shall be effected periodically, and at least once every year, by means of a grounded resolution, and shall be communicated to each bank within the five days following the date in which it is made, without prejudice to the updating that may be effected by the Superintendency whenever evidence of changes in the conditions that originated the previous ratings are brought up.

Article 60. The banks shall be rated in one of the following categories:

Category I : Includes the institutions that are rated in level A of solvency and level A of management.

Category II : Includes the institutions that are rated in level A of solvency and in level B of management, in level B of solvency and in level A of management, or in level B of solvency and level B of management.

Category III : Includes the institutions that are rated in level B of solvency and for two or more consecutive times in level B of management. Likewise, there shall be in this category the banks that are rated in level A of solvency and level C of management, or in level B of solvency and level C of management.

Category IV : Includes the institutions that are rated in level A or B of solvency and for two or more consecutive times in level C of management.

Category V : Includes the institutions that are rated in level C of solvency, irrespective of their level of management.

Article 61. For the purposes of the provisions in the preceding articles, the banks shall be rated according to their solvency in the following levels:

Level A : Includes the institutions whose quotient between the effective net worth referred to in article 66, after deduction of the losses accumulated during the fiscal year, and the addition of the assets weighted by risk, in accordance with the provisions in article 67, is equal or higher than 10 %.

Level B : Includes the institutions whose quotient between the effective net worth referred to in article 66, after deduction of the losses accumulated during the fiscal year, and the addition of the assets weighted by risk, in accordance with the provisions in article 67, is equal or higher than 8 % and lower than 10 %.

Level C : Includes the institutions whose quotient between the effective net worth referred to in article 66, after deduction of the losses accumulated during the fiscal year, and the addition of the assets weighted by risk, in accordance with the provisions in article 67, is lower than 8 %.

Article 62. For the purposes of the preceding articles, the banks shall be rated according to their management in the following levels:

Level A: Includes the institutions not rated in levels B and C below.

Level B: Includes the institutions that reflect certain weakness in their internal controls, information systems for the adoption of resolutions, timely follow up of risks, private risk rating and capacity to face scenarios of contingency, which shall be remedied by the institution itself during the preceding period to that of the next rating in order to avoid a gradual deterioration in the strength of the institution. There shall also be considered the penalties applied to the enterprise, with the exception of those for which there is a pending appeal.

Level C: Includes the institutions that present significant deficiencies in any of the items indicated in the previous Level, whose remedy must be promptly effected to prevent a serious impairment to their stability.

The Superintendency, by means of rules of general applicability, shall establish the conditions and modalities necessary to implement this rating. Such rules shall provide an equal treatment to all the financial institutions facing situations of equivalent characteristics and nature.

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## TITLE VI

### CASH AND TECHNICAL RESERVES OF BANKS

Article 63. The banking enterprises and *Banco del Estado de Chile* shall maintain, for their sight and time deposits or obligations, the cash reserves that may be determined by the Central Bank of Chile.

Article 64. The banking enterprises, financial companies and savings and loan cooperatives that fail to maintain the mandatory or technical reserve they are bound to, shall incur in a fine, to be administratively applied by the Superintendency, equivalent to twice the current interest for non-adjustable transactions, in local currency and with a maturity of less than 90 days, or for transactions in foreign currency, as the case may be, in force for the month in which the infraction took place, adjusted proportionately to the duration of the period of the cash reserve. The fine shall be calculated on the average to which may have amounted the deficit during the period in which this has occurred.

If the lack of mandatory reserve originates due to a banking closing and it does not last more than 15 days counted from the date of cessation of the closing, the Superintendency shall have authority to reduce or condone the fine.

Article 65. The deposits in current account and the other sight deposits and sight obligations a bank may receive, as well as the amounts that must destine to pay sight obligations assumed in the course of its financial business, to the extent they exceed two times and a half its paid up effective net worth, shall be maintained in cash or in a technical reserve consisting of deposits with the Central Bank of Chile or of documents issued by this institution or the Treasury of the Republic, valued at market price, regardless their maturity date. The documents issued by the Central Bank of Chile shall be redeemed by this institution for the value of the balance of the principal owed, plus interest and adjustments calculated up to the date of the reception, at the mere request of the holding bank whenever it finds itself in one of the situations referred to in paragraphs 2 and 3 of Title XV.

For the purposes of this article:

- a) Sight deposits and obligations shall be considered those whose payment may be legally demanded in an unconditional manner, either immediately or within a period of less than thirty days and also the time deposits and obligations counting from the tenth day preceding their maturity.
- b) Deposits, loans and any other obligation of the bank contracted with other bank shall always be considered to be time obligations.

The deposits and obligations subject to the provisions in this article that exceed the amount specified in the first paragraph shall not be subject to the obligation to maintain a cash reserve provided for in article 63; nor shall the amounts maintained by the bank with the Central Bank of Chile by virtue thereof shall be used to constitute it.

The titles forming the technical reserve shall not be subject to any lien. The deposits made by the bank with the Central Bank of Chile shall be exempt from attachment or from being the subject of preventive injunction. The same shall apply to the documents it may have acquired by virtue of the provisions in this article.

If a bank shall incur in deficit in the compliance with any of the obligations contemplated in this article, the manager shall inform this fact to the Superintendent within the business day next following that in which the deficit occurred, as well as the measures that shall be adopted to conform to such obligations. The bank, in this case, shall incur in a fine that shall be calculated applying to each daily deficit the maximum conventional interest rate for non-adjustable transactions, while the deficit is maintained. The Superintendent shall have authority to refrain from applying the fine should it be a deficit that has lasted not over three business days and provided the institution shall have not incurred in other deficit within the same calendar month.

If the deficit is maintained for more than fifteen days, the board of directors shall submit arrangement propositions in the manner provided for in article 122, without prejudice to the authority of the Superintendent to designate a provisional administrator to the enterprise or to resolve upon its liquidation.

## TITLE VII

### **RATIO BETWEEN ASSETS AND SHAREHOLDERS' EQUITY OF FINANCIAL INSTITUTIONS**

Article 66. The effective net worth of a bank shall not be less than 8 % of its assets weighted by risk, net from mandatory provisions. The basic capital may not be less than 3 % of the total assets of the bank, net from mandatory provisions.

By effective net worth of a bank shall be understood the addition of the following factors:

- (a) Its paid up capital and reserves or basic capital.
- (b) The subordinated bonds that may have placed, valued at their price of placement and up to the concurrence of 50 % of its basic capital. The accountable value of these bonds shall diminish in 20 % for each year elapsing from the date which is the sixth anniversary prior to its maturity.
- (c) The voluntary provisions that may have been constituted, up to the concurrence of 1.25 % of its assets weighted by risk. Voluntary provisions shall be those which exceed the ones that the banks must maintain by requirement of the law or by rule of the Superintendency.

When a bank contributes to the companies of which it forms part, or assigns capital to a branch it has established abroad, its effective net worth shall be calculated according to the general rules of consolidation established by the Superintendency.

Article 67. For the purposes of their being weighted by risk, the assets of a bank, net from mandatory provisions, shall be classified in the following categories:

Category 1. Cash, deposited with the Central Bank of Chile or in sight deposits with financial institutions regulated by this statute and financial instruments issued or guaranteed by the Central Bank of Chile. There shall also appear in this category the assets constituted by contributions to companies, acquisition of participation thereat or assignment to branches abroad whose amount has been deducted from the actual shareholders' equity in accordance with the provisions in the preceding article.

Category 2. Financial instruments issued or guaranteed by the State of Chile. There shall also be included in this category the financial instruments in foreign currency of their country of origin issued or guaranteed by states or central banks of foreign countries rated in category one of risk, in accordance with methodologies of international rating firms appearing in a list registered in the Superintendency.

Category 3. Irrevocable letters of credit and payable upon their mere presentation for foreign trade transactions, pending of negotiation, issued by foreign banks rated in category one of risk, in accordance with methodologies of international rating firms appearing in the list referred to in article 78, and loans or transactions with repurchase clause agreed upon by financial institutions regulated by this statute.

Category 4. Mortgage guaranteed housing loans granted to the final consumer. There shall also be included in this category the contracts of leasing referred to dwelling units and that are entered into directly with the promising buyer.

Category 5. Physical fixed asset, other financial assets and all the other assets not included in the previous categories.

For the purposes of the preceding article, the assets included in the above-referred categories, shall be considered in the following percentages of their accounting values:

- Category 1 : 0 %
- Category 2 : 10 %
- Category 3 : 20 %
- Category 4 : 60 %
- Category 5 : 100 %

The Superintendency may include within one of the categories, or create an intermediate category, with respect to the investments in forward contracts, options and other derivative products.

The Superintendency, with the prior favorable resolution of the Central Bank of Chile, adopted by the absolute majority of its members, shall have authority, by means of a rule of general applicability, to change the category of certain assets, provided that it means to move up or down only one level in the schedule previously stated, or set an intermediate level between two categories, or establish that certain assets are placed in Category 1. In any event, the category to which an asset belongs may only be modified once a year, unless the unanimity of the council members in office of the Central Bank amend the previous resolution.

The changes made by virtue of the provisions in the two preceding paragraphs shall enter into effect in the period set forth by the Superintendency, which period shall in no case be less than sixty days.

Article 68. The bank that does not conform to one of the proportions indicated in article 66, shall conform to them within the period of sixty days, without prejudice to incur in a fine of one per thousand of the deficit of the effective net worth or basic capital, as the case may be, for each day it is maintained.

## TITLE VIII

### BANKING TRANSACTIONS

Article 69. The banks are authorized to carry out the following transactions:

- 1) Receive deposits and enter into banking current account agreements.
- 2) Issue bonds or debentures without a special guarantee.
- 3) Make loans with or without a guarantee.
- 4) Discount bills of exchange, promissory notes and other documents representing a debt obligation.
- 5) Issue letters of credit corresponding to loans granted pursuant to Title XIII hereof. The obligations of the debtor in these transactions shall be calculated for the purposes of the limits set forth in article 84, No. 1 and 4.
- 6) Acquire, assign and transfer commercial paper, in accordance with the rules established by the Central Bank pursuant to its Organic Act.  
Banks may also carry out derivative transactions such as futures, options, swaps, forwards and other derivative instruments according to regulation and restrictions set up by Central Bank of Chile.
- 7) Subject to the rules of general applicability issued by the Superintendency, the banks shall be entitled to grant credits secured by a mortgage guarantee. Such credits shall be executed by means of a public deed bearing a to the order clause, of which only one authorized copy shall be made and delivered to the creditor, which credit shall be transferable by means of an endorsement written following, in the margin or at the reverse side of the document, with indication of the name of the assignee. For purposes of information only, the assignment shall be annotated in the margin of the mortgage registration.  
The assignor shall only be liable for the existence of the credit.  
There may be assignees of these credits the banks, the financial companies and other institutions regulated by special laws authorizing them to effect this type of investments. The administration of these credits shall in all these cases remain in charge of a bank or financial company or any of the administration agents of mortgage loans referred to in article 21 bis of Decree with Force of Law No. 251, of 1931, or any other entity authorized by law to manage transferable mortgage loans.
- 8) Effect collections, payments and transfers of funds.
- 9) Conduct foreign exchange transactions, subject to the legal provisions.
- 10) Issue letters of credit.
- 11) Guarantee bills of exchange or promissory notes, become surety whether as the sole surety obligor or as a joint and severally liable obligor, in local currency, subject to the rules and limitations established by the Superintendency.
- 12) Issue bills of exchange, payment orders and drawings against its own offices or correspondents.
- 13) Issue surety bonds or warranty deposits, which shall not be subject to attachment by third parties who are not parties to the contract or foreign to the obligation they guarantee.
- 14) Receive valuables and personal property in custody, under the terms and conditions as

may be set forth by the bank itself and rent safe deposit boxes for the deposit of valuables and personal properties.

15) Organize subsidiary companies within the country, in accordance with the provisions in articles 70 et seq.

16) Accept and perform fiduciary duties, in accordance with the provisions in Title XII hereof.

17) Perform as financial agents for institutions and enterprises, whether local, foreign or international, and render financial advisory services.

18) Acquire, maintain and dispose of, subject to the rules set forth by the Central Bank, notes of the internal debt, and any other kind of securities, issued in series, representative of State obligations or its agencies. The banks shall be entitled to acquire, maintain and dispose of gold in coins or bullion, within the general margin established by the second paragraph of this article.

19) Acquire, maintain and dispose of bonds or debt obligations of international institutions of which the State of Chile is a party.

20) Acquire, maintain and dispose of fixed income yielding debt instruments, including letters of credit issued by other banks, and undertake the issuance and guarantee the placement and the repayment of such debt obligations. These transactions shall be subject to the margins of credit indicated in article 84, both with respect to the issuer as well as the other obligors to the payment.

21) The banks shall be entitled to acquire shares and participate in the ownership of banks or enterprises organized abroad, subject to the rules contained in articles 76 et seq.

They shall also be entitled to become shareholders or participate in the ownership in the companies to which article 74 refers.

22) Acquire, maintain, build and dispose of real properties necessary for their functioning or that of their supplementary services. The bank shall be entitled to lease the portion of the real properties which is not using or the real properties it may require for future expansion.

23) Acquire, maintain and dispose of the personal properties necessary for its use or for the maintenance of its investments.

24) Issue and operate credit cards.

25) Act as agents in the placement of shares of first issue of open stock corporations, being entitled to guarantee their placement. The shares they may acquire as a consequence of the granting of such guarantee shall be transferred within the maximum term of two years, counted from the date of acquisition. This term shall be of one year for the shares approved in accordance with article 106 of Decree Law 3,500, of 1980. While the shares remain in the possession of the bank, they shall neither enjoy the right to participate in the discussions at the shareholders meetings nor to be voted thereat. The transfer of the shares shall be effected in the manner, upon the conditions and subject to the penalties set forth in article 84, No. 5. This guarantee may not apply to a percentage exceeding 35 % of the subscribed and paid up capital of the issuer, and the amounts that correspond to the guaranty or the shares acquired by virtue thereof shall be included in the margins of credit established in article 84.

The shares a bank may acquire pursuant to this subparagraph shall not have a market value which, in the aggregate, exceeds its paid up capital and reserves.

26) Grant to its customers financial services on account of third parties, under the terms

and upon the conditions that may be determined by the Superintendency. With regard to services rendered or requested by institutions subject to the supervision of other Superintendency, the authorization shall be granted by all of them by means of a joint resolution of general applicability.

27) Provide the service of transportation of securities.

The total investments the bank effects in the categories of properties, to which subparagraphs 15, 21, 22 and 23 refer, shall not exceed the total of its paid up capital and reserves.

The bank that acquires properties in excess of the limit set forth in the previous paragraph, shall incur in a fine of 10 % over the excess of the investment made for each calendar month they are maintained.

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## TITLE IX

### PARAGRAPH 1. SUBSIDIARY COMPANIES IN THE COUNTRY

Article 70. The banks and financial companies may organize subsidiary companies in the country destined to effect the following operations or functions:

a) Securities agents, securities brokers, mutual funds managers, investment fund managers or foreign capital funds managers, securitization of certificates and insurance brokers regulated by Decree with Force of Law No. 251, of 1931, all that upon the conditions established by the Superintendency by means of rules of general applicability. The companies that perform the operations to which this subparagraph refers, shall be governed by the laws applicable to such matters and supervised by the Superintendency of Securities and Insurance.

Pursuing consolidation between a parent bank and its subsidiaries, the Superintendency may request to those subsidiaries their financial statements and reviews all the transactions, books, records, accounts, documents or information concerning their solvency.

The Superintendency of Securities and Insurance, by means of a rule of general applicability, shall issue instructions to the insurance brokerage companies that are subsidiary of banks or persons related to the bank that act as insurance brokers, aimed at guaranteeing the independence of their acts and the protection of the right of the insured to decide upon the contracting of insurance and the election of the intermediary, being especially prohibited to the banks to condition the granting of credits to the contracting of insurance through an insurance broker related to the bank.

b) To buy and sell tangible real and personal properties only to execute leasing operations, with or without a purchase option, for the purpose of granting full or partial financing; effect factoring, financial consulting, custody or transportation of securities, credit collection and the provision of financial services that the Superintendency, by means of a resolution of general applicability, may have considered constitute a complement to the banks' corporate business. In those cases, the said Superintendency shall establish, by means of a resolution of general applicability, the conditions for the exercise of the indicated business activities.

The banks shall also be entitled to organize subsidiaries as real estate companies, which, in their organization and operation, shall conform to the rules set forth in this statute. They may, in addition, organize or form part of Housing Fund Administrators, subject to the laws that may govern them.

Article 71. The subsidiary companies may not acquire shares or have a participation in other companies, unless the Superintendency considers that the investment is essential for the development of its corporate purpose and provided it does not exceed, at any time, 5 % of the paid up capital of the company in which such investment is made.

The Superintendency, also by means of rules of general applicability, may authorize the banks to directly carry out any of the activities specified in subparagraph b) of article 70.

Article 72. In order to organize subsidiary companies or directly carry out the activities specified in subparagraph b) of article 70, the bank shall meet the following requirements:

- i) Comply with the minimum percentages referred to in article 66;
- ii) Not to be rated in the last two categories in the processes of general applicability established by the Superintendency. To this effect the rules contained in articles 59 et seq. shall apply.
- iii) That it is enclosed, at least, an economic-financial study of feasibility in which consideration is given to the market, the characteristics of the entity, the projected activity and the conditions in which same shall be developed according to several contingency scenarios. The Superintendency shall analyze the study of feasibility and shall have the right to express its objections concerning gross inconsistencies or flagrant errors that, in its opinion, may exist.

The bank may hold a minority participation in a company that has as its purpose any of those indicated in the preceding articles, unless the Superintendency denies the authorization by means of a resolution founded in the fact that the other partners or shareholders do not comply with the conditions imposed in article 28.

Article 73. The Superintendency shall have a term of ninety days to issue a pronouncement with respect to the organization of the companies to which the preceding articles refer, or the direct performance of activities, to be counted from the date of the filing of the application. If the Superintendency shall require additional information, the said term shall be extended to 120 days. In order to reject the application, the Superintendency shall issue a resolution grounded in the fact that the requirements established by the laws have not been met. In the case of entities rated in the category III, according to the provisions in articles 59 et seq., the resolution may also be grounded in the fact that there exist deficiencies in its management that do not qualify it to engage in the new activity.

Should the applicant bank be in the category I of management and solvency, according to the provisions in articles 59 et seq., the application for authorization shall be deemed approved if the Superintendency does not expressly reject it within the 60 days subsequent to the date of its filing, by means of a resolution founded in the fact that the legal requirements have not been met. Should the Superintendency fail to issue the denegatory resolution within the legal term, the applicant institution may request that the said fact be certified and the certificate shall produce the effect of authorization.

## **PARAGRAPH 2. BANKING ACTIVITIES SUPPORT COMPANIES**

Article 74. The banks may, also, with the prior authorization of the Superintendency, and complying with the requirements of general applicability that, for such specific purpose the Superintendency may establish by means of rules of general applicability, be shareholders or have a participation in a company whose only corporate purpose is any of the following:

- a) Provide services destined to facilitate the compliance with the purposes of the financial entities.
- b) That through it the financial institutions are capable of carrying out certain operations of the banking business with the public, with the exception of receiving money.

Once a bank has been granted the authorization to organize a company for a certain purpose, the same authorization may not be denied to other banks.

Article 75. The Superintendency shall be in charge of the exclusive supervision of the companies referred to in subparagraph b) of article 70, and in article 74, even for the purposes of the registration of the securities they may issue, and shall have authority to issue the rules of general applicability to which their operations shall conform, according to the business activities they may then be engaged in.

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## TITLE X

### **BUSINESS ABROAD**

Article 76. The banks shall be entitled to open branches or representative offices abroad, effect investments in shares of banks established abroad or in shares of companies organized there which have any of the purposes authorized in articles 70 et seq., and article 74. The opening of branches or representative offices shall require the authorization of the Superintendency and the other investments referred to shall require, in addition, that of the Central Bank of Chile.

Article 77. In order to obtain the authorization from the Superintendency, the bank shall meet the following requirements:

- (a) Comply with the minimum percentages referred to in article 66.
- (b) Not to be rated in the last two categories in the rating processes of general applicability set forth by the Superintendency. To this effect, the rules contained in articles 59 et seq. shall apply. In the case of institutions rated in Category III, the Superintendency shall be entitled to deny the application, upon the grounds that there exist deficiencies in its management that do not allow it to undertake the new activity.
- (c) That at least an economic-financial study of feasibility is attached in which the economic situation of the country where the investment is to be effected, the characteristics of the financial market in which the entity is to be established, the proposed activities and the conditions upon which it shall conduct its activities considering several contingency scenarios are discussed. The Superintendency shall analyze the study of feasibility and may express its apprehension with regard to material inconsistencies or flagrant errors which, in its opinion, may exist.
- (d) That the country where the investment is to be made or the office is to be open offers conditions of supervision that permit to evaluate the risk of its operations. If a bank is authorized to open an office or effect an investment in a certain country, the authorization may not be denied to another bank, unless the situation of that country has materially changed.
- (e) That, if in the enterprise participate partners who hold a percentage equal or higher than 10 % of its capital, the requirements established in article 28 be complied with.

Article 78. The Superintendency, by means of a rule of general applicability, shall determine the documents that must be filed with it in order to evidence the compliance with the requirements indicated in the previous article. Any supplementary information that the Superintendency may consider necessary shall be requested within the term of 45 days. The final resolution shall be adopted within the period of 90 days counted from the date in which the application is filed. The Superintendency shall communicate in a confidential manner to the financial institution the grounds for the resolution in the event this is adverse.

The banks may elect to follow the authorization procedure set forth under the subsequent paragraphs when, in addition to the requirements indicated above, they also meet all the requirements indicated below:

- (i) That the bank exceeds in 25 % the minimum percentage of effective net worth to assets

weighted by risk which article 66 refers to.

(ii) That the bank is rated in the first category in the classification processes of general applicability set forth by the Superintendency. To this effect, the rules contained in articles 59 et seq. shall apply.

(iii) That the relevant investment refers to the opening of a branch or the acquisition of shares of a foreign enterprise representing the majority of its stock capital. Should the participation be equal or less than fifty per cent, the Superintendency shall consult with the entity in charge of the supervision in the respective country with respect to the information to which the fourth paragraph of article 28 refers with regard to the shareholders who are not residents in Chile and the senior officers of the company.

(iv) That the country where the investment is to be made or the office is to be open has risk conditions rated in first category, in accordance with methodologies and publications of international rating firms appearing in a list registered with the Superintendency, or there exists an agreement entered into with the entity in charge of the supervision of the relevant country.

In the case referred to in the previous paragraph, the terms indicated in the paragraph preceding that one shall be reduced to half, and the resolution denying the authorization shall be grounded, and be appealable in accordance with the provisions in the second paragraph of article 22.

Article 79. If the Superintendency fails to issue a resolution denying the application referred to in the preceding articles within the relevant period, the applicant institution shall be entitled to request such fact be certified, and the certificate that must be issued shall produce the same effect as the authorization.

Article 80. The Chilean bank, and the companies in which it participates, shall be subject to the following rules:

(1) The bank organized in Chile may only invest up to 40 % of its effective net worth in banks or companies established in the same country.

(2) In the case of a bank, the aggregate of deposits, loans and other obligations that the Chilean banks holding shares maintain in it, either directly or through third parties, may not exceed 25 % of the effective net worth of the foreign bank. The Chilean bank may only effect transactions which amount to the granting of a security or other guarantees to obligations of the banks or companies in which it participates abroad, in the cases and in the manner as may be established by the rules issued with respect to this matter by the Central Bank of Chile or the Superintendency, in the exercise of their respective authorities.

(3) It shall be the obligation of the Chilean bank to furnish information to the Superintendency with regard to the foreign bank or company in which it participates, whether periodically or in such opportunities as the said organism may require it. The foregoing is without prejudice to the obligation established in articles 9 and 10 of Law No. 18,045.

(4) The Chilean bank shall be obligated to obtain the necessary assurances in order for the credits or guarantees granted by the institutions in which it participates abroad to related debtors, whether directly or through third parties, with the ownership or the management of

the participant bank, are maintained within the limits established in this statute for the Chilean banks. It shall also have its obligation to obtain such assurances in order for the credits to persons with domicile or residence in Chile to be maintained within the limits established in article 84, No. 1 and the provisions in article 85.

The branches of Chilean banks abroad shall be subject, in addition, to the provisions in article 81.

Without prejudice to the penalties established in article 19, or those that may result applicable by virtue of article 81, the non-compliance with any of the provisions mentioned above by the Chilean bank, or by the bank, branch or company established or in which it participates abroad, that places a risk to the stability of the main office, shall entitle the Superintendent to force the Chilean bank, by means of a grounded resolution, to dispose of all the shares it may hold in the foreign bank or company, or to close or dispose of the branch or office in which the infraction has been committed, within the period it may determine, which may not be less than ninety days.

Article 81. The branches or representative offices that the banks organized in Chile may open abroad in accordance with the provisions in articles 76 et seq., shall be subject to the supervision of the Superintendency. The bank that resolves to close a branch or representative office abroad, shall provide the Superintendency with at least a 90-day prior notice to the proposed date for the closing. The Superintendency shall be entitled to request from the bank the filing of a plan for the closing of the branch abroad which takes due care of the interests of its customers.

The branches abroad shall be subject to the following provisions:

(1) For the purposes of the margins the Chilean law or the laws of the country where the branch operates may establish, each branch shall be assigned a capital which shall be deducted from the basic capital of its main office in Chile. This assignment of capital shall be included within the limit of investment set forth in article 80, No. 1. The Superintendency may, by means of rules of general applicability, establish the consolidation of the margins of credit of the banks with their branches abroad.

(2) It shall be applicable to them the provisions in articles 66, 69 No. 11, 80 No. 4, 84 No. 5 and 6, and 155.

(3) They shall be entitled to grant credit to persons with domicile or residence in Chile, provided they conform to the limits established in article 84 No. 1, 2 and 4, and subject to the provisions in article 85. However, these provisions shall not apply to loans to its main office.

(4) For the purposes of the transactions between a branch abroad and its main office, both shall be considered as independent entities. Consequently, the obligations imposed by this law to the State of Chile and to the Central Bank of Chile in its Title XV shall never be applicable to these branches.

Article 82. The Superintendency shall exercise the supervision of the banks or companies which the Chilean banks may establish abroad, provided that, in accordance with article 86 of the Stock Companies Act, such banks or companies have the character of subsidiaries of the Chilean bank. In order to establish the circumstances that shall determine the character

of affiliate, all the Chilean banks or their subsidiaries participating in one institution shall be considered as a single entity.

The supervision of the banks or companies to which the previous paragraph refers shall be exercised in accordance with the agreements that may have been entered into with the entity in charge of the supervision in the country where they are established. These agreements may authorize the entities in charge of the supervision to share, under a basis of reciprocity, confidential information of the companies operating in both countries and that are related by reason of being one the controller of the other. The agreements shall stipulate that the confidential information provided to the foreign entities in charge of the supervision shall remain under the same confidentiality as established by the Chilean law. In no event shall the Superintendency provide information subject to secrecy in accordance with the first paragraph of article 154.

Article 83. The Superintendency shall have authority to issue rules of general applicability, establishing equity requirements and allowances, on types of transactions, guarantees, subjects of credit, global limits and margins of diversification by country for the credit transactions they may conduct, from Chile toward a foreign country, the entities subject to its supervision. The Superintendency, in the exercise of its authority, shall also establish the methodology with respect to allowances for risks.

Without prejudice to the general authority it may have, the Superintendency shall have the power to supervise such transactions for the purpose of ensuring the solvency and stability of those entities.

To adopt or alter such rules, the Superintendency shall require to obtain a prior favorable opinion from the Central Bank of Chile.

## TITLE XI

**CREDIT LIMITS**

Article 84. Every bank shall be subject to the following limitations:

(1) It shall not grant loans, directly or indirectly, to a same person, whether a legal entity or an individual, for an amount exceeding **10 %** of its effective net worth. It shall be increased up to 15 %, if the excess corresponds to loans, whether in local or foreign currency, granted for the purpose of financing state public works carried out through the method of concession contemplated in Decree with Force of Law No. 164, of the *Ministerio de Obras Públicas*, provided they are guaranteed with a special pledge of concession of public works established in the said statute, or that in the relevant transaction participate two or more banks or financial companies which have entered into a credit agreement with the constructor or concessionaire of the project. The minimum capital, warranties and other requirements that shall be required from the construction company in order to effect these transactions, in this latter case, shall be determined by means of regulations issued jointly by the *Ministerio de Hacienda* and the *Ministerio de Obras Públicas*.

It shall be entitled, however, to grant such loans up to 30 % of its effective net worth, if the excess over 10 % corresponds to loans guaranteed with liens on tangible real or personal properties with a value equal or higher than such excess. Notwithstanding, there shall also be considered the guarantees constituted by pledge on bills of exchange, promissory notes or other documents that meet the following requirements:

- (a) That evidence loans corresponding to the price payable in installments for goods that are being exported, and
- (b) That have been issued or accepted by a bank or financial institution, whether local or foreign, and, in any event, that represent for them an unconditional payment obligation.

It shall also be admitted as guarantee:

- (a) The documents issued by the Central Bank of Chile or by the State or its agencies, with exclusion of its enterprises;
- (b) The financial instruments of public offer issued in series which are rated in one of the two lowest categories of risk by two of the rating firms indicated in Title XIV of Law No. 18,045;
- (c) The bills of lading, provided the bank is authorized to freely dispose of the goods that are being imported, and
- (d) The letters of credit issued by foreign banks which are rated in the highest category by an international rating firm which appears in the list referred to in article 78. The said letters of credit must be irrevocable and payable upon demand.

In the case of loans in foreign currency for export operations, the limit with guarantee may reach up to 30 % of the bank's effective net worth.

The Superintendent shall set forth the rules regarding the valorization of the guarantees for the purposes of this article.

The loans granted by a bank to other financial institution regulated by this statute, may not exceed 30 % of the effective net worth of the creditor bank.

Should a bank grant loans in excess of the limits set forth in this paragraph, it shall incur in a fine equivalent to 10 % of the amount of such excess.

(2) It shall not grant loans to persons, either individuals or legal entities that are related directly or indirectly to the ownership or the administration of the bank, under terms and conditions that are more favorable with respect to the period, interest rates or guarantees, than those granted to third parties in similar transactions. The aggregate amount of such credits granted to the same group of persons so related, may not exceed 5% of its effective net worth. The limit will be increased up to 25% of its effective net worth, if the exceed over the 5% corresponds to loans covered by guarantees according to the above paragraph. In no event, the aggregate amount of those loans granted by a bank may exceed the amount of its effective net worth.

It shall correspond to the Superintendency to determine, by means of rules of general applicability, the legal entities or individuals that shall be considered related to the ownership or the administration of the bank.

In the same manner, the Superintendency shall issue rules to establish whether certain legal entities or individuals form the same group of related persons, considering especially for such purpose whether there exists among them one or more of the following circumstances:

- (a) A relationship concerning business, capital or administration which permits one or more of them exert a material and permanent influence in the decisions of the others;
- (b) Grounded assumptions that the loans granted to one of them shall be used for the benefit of other, and
- (c) Grounded assumptions that different persons maintain a relationship of such a nature that in fact they conform only one unit of economic interests.

The fact that a company organized abroad, among whose partners or shareholders appear other companies or whose shares are in bearer form, is the debtor of a bank, shall make to presume that it is related for the purposes of this paragraph.

An individual shall not be considered related for the mere fact of possessing up to 1 % of the shares of the bank, or if only maintains a debt obligation not in excess of 3,000 *Unidades de Fomento*<sup>4</sup>.

The financial statements of the banking institutions shall indicate in separate entries the aggregate amount of the related loans referred to in this provision.

Any infraction to the provisions in this paragraph shall be punished with a fine of 20 % of the amount of the credit granted.

(3) It shall not grant, directly or indirectly, loans of any nature whatsoever for the purpose of enabling some person to pay the bank for shares of its own issue. If it infringes this provision, it shall pay a fine equal to the amount of the loan.

(4) The aggregate amount of the loans a bank may grant to its workers may not exceed 1.5 % of the effective net worth of the company, or 10 % of such limit to any one individual.

Notwithstanding, the banks may grant to their workers, without being subject to the limit established in the previous paragraph, loans with a mortgage guarantee for the purposes of acquiring a housing unit for personal dwelling use. This right may be exercised only once

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<sup>4</sup> Translation note: Unidad de fomento (UF) is an indexed unit of account

with respect to the same individual while the labor relationship exists.

In no event shall a banking enterprise grant, directly or indirectly, loans to a director, or to any persons performing duties as its general representative. Nor shall it grant loans to the spouse or minor children under the custody of such persons or the companies to which any of them is a party or in which holds a participation. For the application of this provision, the Superintendency shall be entitled to establish, by means of rules of general applicability, that the companies in which such persons have a participation which does not exceed a certain percentage are excluded from this limitation..

The persons who start performing duties for a bank may not take office until they adjust their credit obligations with such bank to the rules in this provision.

The bank that infringes the rules in this subparagraph or allows its violation shall pay a fine equal to the value of the loan, or of the excess, as the case may be.

(5) It may not acquire properties other than those expressly authorized under this statute.

This limitation shall not apply:

(a) When it receives properties in payment for overdue debts and provided the value of these properties does not exceed 20 % of its effective net worth. If a person related to the ownership or the administration of the bank transfers properties in payment, the bank shall previously secure the authorization of the Superintendency.

(b) When they are acquired in public auction in payment of overdue debts which had been previously contracted.

In such cases, the bank shall be obligated to dispose of the properties within the period of one year, counted from the date of acquisition. In the case of shares, these shall have to be sold in a secondary formal stock market within the maximum period of six months, counted from their acquisition. However, the Superintendency may authorize that the disposition of the shares be effected in public auction.

Notwithstanding, the Superintendency, by means of rules of general applicability, shall be entitled to establish that, in qualified cases, the bank may have an additional period of up to eighteen months for the disposal of the properties. It shall be a requirement, in order to enjoy the extension, to have written off the value of the properties from the books of accounts.

The infraction of the prohibition established in this paragraph shall be punished with a fine equal to the value of the properties acquired. To the bank that does not dispose of such properties within the period and in the manner it may correspond, a fine equivalent to 10 % of the acquisition value, adjusted in accordance with the rules established by the Superintendency, shall be imposed for each calendar month they are maintained.

(6) It shall not assume liability for third party obligations, except in those cases expressly set forth in this statute, or in the rules regarding intermediation of documents.

It shall not create mortgage or pledge rights on its tangible properties, with the exception of those that may acquire for a price to be paid in installments and, in such case, only to guarantee the payment of the price balance. This prohibition shall not apply to gold, whether in coins or bullion.

The infraction of the provision in this paragraph shall render the act null and void, without

prejudice to the provisions of general applicability regarding monetary sanctions.

The bank that is punished with a fine in accordance with this article shall have to conform to the corresponding margin within a period not to exceed from ninety days, counted from the date in which the notice of the violation is effected. Should it fail to do so, it may become eligible for any of the sanctions indicated in article 19.

Article 85. In order to determine the limit to which the loans to the same person may reach in accordance with the provisions in article 84, No. 1 and 4, the following rules shall apply:

a) There shall be considered obligations of a single debtor, those contracted by general or silent partnerships in which the debtor is a jointly and severally liable partner, or by the corporations of any nature wherein the debtor holds more than 50 % of the capital or is entitled to more than 50 % of the profits;

b) If the participation in a corporation is higher than 2 % and does not exceed 50 % of the capital or profits, the inclusion shall be effected proportionate to that participation. The Superintendency, by means of rules of general applicability, may exclude from this obligation the companies in which, due to the large number of partners or shareholders, or other factors, may be presumed that they do not have a significant influence in their decisions;

c) In the case of plurality of debtors of the same obligation, this shall be considered to be a joint and several obligations with respect to each one of the debtors; unless it expressly appears that it only has the character of simply joint obligation.

## TITLE XII

### FIDUCIARY BUSINESS

Article 86. The banks shall be entitled to carry out the following fiduciary business:

1) Accept general or special powers of attorney for the administration of third party's properties.

2) Be depositories, custodians or supervisors with respect to any type of business or affairs.

3) Be liquidators of commercial companies or any type or any kind of business.

4) Be joint general testamentary guardians, joint guardians, special guardians and property guardians. In their capacity as joint guardians, they may be entrusted with the administration of the whole of any part of the pupil's property.

The appointment as a tutor may also fall into a bank, in the cases of articles 351, 352, 360, 361, 464 and 470 of the Civil Code.

The guardianship and curatorship served by a bank shall only extend to the administration of the pupil's property, with the personal care of the pupil being mandatory placed upon a different guardian or legal representative.

The disagreements that may occur between the several guardians shall be decided upon by the ordinary courts according the summary proceeding.

The provision in article 412 of the Civil Code shall apply to the directors and employees of the guardian or curator bank.

5) Be executor, with or without the holding of possession of property, and administrators of undivided properties.

6) Be assignees under a modality when the modality has been established for the benefit a third parties. In such cases it shall be understood that the assignment under a modality always include a condition subsequent clause.

The minimum compensation indicated in article 1094 of the Civil Code shall not apply to the banks.

7) Be administrators of the properties that may have been donated or that have been left under the title of inheritance of bequest to capable or incapable persons, subject to the condition that they are administered by a bank.

The properties that constitute the statutory inheritance portion during the incapacity of the forced heir may be subject to this same type of administration.

The powers of the bank with respect to those properties shall be those of a joint curator whenever the deed of gift or the will has not established otherwise.

8) Be administrators of properties given in trust, whenever it has been so indicated in the deed of trust. Neither the fiduciary owner nor the trustee, or both acting jointly, shall have the power to divest the bank from the administration.

Should the rights, obligations and responsibility of the bank not be determined, the bank shall have the rights, obligations and responsibility of curator of property.

9) Be administrators of properties encumbered with the right of enjoyment, when so has been established in the deed creating such right. The rights and obligations of the bank shall be those indicated by the person creating the said right and, failing to state so, those conferred upon the trustee in article 777 of the Civil Code when the beneficiary does not post a bond.

Neither the beneficiary nor the trustee, or both acting jointly, shall have the power to divest the bank from the administration.

10) Perform the duties as representative of the bond holders.

The banks shall have the right to excuse from accepting the duties entrusted upon them and renounce them without the expression of cause, even with respect to those indicated in paragraph 4, but shall be obligated to adopt all the urgent conservative measures that may be necessary.

Article 87. In the exercise of the powers conferred upon the banks according to the preceding article, these shall have to conform to the general rules of law, to the extent they have not been modified by the provisions in this statute, but shall not be obligated to post a bond or act under oath in those cases in which it may be required by the laws.

Article 88. Neither the custody deposits received by the banks, nor the special powers of attorney which may have as their purpose the provision of those services, or to buy or sell shares, bonds and other securities, receive dividends or interest and represent the owner of the shares, bonds and securities to which they refer, or those whose objective is the collection of loans or documents, shall be considered to be fiduciary operations.

Article 89. The moneys involved in the fiduciary operations or that originate from there, shall be invested in accordance with the instructions received.

In the absence of instructions, they may only be invested in documents issued by the Central Bank of Chile or the Treasury of the Republic, or in financial instruments of public offer rated in the category A by the Risk Rating Commission established by Decree Law No. 3,500, of 1980.

The bank may only maintain such moneys without being invested for the period necessary for their channeling to the corresponding destination, and after the lapse of this period, they shall pay interest at the maximum conventional rate current for non-adjustable transactions.

Article 90. In the event of bankruptcy or liquidation of a bank, the Superintendent or the liquidator, with authorization of the Superintendent, shall have authority to entrust to other banking institution the attention of the fiduciary duties vested on the enterprise adjudged in bankruptcy or in liquidation.

The same shall apply if a banking enterprise, due to motives qualified by the Superintendent, were prevented or unable to continue conducting fiduciary operations.

Likewise, the Superintendent may entrust to a bank certain fiduciary operations that have not been accepted or renounced by other bank, if a substitute trustee has not been designated by the trustor.

In such event, a bank that meets the legal requirements and preferentially one in the same locality shall be designated. The resolution issued by the Superintendent shall constitute sufficient title in order for the banking enterprise being designated to act with the same authority of the previous one, since the moment in which it is transcribed into a public deed.

## TITLE XIII

### OPERATIONS WITH MORTGAGE FUNDING NOTES

Article 91. *Banco del Estado* and the other banks may grant loans, either in local or foreign currency, by means of the issuance of mortgage funding notes for an amount equal to such loans and whose repayment shall be effected through installments paid in advance

The mortgage funding notes shall be expressed in local currency, in adjustable units or any other adjustable system that may be authorized by the Central Bank of Chile, or in foreign currency. In any event, those expressed in foreign currency shall be payable in local currency.

In order to grant these type of loans, the banks shall be entitled to perform the following operations:

- 1) Issue funding notes that correspond to loans secured by mortgage.
- 2) Collect the installments payable by the debtors on loans secured by mortgages and paid the interest and amortization to the holders of the mortgage funding notes.
- 3) Amortize in a direct or indirect manner the mortgage funding notes they have issued. The indirect amortization may be by purchase, redemption or lottery at nominal value.
- 4) Purchase and sell mortgage funding notes either for their own or third parties' account.

These loans may neither be granted with a to the order clause nor be assigned in accordance with the provisions in article 69, subparagraph 7).

Article 92. It shall be the duty of the Central Bank:

- 1) To establish the rules regarding mortgage secured loans through the issuance of mortgage funding notes.
- 2) Establish the limits to the banks for the acquisition of mortgage funding notes for their own account.
- 3) Establish rules regarding the redemption of mortgage funding notes when the guarantee is not timely constituted or when the debtors are at default and the guarantee has materially devaluated.

Article 93. The proceeds of the loans through mortgage funding notes which are granted for building purposes or for the construction of works destined to the improved agricultural or industrial exploitation of the real property shall be delivered through successive installments, to the extent of the works progress, and the basis for the operation shall be constituted by the value of the land and the cost of the works and of the improvements of a permanent nature affixed to it.

Article 94. The mortgage funding notes shall be issued forming series. There shall belong to a series those that accrue the same interest, have equal amortization and have been issued in identical currency.

The mortgage funding notes issued by the banks may be adjustable or not, and may be issued in registered or to the bearer form. If they are issued in registered form, their transfer shall be effected by means of the transfer of the certificate of title, executed by the assignor

and the assignee, registered in a special register that the bank shall maintain for this purpose. The type and division of the notes shall be determined by the issuing institution.

Article 95. The persons that shall contract loans through mortgage funding notes shall undertake to repay them in the installments paid in advance determined in the contract, which shall be inclusive of amortization, interest and a management fee.

The payment default of the whole or any portion of an obligation in mortgage funding notes shall confer the lending bank the right to charge the debtor the maximum interest rate the law permits to stipulate at the time of actual payment.

Article 96. The banks shall not issue mortgage funding notes but in the amount represented by the respective mortgage obligations constituted in their favor.

The mortgage funding notes issued shall be recorded in a register to be maintained by each issuing institution, conforming to that effect to the rules to be enacted by the Superintendency. This organism shall be entitled to take under its control, at any time, the procedure of registration upon verifying deficiencies or irregularities thereat on the part of any issuing institution, all that without prejudice to the penalties that may correspond in accordance with the general rules. From the resolution of the Superintendency an appeal may be filed in the manner and within the period indicated in article 22.

Article 97. The bank shall pay the amount of principal and the interest agreed upon on their stated maturity dates. In the case of mortgage funding notes of indirect amortization, the payment of interest shall be effected on the stated maturity dates, and the amortization shall be effected by purchase, redemption or lottery at nominal value, as it may deem it convenient, of mortgage funding notes for a nominal value equivalent to the sinking fund corresponding to the respective period.

In the event of a lottery, the mortgage funding notes that must be amortized in each period shall be determined by casting lots in the preceding period.

Every lottery or incineration of mortgage funding notes shall be effected before a notary public.

In the case of mortgage funding notes drawn by lot, the banks shall not refuse payment of the principal thereof, or the adjustment or interest, nor shall the opposition of a third party be admitted for its payment, unless, in the case of mortgage funding notes issued in a registered form, the latter alleges the lost of the same mortgage funding note, the collection of whose amortization or interest is being sought.

Every mortgage funding note drawn by lot ceases to be subject to adjustment and accrue interest since the day scheduled for its amortization.

Article 98. The amortization of the mortgage funding notes may be effected in an ordinary manner, either directly or indirectly, or in an extraordinary manner.

By direct ordinary amortization shall be understood that in which periodically the issuer pays part of the principal and of the interest agreed upon, whose values are expressed in the respective coupon.

The indirect ordinary amortization is that effected by means of the purchase or redemption of mortgage funding notes or through a lottery at nominal value, up to a nominal value

equivalent to the sinking fund corresponding to the relevant period.

The extraordinary amortization consists in the application that the issuing bank must make of the early payment in cash that the debtor has effected with respect to the whole or part of his debt, withdrawing from the market by purchase, redemption or lottery at nominal value, mortgage funding notes for an equivalent value. The extraordinary amortization also takes place when the debtor makes an early payment of the whole or any part of his debt by means of the delivery of mortgage funding notes. These notes shall be received at the value stated in the title, after deduction of the partial amortization thereof, or, in the case of mortgage funding notes whose coupons include only the payment of interest, at their nominal value.

Article 99. The loans in mortgage funding notes shall be secured by first degree mortgage rights, which mortgage rights shall not be extended to secure other obligations with the bank.

However, mortgage rights constituted on real estates already encumbered shall be admitted, provided that, after being deducted the previous debt, including adjustment and interest, from its value, there is still enough margin in order not to exceed the limits established by the Central Bank of Chile.

Article 100. The debtor of loans in mortgage funding notes may extraordinarily repay the whole or any part of the outstanding principal of his debt, either in cash or mortgage funding notes of the same series of that of the loan and whose non-amortized nominal value corresponds to the whole or the portion of the loan being paid.

In these cases, in order to be definitely released from all obligations to the bank for the principal or the portion of the principal being repaid, the debtor shall be obligated to pay the interest and management fee corresponding to a period of amortization of the mortgage funding notes of his loan for all the amount for which an early payment has been made.

Article 101. The total or partial extraordinary payment made voluntarily by the debtor may be effected at any time, with the exception of the months in which the lotteries must be conducted.

Article 102. If the mortgaged property shall experience detriment or suffers damage in such a manner that it does not offer sufficient guarantee for the security of the loan, the bank shall have the right to request its repayment. When the losses or detriments affecting the property may not be attributed to the negligence of the debtor, the bank shall demand a new guarantee or an increased guarantee for its loan.

Article 103. When the debtors shall have not satisfied the payment of the installments within the stipulated period, and having such payment been demanded through the courts, they have not paid them within the period of ten days, the judge shall order, upon the bank's petition, the sale of the mortgaged property in public auction, or its surrender in "praetorian pledge" to the creditor bank, in order for the latter to apply to the payment of the amount owed the benefits the property may yield.

The debtor shall have the right to oppose, within the period of five days, to the sale in

public auction or its surrender in “praetorian pledge”. The opposition shall only be admitted when grounded in any of the following objections:

- 1) Payment of the debt;
- 2) Prescription;
- 3) Non-applicability of the action to the defendant.

By virtue of this last objection it shall not possible to argue the existence of the obligation, and, in order for it to be admitted, it shall have to be grounded in a written evidence and to appear based upon a credible foundation. Should these requirements not be present, the court shall forthwith dismiss it.

The opposition shall be handled in accordance with the procedure established for the incidents.

The appeals of the resolutions pronounced against the defendant in these proceedings shall not interrupt the progress of the lawsuit. The higher court shall be entitled to decree, at the request of the party, the suspension of the enforcement of the judgment pronounced by the court of first instance while the appeal is pending if there exist grounded reason for doing so, which resolution shall be adopted without any formalities.

If an opposition is not filed or, upon dismissal of the opposition filed, the mortgaged property shall be sold in public auction or surrendered in “praetorian pledge” to the bank , as the case may be.

Article 104. Upon surrender of the property in “praetorian pledge” to the bank, the bank shall receive all rents, income or fruit yielded by the property, irrespective of the person upon whom the possession thereof may be vested, and after payment of the real property taxes, administration expenses and senior liens, shall apply them to the payment of the amounts owed, keeping an account to reimburse the balance to the debtor, should there be any. At any time in which the debtor makes payment of the amounts owed to the bank, the real property shall be restored to him.

Once the public auction has been decreed, same shall be communicated by means of notices published for four times in different days and with a lapse of twenty days, at least, between the first notice and the day of the auction, in a newspaper of the department in which the proceedings are conducted and, should there not be any, in a newspaper of the capital of the corresponding province. The notices may be published both in business days as well as in non-business days.

In the day the public auction takes place, the property shall be awarded to the bidder submitting the higher offer. The bank shall make payment of its loan from the proceeds of the auction.

The minimum and other conditions for the public auction shall be established by the judge without any right of appeal, at the bank’s proposal; but the minimum of the first auction may not be less than the principal owed, overdue installments, default interest, legal expenses and insurance premiums that may burden the debt. The legal expenses shall be determined by the judge.

Whenever a new auction becomes necessary, the number of notices and the period to lapse between the first publication and the date of the auction shall be reduced by half.

Article 105. If, in addition to the bank, other creditors shall have mortgage rights on the same real property, the resolution surrendering to the bank in “praetorian pledge” the real property, or the one ordering the sale in public auction, shall be notified to them. Should those mortgage creditors have a right senior to that of the bank, they shall enjoy their preferred right to receive payment from whatever the real property yields in the event of surrender in “praetorian pledge”, and without prejudice thereof, or from the proceeds of the sale of the property, in the event of a sale in public auction.

The creditors shall be notified personally with respect to the first auction and thereafter by means of a notice sent by mail to the same place where the first notice to them was effected, unless they have designated in the proceedings a special domicile.

The credits of the State and the Municipalities shall enjoy the preference conferred in articles 2,472 and 2,478 of the Civil Code with respect to the bank’s loans only when they originate from taxes directly affecting the mortgaged property, and that have as their basis the assessed value of the real property, and of credits in favor of paving services, in accordance with the respective laws.

Article 106. The successful bidders of real properties in proceedings regulated by the procedure set forth in this statute shall not be obligated to maintain the leases to which they may be affected, unless these have been executed by means of a public deed registered in the respective Registrar of Real Properties prior to the creation of mortgage rights in favor of the bank or authorized by the latter.

The provisions in subparagraphs 3 and 4 of article 1,464 of the Civil Code shall not apply in the cases of the transfers of properties effected in these proceedings, and the judge shall forthwith order the cancellation of the interdictions and prohibitions affecting the transferred property, even if ordered by other courts.

In these cases, the balances resulting after the bank and the other mortgage creditors have been paid, shall remain deposited to the order of the judge before whom the action is being tried, to secure the interdictions and prohibitions decreed by other courts and which would have been canceled by virtue of the provision in the preceding paragraph.

Article 107. The procedure indicated in this statute shall apply both in the case of a lawsuit for collection against the bank’s direct debtor as well as in the cases contemplated in articles 1,377 of the Civil Code and 758 of the Code of Civil Procedure.

Article 108. Once the legal action has been instituted, the bank shall appoint a depository with the character of definitive in order for him to assume, in accordance with the general rules, the possession of the mortgaged property.

Article 109. With the exception of the case provided for in article 103, the litigation that may be originated between the bank and its debtors, irrespective of the amount, shall be tried briefly and summarily by the Civil Ordinary Court corresponding to the bank’s domicile, with the right of appeal before the respective Court of Appeals, which court shall proceed in the same manner. The appeals filed by the defendant shall not interrupt the progress of the proceedings.

In the actions instituted by the bank against its debtors, the allegations of ownership

presented by third parties which are not based upon current titles registered prior to the creation of the respective mortgage rights shall not be admitted.

Article 110. Anyone who shall forge mortgage funding notes, circulate or maliciously introduce the forged mortgage funding notes, shall be punished with the penalties assigned for the counterfeiting of bills of legal tender.

Article 111. The mortgage guaranteed obligations referred to in this Title shall be deemed determined provided a reference is made in the respective public deed to the debt repayment schedule approved by the Superintendency and transcribed into the register of a notary public.

***Title XIV and all references in this Law to “Financial Institutions” were deleted by Law 20.190, October 3<sup>rd</sup>, 2007.***

## TITLE XV

**MEASURES TO REGULARIZE THE SITUATION OF BANKS AND THEIR FORCED LIQUIDATION**

## PARAGRAPH 1. PREVENTIVE CAPITALIZATION

Article 118. Whenever shall in a bank occur facts that affect its financial situation, and its board of directors has not remedied such situation within the period of 30 days counted from the date of filing of the relevant financial statement, its administration shall proceed in the manner provided for in this article.

The board of directors shall convene, within the fifth business day counted from the expiration of the period indicated in the previous paragraph, the enterprise's shareholders meeting, which shall be held within the thirty business days following the date of the call, in order to resolve upon the capital increase as may be necessary for its normal functioning. The call shall indicate the term, manner, conditions and modalities under which the shares shall be issued and the indicated increase shall be contributed, and shall have to have the prior approval of the Superintendency. The rejection of the conditions contained in the call shall be evidenced in a grounded resolution.

If the shareholders meeting rejects the capital increase in the proposed manner or, upon approval of the capital increase, same is not contributed within the period provided for, or if the Superintendency does not approve the conditions of the call as proposed by the board of directors, the bank shall be prevented from increasing the global amount of its loans as are shown in the financial statement referred to in the first paragraph of this article, or from effecting investments, irrespective of their nature, except in instruments issued by the Central Bank of Chile.

It shall be presumed, in any event, that in a bank have occurred facts that make fear for its financial situation when:

- a) The basic capital, after the deduction of the losses accumulated during the fiscal year that are shown in a financial statement, is less than 3 % of the total assets net of mandatory allowances.
- b) The effective net worth, after the deduction of the losses accumulated during the fiscal year that are shown in a financial statement, is less than 8 % of the total assets net of mandatory allowances and weighted by risk.
- c) By reason of losses accumulated during the fiscal year, which are shown in two consecutive financial statements, flows that, should their proportional increase be maintained in the subsequent six months, the bank would be in one of the situations provided for in the preceding subparagraphs a) or b).

Article 119. The bank that obtains authorization to open a branch or an subsidiary, or to invest in enterprises pursuant to the provisions in article 78, paragraph 2, shall maintain, during the period of one year counted from the date in which the authorization becomes effective, the percentage of shareholders' equity with respect to assets by risk referred to in the same provision, or to reestablish the said percentage, applying the provision in article 118.

## PARAGRAPH 2. INSOLVENCY AND ARRANGEMENT PROPOSALS

Article 120. The banks may only be adjudged in bankruptcy when they are in voluntary liquidation.

Article 121. If a bank ceases in the payment of an obligation, the manager shall immediately provide notice thereof to the Superintendent, who shall determine if the solvency of the institution subsist and, should the contrary be the case, adopt the measures that must be applied according to the laws. The foregoing is without prejudice to the right of the affected creditor to resort to the Superintendency for such purpose.

Article 122. The board of directors of a bank that presents solvency problems that jeopardize the timely payment of its obligations, shall submit arrangement proposals to its creditors within the period of ten days counted from the date in which the lack of solvency has become apparent. The arrangement shall not affect the rights of creditors enjoying preference or the holders of deposits or other sight obligations referred to in article 65.

It shall be presumed, in any event, that a bank presents solvency problems that jeopardize the timely payment of its obligations when:

a) The basic capital, after the deduction of the losses accumulated during the fiscal year that are shown in a financial statement, is less than 2 % of the total assets net of mandatory allowances.

b) The actual shareholders' equity, after the deduction of the losses accumulated during the fiscal year that are shown in a financial statement, is less to 5 % of the total assets net of mandatory provisions and weighted by risk.

The determination of the assets that shall be considered for the purposes of subparagraphs a) and b) above, shall be made in accordance with the provisions in article 67.

c) The bank maintains with the Central Bank overdue emergency loans and, at the time of requesting their renewal, the latter denies it, provided that the report of the Superintendency has also been negative, by grounded reasons.

Article 123. The arrangement proposals may include the following matters:

- a) The full or partial capitalization of the loans;
- b) The extension of terms;
- c) The remission of a portion of the debts, and
- d) Any other licit matter related to the payment of debts.

The arrangement proposals shall be the same for all creditors to whom the arrangement shall apply and the one which is finally approved shall not contain, in any event, different rules for them.

The arrangement proposed by the board of directors shall be qualified by the Superintendency as to its effects in the actual improvement of the financial institution and, especially, as to whether or not the remission of part of the debts that has been proposed is essential. The Superintendency shall issue its opinion within the period of five business days and, upon failure to do so, the arrangement shall be proposed to the creditors. If the

Superintendency formulates objections, the board of directors shall have two business days to accept them. Upon the rejection of the board of directors' proposal, or the non-acceptance of the objections raised by the Superintendency, an arrangement in the terms set forth in the sixth paragraph of article 124 shall have to be proposed.

The financial institution shall submit the proposals to the creditors and shall maintain in all its offices a list of those persons to whom correspond the issuance of a pronouncement with respect to them. In such list shall be stated the value of each credit, considering the balance of the principal plus interest and adjustments. The list shall only be shown to those persons who are creditors with right to vote the arrangement proposals. Notices shall be published in the Official Gazette and in a newspaper of national coverage on the following day whereby it shall be made known the circumstance of the submission of the arrangement proposals, the date of such submission, an abstract of the proposals and a reference to the list of creditors.

After the foregoing situation has taken place, the Central Bank of Chile, at the request of the financial institution and with the prior favorable report of the Superintendency regarding the justification for the submission of arrangement proposals, shall place at its disposal the amounts that may result necessary for the payment of the deposits and obligations not included in such proposals, to the extent its available funds shall not be sufficient for that purpose.

Since the date of the submission of the arrangement proposals and while a decision of the creditors with respect to them is pending, there shall not be enforceable against the institution the repayment of the deposits and obligations other than those indicated in the second paragraph, subparagraph a) of article 65.

The sight deposits received by the bank within the period indicated in the sixth paragraph shall not be subject to the suspension of payments and shall be shown in separate entries.

Article 124. There shall have the right to vote the arrangement those creditors whose credits appear in the list referred to in the preceding article, as well as those creditors whose credits have been acknowledged by the entity, at the request of the holder, prior to the commencement of the voting process. Any discrepancy that may arise due to the inclusion in the list of the names of persons who were not creditors, or the omission of those who did have such capacity, or in connection with the amount of the credit, shall be administratively resolved by the Superintendency no later than the second day preceding the expiration of the voting period.

For information purposes only, the creditors residing abroad, in addition to be included in the list, shall be provided notice by telex, cable or any other equivalent means, addressed to the domicile registered with the institution.

The creditors shall have the right to vote on the arrangement within the period of fifteen days counted from the date of the publication in the Official Gazette referred to in the preceding article, to which purpose they shall indicate their option in the offices of the bank expressly indicated to that effect. The vote shall be witnessed and the scrutiny effected by a notary public or other minister of oath. The arrangement shall be considered accepted if it counts with the approval of creditors representing the absolute majority of the total liabilities with the right to vote, with its value being estimated in the manner indicated in the preceding article.

It shall correspond to the Superintendency the issuance of the rules to which the balloting of the arrangements shall subject and to administratively resolve upon any matter that may arise during its discussion, vote, acceptance or rejection.

The resolutions issued by the Superintendency by virtue of this article may not be contested before any other authority to the extent the resolution adopted by it refers to the validity or lack of validity of the arrangement.

If the arrangement proposed by the board of directors is rejected, this, within the three subsequent days, shall propose to the same creditors who had the right to vote the arrangement, another in which, by means of the capitalization of the credits that correspond, produces the effect that the bank is left with a proportion between effective net worth and assets weighted by risk which is not less than 12 %. For this purpose it shall be effected a new publication in the manner provided for in the preceding article and in everything else the rules contained in this article shall apply. Upon the rejection of this arrangement, the provisions in article 130 shall apply.

The rules contained in the Bankruptcy Act shall not apply to the arrangements this paragraph deals with.

Article 125. In the situations provided for in this paragraph, the board of directors shall call for bids for the portfolio of mortgage loans subject to Title XIII, handling in a separate manner the portfolio of mortgage loans for dwelling purposes from that corresponding to other purposes. There shall have the right to participate in the bidding processes other financial institutions, both public and private, provided they accept to take care of the payment of the mortgage funding notes corresponding to the relevant portfolio, all that subject to a balance of such credits and obligations.

If the offers received were equivalent to or higher than the amount agreed to pay the other creditors in the arrangement, the board of directors shall proceed to transfer the corresponding portfolio to the acquiring institution. In such event, the value of the mortgage funding notes shall be reduced to the offered percentage and the acquiring institution shall be obligated to their payment up to such amount, for which purpose it shall provide a notice by means of a notice published in the Official Gazette. The institution shall proceed to re-stamp the certificates representing the mortgage funding notes, with the indication of the percentage to which they shall be reduced, when they are presented for collection.

The call for bids shall be effected in such a manner as to have the matter resolved no later than 90 days after the approval of the arrangement and, if none of the offers received were equal or higher than the amount offered to pay in it, the board of directors shall reject them all. If there were no offerors, a new offer for bids shall be called in such a manner as to have it decided within the period of 90 days counted from the date in which the first one was effected.

Upon rejection of the first bidding offers due to the reason indicated in the preceding paragraph, or if in the second bidding process there were no offerors or those that had tendered offers do not offer the amount offered to pay in the arrangement, the stipulations contained in the said arrangement shall apply to the holders of mortgage funding notes issued with respect to the corresponding portfolio.

All payments to creditors with respect to mortgage funding notes shall be suspended until

the mortgage portfolio is transferred, or said creditors become subject to the arrangement or to the results of the liquidation, as the case may be. The moneys received from the mortgage debtors during this period shall be placed at the disposal of the bank that acquires the portfolio.

Article 126. Whenever the mortgage credits of Title XIII are transferred in accordance with the provisions in this Title, the acquiring bank shall become obligated to the payment, either fully or partially, of the mortgage funding notes, all that subject to a balance of the said credits and obligations. The remaining creditors of the enterprise, whether or not in liquidation, shall not have the right to oppose to this transfer. The acquiring entity shall be vested with all rights, warranties and privileges inherent or accessory to the acquired credits.

The transfer shall be evidenced by means of a public deed, complemented by a list of the credits assigned, which list shall be transcribed in the register of a notary public. The list shall contain the names of the debtors, the original amounts of the loans and the information regarding the registration of the mortgages.

The real estate registrars shall record the transfer of these credits in the margin of the respective mortgage registrations, at the request of the assignor or the assignee, with the sole exhibition of the public deed of assignment and certificate of the transcription of the list.

The bank shall effect, for information purposes only, publications both in the Official Gazette and in a newspaper of national coverage, whereby the fact of the transfer of the mortgage portfolio to other enterprise is made known, with an indication of the date of the public deed and the notary public before whom it was executed.

The notaries public and real estate registrars may only charge for the performances referred to in this article the fixed rate that corresponds, without any proportional surcharges.

Article 127. In the event that the arrangement is approved and the institution, by virtue of its provisions, is obligated to issue shares in payment of credits to the creditors, the board of directors, in its capacity as representative of the shareholders, shall issue the shares with the merit of the resolution adopted, whose abstract shall be registered and published in accordance with the provisions in article 31.

The shares to be issued shall be delivered to the creditors proportionate to the capitalized portion of their credits.

Upon the issuance of the shares, the shareholders meeting shall be convened to elect a new board of directors.

Whenever shares must be issued pursuant to an arrangement, they shall be estimated by the value resulting from the division of the bank's basic capital, to the extent same results positive, as of the date of the proposal of the original arrangement, by the number of shares subscribed for and paid up. For these purposes, the losses accumulated as of that same date shall be discounted. If, in the situation provided for in this paragraph, the bank's basic capital does not result positive, the shares issued prior to the arrangement shall lapse by operation of the law on the same date in which those arising from the capitalization become issued, unless in the arrangement it is stipulated otherwise.

The shareholders receiving shares pursuant to an arrangement shall have the right to

demand that the bank purchases from them such shares at their book value proportionate and up to the limit of the annual net profits, after deduction of the dividends that are resolved to be distributed to those same shareholders. This right shall be exercised within the ninety-day period following the holding of the shareholders meeting that approves the balance sheet, and upon failure to do so, the shareholder shall lose the right for the relevant year. The bank shall distribute the shares so acquired to the holders of shares issued prior to the arrangement, without charge and proportionate to those in their possession. The provision in this article shall only apply when shares issued prior to the arrangement exist.

The foreign individual or legal entity, creditor of an obligation expressed in a foreign currency, that effects the capitalization referred to in this article, may petition that this transaction become subject to the rules of Decree Law No. 600, of 1974, as amended.

Article 128. For the purposes of the capitalization of credits dealt with in this article, the limitations or prohibitions regarding the acquisition of shares contained in this or others legal texts shall not apply.

The shares acquired by virtue of the authorization contained in this article shall be disposed of within the period of three years, counted from the date of the capitalization. Should the holders of these shares be the State or the Central Bank of Chile, such shares shall not have voting rights in the election of directors, while they remain without being transferred.

Article 129. The bank that considers itself affected by any of the determinations of the Superintendency that establishes that have occurred facts that make fear for its financial situation or that presents solvency problems, in accordance with the general or special rules contained in the fourth paragraph of article 118 and the second paragraph of article 122, may request the revision of the said resolution to the Superintendency, accompanying the relevant supporting information.

The revision shall refer to the general qualification of the bank's assets and shall be requested within the period of five business days, counted from the date in which same was communicated. The Superintendency shall issue a pronouncement with respect to the revision within a period not to exceed fifteen days, counted from the date in which all the relevant information was submitted.

Within the second day following the request for revision, the Superintendency shall communicate it to the Council of the Central Bank of Chile. In order to reject the revision, either in whole or in part, it shall act with the approval of the said Council, unless the latter has failed to issue a pronouncement in the day next before the last one established for the Superintendency to resolve.

Upon the filing of the request for revision, and while the resolution is pending, the periods of thirty and ten days which, respectively, establish the first paragraphs of articles 118 and 122 shall be suspended.

### PARAGRAPH 3. FORCED LIQUIDATION

Article 130. If the Superintendent determines that a bank does not possess the necessary

solvency to continue operating, or that the security of its depositors or other creditors requires its liquidation, or if the arrangement proposals shall have been rejected, it shall proceed to revoke the authorization of existence of the affected enterprise and shall declare it in a state of forced liquidation, with the prior approval of the Council of the Central Bank of Chile.

The resolution issued to that effect by the Superintendent shall be grounded, and shall contain, in addition, the designation of a liquidator, unless the liquidation is assumed by the Superintendent himself. The lack of solvency or security of the depositors or creditors shall be based upon evidence appearing from the financial statements and other information available to the Superintendency.

Article 131. When the Superintendent assumes the liquidation he shall be entitled to delegate all or some of his powers upon one or more delegates.

The liquidator shall have a period of three years to accomplish the duties and shall have the authority, obligations and responsibilities set forth by the law for the liquidators of stock corporations. The period of the liquidation may be renewed for successive periods not to exceed one year, by means of a grounded resolution of the Superintendent, in such a case the liquidator being obligated to previously effect a publication in a newspaper of national coverage concerning the progress of the liquidation.

Article 132. Once a bank has been declared in a state of forced liquidation, the deposits in current accounts and the other sight deposits it may have received and the sight obligations it may have assumed in its financial activities shall be paid with on account of the funds in cash or deposited with the Central Bank of Chile or invested in documents that represent the technical reserve the said article refers to, without the payment procedures or the limitations that regulate the process of forced liquidation being applicable to them. For the purposes of this article, it is presumed that all the institution's cash funds are of those that must be destined to the payments dealt with in this provision.

If all the funds provided for in this article shall prove to be insufficient, the liquidator shall proceed with the outmost diligence and promptness to effect these payments and, to that effect, shall have authority to dispose without delay of the other assets as may result necessary to that end. The Central Bank of Chile shall provide the funds necessary to pay to the creditors of the obligations this article refers to. For such purpose, the Central Bank of Chile shall, at its option, acquire assets from the bank or grant loans to it. The loans that the Central Bank of Chile may grant in order to comply with this obligation, or that indicated in article 123, shall enjoy a preference with respect to any other creditor, whether preferred or general.

The liquidator shall have the power to transfer the current accounts and other sight deposits to other bank, which bank shall take care of the operation of the said accounts and of the payment of the deposits in the capacity of legal successor, up to the limit of the funds delivered for that purpose.

If a creditor of the bank for obligations which are not included in article 65 shall have obtained payment, or the partial or full set off with respect of such credits, starting from the date in which the arrangement proposals or the resolution ordering the forced liquidation, as the case may be, shall loose the right to have its sight credits, up to the limit of the amount

of the said payment or set off, obtained.

Article 133. The liquidator shall be especially obligated to:

a) Prepare a detailed list of all the creditors not included in the preceding article, with an indication of the amount and nature of the credit and the preferences they enjoy, which list shall be maintained in all the offices of the institution and may only be exhibited to those who prove to be creditors in the liquidation.

In the Official Gazette and a newspaper of national coverage there shall be published notices whereby a call is made upon the depositors and other creditors to appear before the bank to acknowledge their credits. Objections to the contents of the list may be filed with the Civil Ordinary Court of the domicile of the bank in liquidation, within the period of 30 days, counted from the publication in the Official Gazette. The procedure applied to the claim shall be that of the incidents.

The final list shall constitute the acknowledgment of the credits with a right to receive the corresponding distributions.

After the distribution among the creditors that appear in the list has been effected, the creditor that obtains by means of a court sentence the acknowledgment of a credit prior to the date in which the liquidation has been declared, shall have the right to demand, while there still are funds available, its participation in future distributions and shall not be entitled to request from the creditors already paid the restitution of any sum whatsoever, even if the assets of the liquidation are not enough to cover the amount of the unpaid distributions.

After the lapse of two years, counted from the publication of the list in the Official Gazette, no new claims shall be admitted against the financial institution declared in liquidation for obligations prior to the resolution.

b) Report annually to the shareholders and creditors with respect to the administration and render the final account in the manner provided for in the Stock Corporations Act.

For the purposes of the distributions of funds that may correspond to the creditors of the liquidation, the amount of the credits that appear in the list referred to in subparagraph a) shall be increased in the manner indicated below:

1) Those in which there has been an agreement on adjustment and interest, or both, they shall continue accruing the adjustment and interest according to the agreement.

2) Those that do not bear adjustment or interest, or cease to accrue them by reason of their maturity, shall accrue current interest for non-adjustable transactions.

Article 134. The liquidator shall proceed with the mortgage loans subject to Title XIII in the same manner as contemplated in articles 125 and 126.

The bidding processes that must be effected shall be called in such a manner as to have them resolved within the 90 days subsequent to the date in which the liquidation of the enterprise becomes in effect. If the offers received represent that the acquiring institution shall take care of the payment of the mortgage funding notes for an amount less than 90 % of their nominal value, the liquidator shall call the holders of the said mortgage funding notes to a balloting in order to determine whether they accept the purchase offer or if they elect to take their chances in the liquidation. The offer shall be considered accepted if it counts with the affirmative vote of creditors representing the absolute majority of the

outstanding value of the mortgage funding notes. For these purposes, the liquidator shall publish notices both in the Official Gazette and in a newspaper of national coverage, and, with respect to everything else, the provisions in article 124, third, fourth and fifth paragraphs, shall apply.

If in the corresponding bidding process there were no offerors, a new one shall be called in a manner that it may be resolved within the period of 90 days counted from the date in which the first one took place. In this process, the same provisions indicated in the preceding article shall apply.

Article 135. Once the forced liquidation of a bank has been resolved by the Superintendency, neither the enforcing actions that may be instituted shall be admitted, nor shall attachments or preventive measures be ordered, for obligations prior to the resolution.

Article 136. The resolution ordering the forced liquidation of a bank shall produce the immediate enforceability of all credits existing against it, without prejudice to the special rules set forth in article 134 for the mortgage funding notes.

To the extent that there exist available funds, the liquidator shall, after making reserve of resources to meet the expenses of the liquidation, pay the creditors that enjoy preference and distribute the remainder among the general creditors, proportionate to the amounts of their respective credits.

If by any reason the obligations of the bank shall not be paid in full, they shall be covered proportionate, without prejudice to the legal preferences.

Whenever a creditor is at the same time a debtor of the bank, the set off shall only take place at the time of the respective distributions of funds and up to the limit of the sums that are credited to the credit and provided the other legal requirements are also met. Likewise, the related payment obligations derived from derivatives transactions will be off set if made according to article 69 number 6 of this law, cases in which a bank declared in liquidation will be subject to the rules applicable under the second and following paragraphs of article 69 as set forth in chapter fourth of the commercial code.

No other compensation shall proceed during the liquidation process.

The Superintendent shall turn back the liquidation to the shareholders as from the moment in which all the credits of the depositors and other creditors are fully paid and the expenses of the liquidation covered.

Article 137. In the resolution ordering the forced liquidation of a bank, the Superintendent may authorize, for the period he may determine, that the enterprise continues operating its banking current accounts or the reception of other sight deposits, which shall be maintained under separate entries and shall not be subject to the limitations contemplated in the preceding article.

Article 138. Whenever a bank that is in the process of liquidation, or whose shareholders meeting has resolved its dissolution, transfers the totality of its assets or a material portion thereof to other financial institution, such transfer may be effected by means of the execution of a public deed whereby it is globally stated, by its amount and item, the properties being transferred, according to the balance being in use in the banks. In the

register maintained in the same notarial office shall be transcribed an inventory of such properties. In such case, the tradition of the properties and their corresponding guaranties and accessory rights shall be effected by operation of the law and shall not require endorsement, notice or registration. Notwithstanding, in the case of the transfer of the ownership with respect to real properties and motor vehicles, the corresponding recording shall be required. The assignee shall be entitled to exercise the rights of the assignor without the need to provide evidence of the transfer, provided it invokes a title in the name of the assigning entity that has executed the public deed referred to in this paragraph.

In the event that credits secured by mortgage are assigned, the real estate registrars shall make a note of the transfer of these credits in the margin of the respective mortgage registrations, at the request of the assignor or acquiring entity, with the sole exhibition of the public deed of assignment and the transcription in the register in which the list of the credits appears. The same shall apply for the credits secured with a pledge that has to be registered.

For all purposes of this article, by material portion of the assets of a bank shall be understood those assets that correspond to no less than one-third of the accounting value thereof.

The bank shall, for purposes of information only, effect publications both in the Official Gazette and a newspaper of national coverage, whereby the fact of the transference is made known, with an indication of the public deed and the notary public before whom it has been executed.

Article 139. The provisions in this Title shall not apply if a financial institution has transitorily interrupted its operations or the payment of its obligations due to legal strike of its personnel or due to force majeure that prevents its functioning.

#### PARAGRAPH 4. CAPITALIZATION OF A BANK BY THE FINANCIAL SYSTEM

Article 140. Should a bank be in any of the situations provided for in articles 118 or 122, or subject to provisional administration, it shall be entitled to agree upon a two-year term loan with other bank. In the event of concurrence of creditors, the said loan shall be paid after all the general credits have been satisfied.

The conditions of these loans shall be agreed upon by the directors of both institutions and have the approval of the Superintendency, without their submission to the shareholders meetings being necessary.

No bank shall grant loans of this nature for an amount in excess of 25 % of its actual shareholders' equity.

This loan shall be computed as capital of the receiving institution for purposes of the margins established by this statute. The lending institution shall have the right to impose to the debtor enterprise the obligations, limits and prohibitions referred to in subparagraph e) of article 104 of Law No. 18,045.

The indicated loan may only be repaid to the extent the debtor enterprise is duly capitalized in accordance with the provisions in this statute, with the exclusion of the indicated loan.

Should the loan not be repaid within the stipulated term, same may be used for the following purposes:

- a) To be previously capitalized in the event the merger of the receiving enterprise with the lending institution is agreed upon.
- b) To contribute to a capital increase resolved by the receiving institution, provided the shares issued are subscribed for by a third party. The conditions for the financing of the shares shall be agreed upon between the bank that capitalizes its credit and the subscribers thereof. The persons related, either directly or indirectly, to the ownership or administration of the bank that capitalizes its loan shall be prevented from paying those shares in installments.
- c) To subscribe for and pay up a capital increase. In such a case, the shares acquired shall be disposed of in a secondary formal market within the period of 180 days, counted from the date of the capitalization, unless it has distributed them among their shareholders in accordance with the general rules. Should there not be bidders in the first auction, this shall be repeated in each calendar month.

Those acquiring shares shall comply with the provisions of both articles 28 and 36. The shareholders meetings necessary in order to comply with the provisions in this article must form the quorum indicated in article 61 of Law No. 18,046.

These loans may not be granted by *Banco del Estado de Chile*, the banks that are subject to a provisional administration or the banks having common shareholders who, directly or indirectly, control the majority of their shares.

## PARAGRAPH 5. CRIMINAL OFFENSES CONNECTED WITH THE FORCED LIQUIDATION

Article 141. Whenever a bank is declared in the state of forced liquidation, fraud shall be presumed:

- 1) If the bank has acknowledged non-existent debts.
- 2) If the bank has simulated transfers, with harm for its creditors.
- 3) If the bank has compromised in its own business the properties received in the performance of a deposit in custody or a fiduciary operation.
- 4) If, knowingly of the declaration of the bank's forced liquidation resolution, and without authorization from the liquidator, its administrators has performed any act of administration or disposal of properties in detriment of the creditors.
- 5) If, within the fifteen days prior to the declaration of forced liquidation resolution, the bank has paid to a creditor in detriment of the others, by means of an advanced payment of its obligation.
- 6) If it has hidden, altered, forged or destroyed the books or documents of the bank and other evidence thereof.
- 7) If, within the period of sixty days prior to the date of the forced liquidation, the bank has paid interest on time deposits or savings accounts with rates considerable higher than the average current in the locality for similar institutions, or has sold properties of its assets at prices notoriously lower than those of the market, or used other unfavorable schemes to provide itself of funds.
- 8) If, within the year prior to the date of the forced liquidation resolution, the bank has

repeatedly infringed the credit margins referred to in article 84, numerals 1, 2 and 4, or those that regulate the constitution of guarantees or securities, or has performed any other act aimed at making more difficult, deviate or evade the supervision of the Superintendency, other than those comprised in article 158.

9) If it has entered into contracts or other type of agreements in detriment of the bank's equity, with either individuals or legal entities which article 84, numeral 2, refers to.

10) If, during the period of ninety days prior to the forced liquidation resolution the bank has incurred in deficit in the compliance with the obligation imposed upon it by article 65.

11) In general, every time that the bank has wishfully performed a transaction that diminishes its assets or increases its liabilities.

The criminal offense set forth in this article may be denounced by any person.

Article 142. The directors, managers or other persons who have participated, under any title, in the direction or administration of the bank, shall be considered authors of the criminal offense referred to in the preceding article and shall be liable to punishment of from 541 days up to 5 years' imprisonment when, in the performance of their duties or on occasion thereof, have executed any of the acts or incurred in any of the omissions referred to in the indicated provision, or when they have authorized such acts or omissions, without prejudice to the civil liability they may incur.

The provision in the previous paragraph does not exclude the application of the rules provided for in articles 14 to 17 of the Criminal Code.

If the acts that have performed the persons indicated in this article have assigned a penalty higher than the one set forth therein, the penalty assigned to the most serious criminal offense shall apply.

Article 143. Whenever it has occurred any of the facts described in article 141, the Superintendency shall report to the Ministerio Público the bank forced liquidation resolution, along with its supporting documents, in order to institute the corresponding actions.

#### PARAGRAPH 6. STATE GUARANTEE

Article 144. The guarantee of the State is hereby granted to the obligations arising from the time deposits and obligations, through savings accounts or registered or to the order documents, of their own issue, of banks and financial companies. The said guarantee shall only benefit individuals and shall cover 90 % of the obligation's amount.

The aggregate of deposits and obligations covered by this guarantee that a creditor may have in a financial entity, shall be considered as one obligation for all purposes provided for in this article.

Article 145. No person shall be the beneficiary of this guarantee in one institution or in all of the financial system for obligations in excess to 120 *Unidades de Fomento* in each calendar year.

Article 146. If the document in which the deposit or obligation subject to guarantee is evidenced is in the name of more than one individual, the payment of the guarantee shall be understood effected to their holders proportionate to their number, independently of any agreement there may exist among them. The mere fact of appearing a legal entity in a document shall preclude the operation of the guarantee.

When a guaranteed obligation is evidenced in a document executed to the order, it shall be presumed that the endorsements have been made subsequently to the date of the financial institution's suspension of payments and that the secured person is the first beneficiary, unless the endorser or the endorsee has registered the endorsement in the respective entity.

Article 147. Article deleted by Law 20.190, October 3<sup>rd</sup>, 2007.

Article 148. The guarantee and the obligations included therein shall be made enforceable by means of a resolution of the Superintendency when an arrangement is approved in accordance with Paragraph 2 of this Title or a financial institution is declared in a state of forced liquidation. In the first case, the payment shall be effected by the Superintendency, and in the second case, by the liquidator.

Article 149. The enforceability of the guarantee includes all the obligations referred to in article 144, contracted by the financial institution, but only in the percentage indicated in the said article and with the limit established in article 145.

Article 150. For the purposes of payment, it shall be considered the amount of the principal of the original obligation or its last renewal, and shall be paid the interest and adjustment accrued up to the date of payment.

Article 151. It shall be a condition precedent in order to receive payment of the guarantee that the beneficiary thereof waives the right to receive the balance of the obligations or the portion thereof that gave origin to said payment. Should the payment of the guarantee be rejected, the rights shall be preserved to be exercised in the arrangement or in the liquidation, as the case may be.

Article 152. Once the guarantee has been paid, the State shall become surrogated by operation of the law in the rights of the beneficiary of the guarantee, for the portion in which it has participated in such payment.

Article 153. To the beneficiary of the guarantee who, in turn, were a debtor of the financial institution, shall be compensated the amount thereof to the corresponding credit, unless it is duly secured or posts a bond for the amount to which reaches his guarantee.

## TITLE XVI

### **BANKING SECRECY AND OTHER PROVISIONS**

Article 154. The deposits and other obligations of any nature received by the banks shall be subject to banking secrecy and information regarding such transactions may not be provided except to the depositor or creditor of the obligation or whomever has been expressly authorized by him or to his or her legal representative. Anyone who infringes the rule above shall be liable to a punishment of from 61 days up to three years' imprisonment.

All other transactions shall be subject to confidentiality and the banks may only disclose them to whom demonstrate a legitimate interest and provided it is not foreseeable that the knowledge of the information may cause a monetary damage to the customer. Notwithstanding, for the purpose of appraising the situation of the bank, the latter may provide access to the detailed knowledge of these transactions and the related information to specialized firms, which firms shall become subject to the provisions regarding confidentiality established in this paragraph and provided further that the Superintendency approves and registers them in the register that shall open for these purposes.

In any event, the banks may disclose the transactions indicated in the previous paragraphs, in global terms, neither individualized nor in a partial manner, only for statistical or information purposes whenever there is a public or general interest at stake, qualified by the Superintendency.

The ordinary and military courts, in cases actually before them for decision, may order the remittance of pieces of information regarding specific transactions which are directly related to the proceedings, with respect to deposits, obligations or other transactions of any nature, effected by those who have the character of parties or indicted in the same proceedings, or to order the examination thereof, if necessary.

The Ministerio Público attorneys, previous court authorization, may examine or request to examine the files mentioned above, which must be directly related to the investigation they carry out.

Article 155. The institutions subject to the supervision of the Superintendency shall be bound to preserve during six years their books, forms, correspondence, documents and slips. The Superintendent may authorize the elimination of part of this file prior to the expiration of this period and request that certain documents or books be preserve for longer periods. He may also authorize them to preserve mechanical or photographic reproductions of these documentation in substitution of the originals.

The period indicated above shall be counted from the date of the last entry effected on them or from the date in which they have been issued, as the case may be.

Under no circumstance may the books or instruments which are directly or indirectly related to any pending case or litigation be destroyed.

The Superintendent may authorize the banking enterprises to restore the canceled checks to the drawer.

Article 156. The financial institutions shall be subject to the following system of lapsing of the deposits, obligations or any other credit for the benefit of third parties derived from its

financial business activities, with those arising from dividends paid to their shareholders being expressly included:

Upon the passing of two years since the relevant account has not had any movement or the credit has not been collected by the creditor, the financial institution shall make a list within the month of January next following, which shall be exhibited at its main office. The credits in amounts less than the equivalent to one *Unidad de Fomento* may be omitted from the list. Those individually exceeding the equivalent to five *Unidades de Fomento* must be published in the Official Gazette in any day of the month of March immediately following.

Upon the passing of three years counted from the month of January in which it corresponds to make the list, the corresponding credit shall lapse and all rights the holder thereof may have with regard to it shall become extinguished, and the financial institution shall then be obligated to deposit the corresponding amount, after deduction of the publication expenses, with the Regional or Provincial Treasury corresponding to the corporate domicile.

The provisions in this article shall not apply:

- a) To the undefined time deposits and obligations or those with clause of automatic renewal;
- b) To the security bonds and warranty deposits;
- c) To the sums received for travelers checks, and
- d) In those events in which there is withholding, pledge or attachment on the relevant moneys.

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## TITLE XVII

### **PENALTIES**

Article 157. The directors and managers of an institution subject to the supervision of the Superintendency who, knowingly, make a false representation with respect to the ownership and capital contribution of the enterprise, or approve or submit a misstated or false balance sheet, or feign its situation, especially the amounts advanced to directors or employees, shall be punished with from 541 days up to 5 years' imprisonment and a fine of one thousand to ten thousand tax units.

In the event of bankruptcy of the institution, the individuals who have performed such acts shall be considered responsible for fraudulent bankruptcy.

Article 158. The founding shareholders, directors, managers, officers, employees or independent auditors to an institution subject to the supervision of the Superintendency who alter or misrepresent data or information in the balance sheets, books statements, accounts, correspondence or other document of any nature or hide or destroy these elements, with the intention of hampering, deviate or elude the supervision that corresponds to the Superintendency conduct in accordance with the laws, shall incur in the penalty of from 541 days up to 5 years' imprisonment.

The same penalty as above shall apply to those who, with the same purpose, supply, execute or present those items of evidence altered or misrepresented. This provision does not exclude the application of the rules contained in articles 14 to 17 of the Criminal Code.

Article 159. Should a financial institution omit to register in its accounts any type of transaction affecting the equity or the liability of the enterprise, its general manager or whomever performs as such, shall be penalized with from 541 days up to 5 years' imprisonment.

Article 160. Anyone who obtains loans from credit institutions, either public or private, supplying or providing false information or maliciously incomplete with respect to his or her identity, activities or statements of situation or equity, causing a damage to the institution, shall be penalized with from 541 days up to 5 years' imprisonment.

## TRANSITORY PROVISIONS

Article 1. The banks that were operating on the date in which Law No. 19,528 was published, shall maintain a ratio between their basic capital and their assets of at least 3 % and between their effective net worth and their assets weighted by risk, of 8 %.

That banks that, as of the same date indicated above do not maintain any of those ratios, shall submit to the Superintendency a program of adaptation comprising a maximum period of two years. The penalty contemplated in article 68 shall apply to them with respect to the relevant ratio whenever there is a deficit with respect to the program accepted by the Superintendency.

Article 2. The banks and financial institutions that shall be operating on the date in which Law No. 19,528 was published, shall complete the minimum capital that corresponds to them in accordance with the provisions in articles 50 and 114, within the period of three years, counted from the same date.

Article 3. The general rules regarding consolidation of financial statements which correspond to be issued by the Superintendency, pursuant to the provisions in articles 66 and in the exercise of its authority, shall enter into force within the period of 180 days, counted from the date of publication of Law No. 19,528.

Article 4. The savings and loan cooperatives that, as of November 27, 1986, had been subject to the supervision of the Superintendency of Banks and Financial Institutions shall continue being subject to its supervision while they maintain deposits or obligations received from the public or their associates. The provisions in Title I of this statute shall apply to the indicated cooperatives.

Without prejudice to the foregoing, the amendment, dissolution and liquidation of these cooperatives shall be subject to the Cooperatives Act and in such acts shall participate only the authorities that are mentioned in such statute.