

# **T R A N S L A T I O N**

## **REPUBLIC OF PANAMA MINISTRY OF TRADE AND INDUSTRY EXECUTIVE DECREE N° 126**

**(Of 23 June 2010)**

Whereby Law 72 of 9 November 2009, which amends and adds Law 8 of 2000 and Law 33 of 2000 on the Micro, Small, and Medium Enterprise, is regulated.

**THE PRESIDENT OF THE REPUBLIC**  
**In use of his legal and constitutional powers,**

### **WHEREAS:**

By means of Law No. 8 of 29 May 2000 the Authority for the Micro, Small and Medium Enterprise was created with the purpose of creating and fostering the development of micro, small and medium companies, encouraging and strengthening the sector, contributing with employment, with the economic growth of the country and for a better distribution of income.

By means of Law No. 33 of 25 July 2000, the rules for developing micro, small, and medium enterprise were provided, which created, among other things, the Loan Guarantee Fund and the technical assistance and training fund, establishing the main principles that determined and governed its use.

By means of Law No. 72 of 9 November 2009, Law No. 8 of 2000 and Law No. 33 of 2000, which govern the micro, small, and medium enterprise and creates the National Entrepreneurship System and Entrepreneurship Fund, setting up the basic principles that will govern its use, were amended.

Article 15 of the aforementioned Law No. 72 creates, within the structure of the Authority, the National Entrepreneurship System which will gather around all sector supporters in the Republic of Panama, in order to join forces to develop micro finance and non-financial services.

Article 20 of Law No. 72 creates an Entrepreneurship Fund within the National Entrepreneurship System destined to fostering entrepreneurship, strengthening existing companies, promoting microfinance, technical assistance and training for MSMEs and financial and non-financial institutions.

According to Law No. 72, the Executive Branch must procure an efficient utilization governing the operation, functioning, and management of the Fund, the procedures for its use, the mechanisms to pay credit institutions when speaking of guarantees, payment for technical assistance, and any other aspect necessary to implement the Fund-related rules.

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Article 31 of Law No. 72 establishes that the Executive Branch will provide the regulations to the authority, the Entrepreneurship System and Entrepreneurship Fund.

Because of the above,

## DECREES:

**Article 1: TO APPROVE** these regulations in accordance with the definitions, norms, and proceedings which are hereby establish.

## CHAPTER I DEFINITIONS

**Article 2:** For the purposes of this regulation, the following terms will be defined, regardless of singular or plural, masculine or feminine, as follows:

1. **AMPYME:** Authority of Micro, Small and Medium Enterprise.
2. **Creditor:** The Financing Entities (FE) that had granted loans or any funding as part of AMPYME programs supported by the Entrepreneurship Fund.
3. **Seed Capital Fund Administrator:** Public or private institutions with enough experience in managing economic resources.
4. **Rural Fund:** Institution that provides financial services to microenterprises that would not normally have access to traditional financing, fostering its self-sustaining development based on own savings and effort.
5. **Seed Capital:** Non-refundable grant fund provided to support new self-sustaining entrepreneurs and micro entrepreneurs of urban, rural and indigenous areas and entrepreneurs and micro entrepreneurs of companies that want to have new businesses or reinforcing the existing until the microenterprise becomes a productive business to the applicant.
6. **Evaluation Committee:** Public and private interdisciplinary team, responsible for analyzing the technical, legal, economical, and financial feasibility of the business plans submitted during the Capital Seed contest calls aimed to provide an opinion on the compliance with those. This Committee will recommend the amount to be financed to those business plans that are considered as feasible.
7. **Lease Contract or Leasing:** A written or implied contract by which an owner of a specific asset grants a second party the right to its exclusive possession and use for a specific period and under specific conditions, in return for specified periodic rental or lease payments. It is a hire-purchase agreement without the requirement of an initial deposit and the added advantage of tax benefits; this in turn increases the competitiveness of micro and small enterprises nationwide.
8. **Credit Unions:** Private, non-profit associations comprised by natural and juridical persons, which constitute companies, aimed to planning and carrying out work or service activities, of social and economic benefit,

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designed to unify production, distribution, and consumption of goods and services with the economic, intellectual and moral support of its associates.

9. **Agreement:** Agreement between AMPYME and EF by means of which both parties establish and agree a series of rights and duties for the execution and development of AMPYME programs.
10. **Debtor:** For the purposes of this regulation, a debtor is any natural or juridical person under the classification of micro, small or medium enterprise that was granted with any funding from EF within the fund guarantee programs.
11. **Trust Company:** Any juridical person engaging professionally and usually in trust business and holding a trust license duly granted by the Superintendency of Banks.
12. **Entrepreneur:** natural person holder of an economic unit of goods and/or services, with own desire, individual motivation and ability to create, develop and operate a company, taking a risk in conducting business in an economic activity to satisfy a need or desire of the society in exchange for a profit or benefit.
13. **Bank or Banking entity:** For the purposes of this regulation are those banking institutions, whether national or foreign, holder of a General License granted by the Superintendency of Banks empowering them to engage in the banking business in Panama and have duly formalized their participation in the programs held by the Authority for the Micro, Small and Medium Enterprise (AMPYME).
14. **Financing Entities (EF):** Loan entities members of the programs derived from the Guarantee and Micro Credit Funds, whether they are banks, unions, non-governmental organizations, rural fund, financiers and others.
15. **Factoring:** Companies engaged in transforming assets, such as checks, invoices, notes, promissory notes, contracts, and other receivable documents, in immediate liquid resources by means of transfer of invoices and/or documentary credits, with the purpose of increasing competitiveness.
16. **Financier:** For the purposes of this regulation, is any natural or juridical person engaged in providing to the public loans of money-financing facilities, awarded with a license granted by the Ministry of Trade and Industry and a member of the programs derived from the Entrepreneurship Fund.
17. **Technical Assistance and Training Fund:** Created by article 21 of Law No. 72 of 2009, it is aimed to provide resources for the execution of training programs and projects for the development and reinforcement of micro, small and medium enterprise of microfinance and non-financial services operators, as well as to ensure services to entrepreneurs, businessmen, and businesses of the MSMEs sector.
18. **Capital Seed Fund:** Created by means of article 21 of Law No. 72 of 2009, aimed to support new entrepreneurs and self-sustaining micro entrepreneurs of urban, rural and indigenous areas and entrepreneurs and micro entrepreneurs of companies.
19. **Guarantee Fund:** Created by means of article 21 of Law No. 72 of 2009, which improves business competitiveness aimed to guarantee loans disbursed by financial entities to entrepreneurs and to micro and small

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enterprises. This fund works in two ways: individual guarantees for MSME and micro finance intermediation guarantee.

20. **Microcredit Fund:** Created by means of article 21 of Law No. 72 of 2009, addressed to financially support the activities of micro finance operators for the benefit of existing micro, small and medium enterprises.
21. **Financial Intermediation Guarantee:** A guarantee document issued by the Authority to the financial entity that granted a credit to a first-tier operator member of the MSE program, assuming the irrevocable obligation of paying an amount of money to that entity.
22. **Individual Guarantees:** A guarantee document issued by the Authority to the financial entity that granted a credit to entrepreneurs or micro or small companies affiliated to MSE programs, assuming the irrevocable obligation of paying an amount of money to that entity.
23. **Business Incubator:** Center provided with facilities and non-financial services to facilitate business management.
24. **Line of Credit:** Credit agreement between a Financing Entity and an entrepreneur, a micro and small company or a micro finance operator or first-tier entity, by means of which the entrepreneur, micro and small company or micro finance operator or first-tier entity is granted with an approved maximum amount for a determined period of time to utilize and reimbursed it according to its needs.
25. **Microcredit:** Small amount of credit granted to owners of their own, small-scale business, paid mainly with the proceeds of the sale of goods and services. Those are granted using specialized credit methods of intensive personal contact to, among other things, evaluate and determine the willingness and payment capacity of the potential customer.
26. **Microfinance:** Supply of financial products to persons or group of persons whose access to traditional financial systems is limited or nonexistent due to their socioeconomic condition.
27. **MSME:** Micro, Small and Medium Enterprise.
28. **MSE:** Micro and Small Enterprise.
29. **Microfinance Operators or Entities:** Are those first-tier operators that directly provide microfinance services to natural or juridical persons of the micro and small enterprises sector, including NGOs, Rural Funds, Savings and Credit Unions, Financiers, and Bank.
30. **Non-governmental Organizations (NGOs):** Those private non-profit associations with the primary objective of promoting an integral development of the human being. Are basically engaged in fostering community development, promoting training services, technical assistance, and providing microfinance services in order to support poorest groups sharing benefits from development itself.
31. **Business Plan:** Strategic document that determines the economic and financial viability of a business project and is used internally for the planning and running of the company.
32. **Financial Services Suppliers:** Financial and microfinance entities providing financial products and services to the micro, small and medium enterprises sector.

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33. **Providers of Business Development Services:** Any natural or juridical person providing or promoting business development services to micro, small and medium enterprises, such as training and technical assistance, human resources training, reinforcement of business culture, advisory for the organization of new companies and for the consolidation or expansion of the existing ones, technology research and development, quality and competitiveness management, as well as business consultancy and management.
34. **PROFIPYME:** According to this regulation, it is the financing program addressed to small and micro companies, guaranteed by the Guarantee Fund managed by the AMPYME.
35. **Financial Services:** Those requested by entrepreneurs or micro, small and medium enterprises sector of the urban, rural and indigenous areas to be granted with loans.
36. **Non-financial services:** Those that enhance the performance of a company, its access to markets and its ability to compete with others. These services are composed of strategic and operating business services and technology tools to ease the development of micro, small and medium enterprises.
37. **National Entrepreneurship System:** Structure created within the organization chart of the AMPYME to gather all sectors supporting the micro, small and medium enterprise sector in the Republic of Panama in order to join forces for the development of financial and non-financial services.

## CHAPTER II NATIONAL ENTREPRENEURSHIP SYSTEM

**Article 3:** The National Entrepreneurship System was created as a technical unit attached to Directorate General of the Authority for the Micro, Small and Medium Enterprise.

**Article 4:** The primary objective of the National Entrepreneurship System is fostering, energizing, and strengthening MSME sector in the urban, rural and indigenous areas of the Republic of Panama, gathering all actors of this sector in order to join forces to develop micro finance and non-financial services.

**Article 5:** The National Entrepreneurship System will have a free Registry to which all financial and non-financial institutions may be registered. The registration will be made through an application or any other means prepared to that end provided by AMPYME.

The financial and non-financial entities shall meet the following requirements:

1. Submit a letter addressed to the Director of the Authority for the Micro, Small and Medium Enterprise (AMPYME) in which is explained his interest of being registered in the National Entrepreneurship System.
2. Copy of the public deed (Articles of Incorporation) of the company.

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3. Notice of Operation (natural or juridical person).
4. Certificate issued by the Public Registry (minimum validity of three months).
5. Copy of the ID card of the Legal Representative.
6. Bank Reference Letter.
7. Fill out concerning applications to have access to the Entrepreneurship Fund.
8. Fill out the Résumés of the Staff.

**Article 6:** In accordance with Law No. 72 of 9 November 2009, the institutions member of the National Entrepreneurship System will have access to the Entrepreneurship Fund as long as they meet with the norms and requirements established by AMPYME by means of this regulation.

**Article 7:** In order to maintain an appropriate exchange of information that will strengthen financial and non-financial institutions, the members of the National Entrepreneurship System will meet, at least, once every six (6) months prior summons made by the Director General of AMPYME.

**Article 8:** The Director General will make the call, at least, five (5) business days in advance explaining the purpose of such.

**Article 9:** Also, at least five members or representatives of the sector member to the System and duly empowered to such effects, may request for meetings, in writing, with at least fifteen (15) business days in advance, providing the topic or topics of interest for the sector that needs to be discussed, with a brief explanation of the reasons to that request.

**Article 10:** The working agenda used for each meeting will consist of, basically, the topics submitted to the occasion and any other topic considered of relevance or updated to the attendees.

### **CHAPTER III ENTREPRENEURSHIP FUND GENERAL PROVISIONS**

**Article 11:** The Entrepreneurship Fund is that allocated to drive and encouraging entrepreneurship, strengthening existing companies, fostering microfinance and technical assistance to MSMEs and financial and non-financial institutions and will be subject to the provisions established in this Executive Decree.

**Article 12:** According to this Law the Entrepreneurship Fund will consist of the following funds:

- A. Technical Assistance and Training Fund: Provided with an annual fund of seven million U.S. dollars (B/.7,000,000.00) for the execution of programs and projects that may contribute with the development and strengthening of micro, small and medium enterprises, of the microfinance and non-financial

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services operators, to guarantee services to entrepreneurs, businessmen and businesses of the MSEs sector.

- B. Seed Capital Fund: Fund allocated to support new entrepreneurs and self-sustaining micro entrepreneurs of urban, rural and indigenous areas, as well as to support entrepreneurs and micro entrepreneurs of businesses. A non-refundable seed capital fund of up to one thousand balboas (B/.1,000.00) is applicable, as long as the applicant complies with training and oversight provided by AMPYME, until the micro company becomes a productive business to the former.
- C. Microcredit Financing Fund: addressed to financially support the activities engaged by the microfinance operators for the benefit of Micro and Small Enterprises.
- D. Guarantee Fund: Business competitiveness enhancer fund that will be provided to entrepreneurs and micro and small companies and will be nurtured with a minimum annual fund of three million balboas (B/.3,000,000.00). This fund will consist of two modes: individual guarantees to MSME and microfinance intermediation guarantee.

**Article 13:** The Technical Assistance and Training Fund and Guarantee Fund will be executed through the development of programs and/or projects designed by AMPYME.

**Article 14:** The Seed Capital Fund and Microcredit Fund may be executed by public or private funds Administrators or a Trust company.

### CHAPTER IV TECHNICAL ASSISTANCE AND TRAINING FUND

**Article 15:** In accordance with article 21 of Law No. 72 of 9 November 2009 the Technical Assistance and Training Fund must provide the resources necessary for the execution of the programs and projects for the development and strengthening of micro, small and medium enterprises, of financial and non-financial services suppliers, and of microfinance operators.

#### SECTION I TRAINING FUND

**Article 16:** Training programs referred to in this Fund, must be aimed, among other things, to the development of entrepreneurial attitudes, perfecting business administration practices, utilization of new tools/technology, perfecting the operation of new and existing companies, and strengthening the competencies of financial and non-financial service providers.

**Article 17:** The providers (natural or juridical persons) to be eligible to develop training programs based on the needs of the sector, may manage those according to the degree of formality of the businessman or entrepreneur, choosing to offer:

# TRANSLATION

1. Basic business management courses: For those registered in the Business Registry of AMPYME even though those are informal businesses.
2. Intermediate business management courses: For formal companies registered in the Business Registry of AMPYME.
3. Specialization courses: For formal companies registered in the Business Registry of AMPYME.
4. Specialization courses to financial service providers addressed to companies of the MSME sector.
5. Specialized training courses addressed to entrepreneurship service providers.
6. Business culture courses addressed to all levels of the education system.

**Article 18:** These programs will be used for:

1. Training programs: These programs will only cover basic, intermediate and specialized training which will be directly financed or approved by AMPYME. AMPYME may not oblige beneficiaries to favor a determined business development services provider. Technical, bachelor or postgraduate degrees will not be considered as programs covered by AMPYME.
2. Training programs: Will be provided by business development service providers hired by AMPYME for this purpose. These training will be addressed to communities or groups of companies engaging in an economic activity.
3. Training programs addressed to EF employees.
4. Training programs addressed to train business development service providers.
5. Courses, seminars, forums, workshops, congresses, e-conferences, videoconferences, distance learning courses, consultancies, tutoring or any other suitable method financed totally or partly by AMPYME.

**Article 19:** Natural or juridical persons that want to participate in any of the training programs as business development service providers must meet the following requirements:

1. Must be registered in the National Entrepreneurship System.
2. Must be duly certified by AMPYME to provide the course.
3. This certification must include information on the topics and methodology of the courses and trainers' résumés.

**Article 20:** AMPYME must maintain a record of the training needs domestically, especially in the micro and small enterprises sector, which must contain, as minimum, the following:

1. Most popular training programs for micro and small enterprises and their description.
2. Detailed human and economic resources with which business development service providers have.
3. Projection of companies' training or technical assistance needs for the next three (3) years.



# TRANSLATION

**Article 21:** Training programs may be provided to entrepreneurs, individual companies, business associations or communities whose inhabitants are interested in creating companies or strengthening the existing companies.

## SECTION II TECHNICAL ASSISTANCE

**Article 22:** The Technical Assistance program will be used to hire national and international advisors and business development service providers with the purpose of increasing competitiveness, productivity and quality of the micro, small and medium enterprises or assisting with the marketing of new products.

**Article 23:** This Fund may also be utilized as follows:

1. To cover expenses related to forums, workshops, and seminars proposed by AMPYME, without prejudice to be sponsored by third parties.
2. To purchase lab, production or teaching equipment, which will be used by government institutions and public or private universities to develop concrete projects previously agreed with AMPYME. Purchase of equipment will be governed by existing public procurement regulations.
3. As counterparty in costs and expenses to carry out investigations, programs or projects with the cooperation of national or international government institutions, non-governmental organizations and international bodies.

**Article 24:** Companies, organizations or business groups needing AMPYME's help as technical assistance programs should submit a formal request to the latter, who will approve them after an assessment process. The request of the interested company must include, at least, the following:

1. Type of technical assistance required by the applicant.
2. Economic justification of technical assistance.
3. Report on the applicant's financial condition.

## CHAPTER V SEED CAPITAL FUND

**Article 25:** In accordance with article 21 of Law No. 72 of 9 November 2009 the Seed Capital Fund is the one allocated to support new entrepreneurs and self-sustaining micro entrepreneurs of urban, rural and indigenous areas, and to entrepreneurs and micro business entrepreneurs. A non-refundable seed capital fund of up to one thousand balboas (B/.1,000.00) will be applicable, as long as the applicant meets with the training and oversight of AMPYME until the micro business becomes a productive business to the applicant.

**Article 26:** The resources of Seed Capital Fund may be applied by all Panamanian citizens, of age, interested in starting a business project in any region of the country and that belong to any of the following economic units:

# TRANSLATION

1. **Entrepreneurs:** Persons looking for an economic benefit, by means of an individual or joint work, through creations, innovations or initiatives that may allow them to identify business opportunities.
2. **Self-sustaining micro companies:** activity performed by a natural person, whose benefits only allow him, difficultly, his own or his family's subsistence.
3. **Micro business:** A formal or informal economic unit, generating annual gross profit or invoicing up to one hundred thousand balboas (B/.150,000.00).

A business plan may be submitted individually or jointly.

**Article 27:** The Seed Capital Fund may be administered by public or private Institutions with experience in administering economic resources. The public institutions must sign an agreement with the Authority to that end.

The private institution that wants to participate as fund administrator shall be chosen by means of existing Public Procurement regulations in the Republic of Panama and also must meet, as minimum, with the following requirements:

1. To have legal status.
2. A certification issued by the Ministry of Economy and Finance.
3. Accounting and administrative procedures established within the organization in accordance with the generally accepted accounting standards.
4. Ability to opening and maintaining a current account for the exclusive funds administration.
5. To have, as minimum, one (1) year of experience in funds administration, microcredit administration or a suitable company with specialized staff and to submit the corresponding guarantee bond.
6. To have financial reports duly audited by a Certified Public Accountant.
7. To have been subjected to, at least, one external audit.

**Article 28:** The Seed Capital Fund will grant resources for up to one thousand balboas (B/.1,000.00) non-refundable to finance business plans to support new entrepreneurs and self-subsistence micro businessmen of urban, rural and indigenous areas and to entrepreneurs and business micro businessmen.

**Article 29:** The resources allocated by the Seed Capital Fund may be used to cover the resources needs described or contemplated in the Business Plan prior approval of the Evaluation Committee.

**Article 30:** The resources allocated by the Seed Capital Fund may not be used to cover the following issues:

1. Compensation to the entrepreneur or his employees, unless for agriculture sector.
2. Purchase of movable goods not related to the purpose of the business plan.
3. Purchase of immovable goods.

## **TRANSLATION**

4. Purchase of securities and financial instruments (fixed-term savings, mutual funds deposits, among others).
5. Remodeling or adaptation to any type of immovable goods which are not covered by the business plan.
6. Compensation to advisors to prepare the business plan or project feasibility studies.
7. Payment of liabilities, debts or dividends.
8. Capital recovery.
9. Purchase of stocks, business rights, bonds and other movable values.
10. Payment of taxes related to the business operation and fines or penalties because of non-payment of State obligations.
11. Purchase of premiums, franchises or business premises.
12. Seed capital should not be used as collateral or pledge in financial obligations or be transferred to a third party.

**Article 31:** The necessary requirements to be awarded with Seed Capital Fund resources are as follows:

1. Being a Panamanian citizen
2. Being of age.
3. To have Business Register issued by AMPYME.
4. Have not been previously benefited with the Seed Capital Fund.
5. Must be registered in the Training Fund to apply for the Seed Capital Fund and the due approval of said training.
6. Register and submittal of business plans.
7. To attend the seed capital contest call complying with the requirements established for that purpose.
8. Evaluation Committee's approval of the Business Plan.
9. To have a notice of operation, unless those excluded by existing Laws.
10. Allocation of seed capital.
11. The beneficiary must accept the surveillance and technical assistance provided by the staff appointed by AMPYME.
12. Control and evaluation of the investment.

**Article 32:** Once the business plans are prepared, the entrepreneurs and micro companies may access to capital seed contest calls, attaching to the requirements set forth in the contests, a copy of their business plans with the respective evaluation, which must be registered and submitted personally to the offices of AMPYME.

**Article 33:** At least once a year AMPYME, as executor of the Seed Capital Fund, will establish the terms and conditions of the different public calls to access to contestable seed capital funds.

**Article 34:** AMPYME has initially established the following contests, according to lines and intervention segments:

# TRANSLATION

1. **Self-subsistence Entrepreneurship contest:** promoting and supporting the generation of new initiatives of multi-sector businesses of entrepreneurs and self-subsistence micro companies.
2. **Production-based Organizations Entrepreneurship contest:** supporting entrepreneurs working jointly in rural and indigenous areas.
3. **Strategic economic activities contest:** supporting entrepreneurs and micro businessmen performing tourism, agroindustry, commercial, services, and handicrafts activities.
4. **Business incubators:** supporting entrepreneurs and micro businessmen to develop business ideas with business incubators having agreements with AMPYME.

The General Directorate of AMPYME or the appointee will be responsible for the development of public call for registration and nomination.

Each call will have, preferably, the background and objectives of the call; geographic coverage (national, regional, by Province or Indigenous Region); call chronogram; sponsors, beneficiaries, stops, amounts and usages; beneficiary economic sectors; budgetary availability; procedure to participate in the contest; form of the business plan to be submitted; evaluation process; seed capital allocation; monitoring and technical accompaniment; control, monitoring and evaluation mechanisms.

As of the closure of each call, the Directorate General of AMPYME or the appointee will prepare a Minute where the number and list of applications registered during the calls is certified. Within a peremptory period of time after the closure, the list of applications registered will be published on the website of the entity or in any other local, regional or national means.

**Article 35:** To assess the business plans, the Evaluation Committee must take into consideration the following:

1. **Verification of admissibility requirements:** The Directorate General of AMPYME or the appointee will verify the information submitted by entrepreneurs and micro companies on the fulfillment with the requirements stipulated in each call. Only those applications duly filled out and with complete documentation will be going to the next round.
2. **Business plan evaluation:** The evaluation process of the business plans registered in each call, will be the responsibility of the public – private evaluation committees, chosen according to the type of contest to be made and required expertise. The committees have the purpose of establishing the technical, economic and financial viability, as well as the structure and coherence of the business plan.

**Article 36:** The Evaluation Committee will consist of public and private sectors representatives, as follows:

1. AMPYME Regional Office.
2. Non-financial entity involved in promoting micro and small enterprises.

## TRANSLATION

3. Fund Administrator contracted for that purpose.
4. Business Association or civic clubs.
5. Depending on the contest: the Governor of the Province, Local Board, Government Agency involved in the topic and/or University

**Article 37:** The Evaluation Committee will prepare a Minute with the definitive result of the evaluation based on the criterion set on the calls.

**Article 38:** The Directorate General of AMPYME or the appointee will publish the list of beneficiaries to be awarded with the Seed Capital on the entity's website or through any other local, regional or national means.

**Article 39:** The winner of the contest will sign a Commitment Agreement with the Authority to provide him the capital, which will have, among other things, the acceptance of monitoring and accompanying of technical staff appointed by AMPYME.

Said agreement will be signed within a period no longer to thirty (30) business days starting from the publication of the award. Otherwise, it will be understood as the winner relinquished the prize.

**Article 40:** The resources will be granted to the beneficiaries through a formal delivery letter, whereby will be specified the seed capital payment. From the moment the seed capital is granted, the beneficiary will have twelve (12) months to use it totally and will have to inform AMPYME upon its request.

If there is any false information or noncompliance while using the resources, as agreed, AMPYME will take the following measures:

1. Will not allow the beneficiary to participate in any other AMPYME program for 5 years counted from the date the Authority acknowledged the noncompliance.
2. Corresponding legal sanctions.

## CHAPTER VI MSEs MICROCREDIT FINANCING FUND

**Article 41:** In accordance with article 21 of Law No. 72 of 9 November 2009, the MSEs Microcredit Financing Fund is aimed to financially support the activities of microfinance operators for the benefit of existing micro and small enterprises.

**Article 42:** The MSEs Microcredit Financing Fund will work as a Trust Fund that will provide a financial instrument to Microfinance Operators with a line of credit to finance MSE. This trust fund will work as second-tier bank for microfinance operators providing financial resources to first-level operators that, with such resources and on their own risk, will allocate and receive those from their users and clients, expanding and consolidating their microfinance services.

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**Article 43:** The trust fund will consist of the following:

1. A Trustor. AMPYME will act as Trustor.
2. A Trustee. The financial company contracted to that purpose will act like it.
3. A Primary Beneficiary. All those natural or juridical person producer of goods and services that belong to the micro and small enterprises sector that may receive financial services through Microfinance Operators according to the eligibility requirements established in the Operating Manual of this Trust fund.
4. A Final Beneficiary that will be the AMPYME, who will receive in this concept the trust equity when the trust fund is over.

**Article 44:** The Trust company will be chosen through the existing Public Procurement regulations of the Republic of Panama.

**Article 45:** The MSEs Microcredit Financing Fund will be financed with a Trust fund whose resources will be allocated by the Executive Branch. The Ministry of Economy and Finance will take the necessary provisions to allocate to the Fund the necessary budget allocation in order to apply it.

**Article 46:** Microfinance Operators legally established in the country will have access to resources of this fund.

**Article 47:** The Microfinance Operators that meet the following requirements may be eligible to work as first-tier bank:

1. Must be a member of the National Entrepreneurship System.
2. Must demonstrate one (1) year of experience, as minimum, in handling microcredit or a suitable company with specialized, professional staff.
3. A copy of legal standing.
4. Certificate issued by the Public Registry
5. To submit an operating authorization document duly updated by the institution regulating its operation.
6. To submit updated financial statement of the previous year signed by a certified public accountant.
7. To submit an authorization minutes issued by the board of directors to apply for the resources of the fund.
8. The entity must provide the cash flow and strategic execution program and microcredit allocation.

**Article 48:** The resources of the Entrepreneurial Fund allocated to MSEs Microcredit Financing Fund must be lent to Microfinance Operators to provide funds to the following activities:

1. Acquisition of goods, works and services required for the execution of a project that may contribute to increase the productivity of the existing companies.
2. Working Capital.

## **TRANSLATION**

3. Cooperating and technical advisory expenses, necessary to execute production, commercial, and service activities performed by micro and small enterprises.
4. Restructure of previous debts, as long as those were confirmed as originated from the business operation.

**Article 49:** The resources of the Entrepreneurship Fund allocated to the MSEs Microcredit Financing Fund shall not be granted by Microfinance Operators to provide funds to the following activities:

1. Personal expenses of the loan beneficiary.
2. Payment to third parties or payment of dividends or retrieval of inverted capital.
3. Purchase of shares and participations in stock capital.
4. Payment of wages and compensations.
5. Payment to the entrepreneur or his employees, excepting the agriculture sector.
6. Recurrent expenses.
7. Payment of taxes
8. Purchase of immovable property that are not destined to business productivity.
9. Funding of investment which proceeds will encourage alcohol consumption.
10. Funding of investments which are aimed to promote sex or undermines morality.

**Article 50:** The participation of Microfinance Operators in the Program will be governed by the Contract signed with the Trustor that will allow the opening of a Line of Credit. In such a contract shall be established the rights and duties of the parties according to the provisions of this regulation, the operating manuals of this fund, and any other document attached thereto.

**Article 51:** The interest rate applied to loans granted to Microfinance Operators, within the Lines of Credit granted, will be of fixed rates and will be determined during the signing of the Contract entered into by the Microfinance Operators and Trust. Said rate must cover the credit risk, market risk and operating expenses.

This rate shall not be lesser than the interbank deposits reference rate to 90 days average for the banking system that is published by the Superintendency of Banks, adjusted to the statutory reserves cost and other fixed assets.

**Article 52:** It is up to supply and demand to apply interest to the primary beneficiaries. Microfinance Operators will apply to sub-loans the interest rates agreed upon with each primary beneficiary.

**Article 53:** Loans granted to Microfinance Operators by the Trustor must be established according to the limits to be accessed by each of them according to the annual results of their credit risk level as first-tier entity.

# TRANSLATION

**Article 54:** The Trustor will be responsible for the allocation of resources of the Trust fund through Microfinance Operators that meet the eligibility requirements established by the MSEs Microcredit Financing Fund Trust fund.

Microfinance Operators will take the credit risk of the concerning sub-loans and will be responsible for the utilization of resources according to the provisions of this regulation, of the operating manuals of this fund, and of any other document attached thereto.

## CHAPTER VII GUARANTEE FUND

**Article 55:** In accordance with article 21 of Law No. 72 of 9 November 2009, the Guarantee Fund was created in order to improve business competitiveness of entrepreneurs and micro and small enterprises. This fund will work as follows: Individual Guarantees to micro, small, and medium enterprises (MSME) and Financial Intermediation Guarantee to microfinance companies.

## SECTION I GENERAL PROVISIONS

**Article 56:** The Financing Program for Micro and Small Enterprises (PROFIPYME) was created whereby AMPYME, through the Guarantee Fund, will approve the funding made by EFs to entrepreneurs and micro and small enterprises according to what is set forth in this regulation. These funding may consist of loans, leasing, factoring, EF fund, and other microfinance services.

**Article 57:** PROFIPYME objectives are:

1. To promote the offer of loans, leasing, factoring, and lines of credit and any other method created to support entrepreneurs and micro and small enterprises to finance investments, creation of new enterprises and to expand or increase the productivity of existing companies.
2. To promote funding of Financial Entities (EFs).

**Article 58:** The Guarantee Fund may not be used by AMPYME for direct loans to micro and small enterprises. The Authority will procure an efficient utilization of the Guarantee Fund, so it will limit this to benefit for only one simultaneous operation made by any natural or juridical person.

**Article 59:** Under the Individual Guarantees mode, the secured capital should not exceed twenty-five thousand balboas (B/.25,000.00) for entrepreneurs and micro enterprises, or fifty thousand balboas (B/.50,000.00) for small enterprises. In both cases, the guarantee may only reach eighty percent (80%) of debt balance.

**Article 60:** Under the Financial Intermediation Guarantees mode, the EF secured capital should not exceed five hundred thousand balboas (B/.500,000.00) and the guarantee may only reach eighty percent (80%) of debt balance.



# TRANSLATION

**Article 61:** Any EF member of PROFIPYME shall meet with the rules contained in this regulation and shall submit to AMPYME a financing program for entrepreneurs and micro and small enterprises.

EF will grant loans, leasing, factoring, lines of credit, and other financial services, according to the criteria established in the agreement signed with the Authority and also, shall have in force the analysis of opportunities and risks related to each enterprise to which they grant loans and follow up each funding.

**Article 62:** AMPYME may impose individual limits to each EF portfolio in accordance with their competency, reliability, and experience. Also it may impose limits in situations of resource shortage, market saturation, excessive delinquency of certain activity or economic crisis.

**Article 63:** EF eligible to become a member of PROFIPYME must submit the following documentation:

**1. Banks:**

- a. Authenticated copy of the Resolution issued by the Superintendency of Banks by means of which the EF was granted with a General License and/or special License for Microfinance system to start operations in the country.
- b. A formal request made by the legal representative of the Bank to be registered in the programs guaranteed by the fund.
- c. Documents explaining the credit policies related to risk management, analysis, control, and classification of corporate loans addressed to micro and small enterprises, as well as the practices to monitor and retrieve those in compliance with the provisions of Rule No. 6-2000 of 28 June 2000 issued by the Superintendency of Banks on risk management, analysis, control and classification. In case of promulgating a new regulation modifying or replacing the aforementioned Rule, the latter shall be applied.
- d. To submit to AMPYME a training program for credit officials specialized in credit to micro and small enterprises.

**2. Financiers:**

- a. To submit authenticated copy of the License granted by the Directorate General of Financial Companies of the Ministry of Trade and Industry.
- b. Formal application issued by the Legal Representative of the Financier for their registration in the programs guaranteed by the fund.
- c. Must commit itself in the agreement signed to follow up the provisions of Rule 6-2000 of the Superintendency of Banks and submit itself to the same limits of interest rates regulating banks in loans addressed to micro and small enterprises sector.
- d. To submit to AMPYME a training program for credit officials specialized in credit to micro and small enterprises.

# TRANSLATION

## **3. Unions:**

- a. Be duly organized according to Law No. 17 of 1997, so it shall provide a certification of the Registry issued by the Directorate of Union Registry of the Panamanian Autonomous Institute of Unions, in which all constitution, legal standing, legal representative requirements or any other information on its condition can be evidenced.
- b. Formal application issued by the Legal Representative of the Union for its registration in the programs guaranteed by the fund.
- c. Must commit itself to the agreement signed to follow up the provisions of Rule 6-2000 of the Superintendency of Banks and submit itself to the same limits of interest rates regulating banks in loans addressed to micro and small enterprises sector and/or any of the criteria agreed upon with AMPYME according to the agreement entered into with EF.
- d. To submit to AMPYME a training program for credit officials specialized in credit to micro and small enterprises.

## **4. NGOs and Rural Funds:**

- a. Registration certificate granted by the legal standing registry of the Ministry of Government and Justice.
- b. Certificate issued by the Public Registry.
- c. Formal request of the Legal Representative of the NGO for its registration in programs guaranteed by the fund.
- d. Must commit itself to the agreement signed to follow up the provisions of Rule 6-2000 of the Superintendency of Banks and submit itself to the same limits of interest rates regulating banks in loans addressed to micro and small enterprises sector and/or any of the criteria agreed upon with AMPYME through an agreement signed with EF.
- e. To submit to AMPYME a training program for credit officials specialized in credit to micro and small enterprises.

After the submitted documentation is analyzed, AMPYME will inform to EF within a period no longer than thirty (30) days, if there is any objection to make official its participation in the program. If there is no information from AMPYME to EF within the aforementioned period it will be understood as the application was approved.

Once the application is approved, the concerning agreement will be signed, which will be in a standardize format and any amendment or addendum must be made with the agreement of both AMPYME and EF members to the program, maintaining the principle of legal equality.

## **SECTION II GUARANTEE FUND USE**

**Article 64:** AMPYME may evaluate the credit risks of fund guaranteed according to the principles provided in Rule No. 6-2000 of the Superintendency of Banks and/or any of the additional criteria agreed with AMPYME through the agreement

# TRANSLATION

signed with EF. The credit granting for purposes other than those established in this regulation by EF within PROFIPYME will be the sole responsibility of the lending entity and will not be guaranteed by the fund.

**Article 65:** EF will be responsible for evaluating the credit risks that the fund guarantees by means of the agreement signed with AMPYME according to the principles provided for in Rule No. 6-2000 of the Superintendency of Banks and the additional criterions agreed with AMPYME. The credit granting for purposes other than those established in this regulation by EF within PROFIPYME will be the sole responsibility of the lending entity and will not be guaranteed by the fund.

**Article 66:** Any Credit Entity member to PROFIPYME should:

1. Appoint credit officials duly trained to follow up credits granted.
2. Submit to AMPYME a report within the five first days of each month, which will describe the new credits and the general condition of loans granted, including the purpose of the loan, the amounts paid to capital or interests, the debt balances, compliance percentage, delinquency, and any other information that AMPYME may request to EF through a letter.
3. Provide AMPYME with the credit documentation when there is any claim filed to the fund.
4. Each EF shall collect from the guarantee beneficiary the fee on the loan amount fixed by AMPYME by means of a resolution based on numbers 4 and 6 of article 13 of Law No. 72 of 2009. The amounts collected from the fee will be paid by EF to the account of the Guarantee Fund in the Banco Nacional. AMPYME will establish the collection and fee management procedures by means of an agreement with EF.

EF's failure to comply with these obligations will annul the possibility of taking part of the programs using the Guarantee Fund.

**Article 67:** EF will inform AMPYME of the request of each funding granted within the program. After this information is received, AMPYME will evaluate the request and may issue a Credit Guarantee document for the loan, leasing, factoring or lines of credit. Once it is approved, the guarantee will be given to the member entity.

This document will be returned to AMPYME under the following circumstances:

1. When the debtor pays the total amount of the credit obligation; which makes unnecessary to continue with the guarantee.
2. When a claim filed against the fund is handled.

**Article 68:** Funding granted by PROFIPYME to EF under the financial intermediation mode, must have as objective to provide funds to micro and small enterprises to create new companies or to expand or increase the productivity of the existing ones. As a result, funds shall not be granted to refinance debts with other financial institutions.

## **TRANSLATION**

**Article 69:** Funding granted by EF to entrepreneurs and micro and small companies under individual guarantee mode within PROFIPYME, must be aimed to invest, create new companies or expand or increase the productivity of the existing ones. As a result, funds shall not be granted to refinance debts with third parties when those are not related to the company's business.

**Article 70:** By means of a Resolution the percentage of debt balance that will be guaranteed by AMPYME, according to the economic activity, will be fixed as long as it does not exceed the limits established in this Executive Decree.

**Article 71:** By means of a Resolution the percentage of debt balance that will be guaranteed by AMPYME to EF granting the guarantee for institution's funding, which shall not exceed the foreseen in this Executive Decree will be fixed.

**Article 72:** In PROFIPYME, both the individual guarantee and financial intermediation covered by the fund, will not be executed because of debtor's delinquency, but for the definitive uncollectable debt capital and interests within the first one-hundred twenty (120) days after the delinquency of the periodic payment of the service of the debt and after all restructuring possibilities were exhausted.

EF may not use the guarantee just because by lack of payment from the debtor but as coverage of the losses occurred for the credit disappearance of creditor's assets, according to the principles provided in article 8.5 of Rule No. 6.2000 that will govern all EF.

Shall not be covered by the Guarantee Fund the account management fee, extrajudicial or judicial collection diligences, delinquent interest for more than one-hundred twenty (120) days after the payment delinquency occurred and any other additional expenses.

### **SECTION III ELIGIBILITY TO USE THE GUARANTEE FUND**

**Article 73:** Under the Individual Guarantees mode, will be considered as eligible to be granted with the guarantees, those entrepreneurs, micro and small enterprises that comply with the following criterions:

1. The loans shall be used in investment to create new enterprises and expand or increase the productivity of the existing ones.
2. The loan receiver shall be registered in the Enterprise Registry of AMPYME.
3. If it is an informal enterprise and is duly registered in the Enterprise Registry, the capital guaranteed by the Authority may not exceed two thousand balboas with 00/100 (B/.2,000.00). While for formal micro enterprises, the capital guaranteed by the Authority may not exceed the amount of twenty-five thousand balboas with 00/100 (B/.25,000.00). In case of small enterprises, the capital guaranteed by the Authority may not exceed fifty thousand balboas with 00/100 (B/.50,000.00).

## TRANSLATION

4. None enterprise will receive two or more guarantees simultaneously within PROFIPYME.
5. Should not have incurred previously in any delinquency when paying their credits with PROFIPYME.

AMPYME may agree additional eligibility criteria, which shall be informed to all member credit entities within fifteen (15) business days prior its application.

AMPYME together with EF will agree mechanisms to effectively apply these criteria during the loan evaluation, as well as to grant loans to companies performing activities that are not eligible according to this regulation.

**Article 74:** Under the Financial Intermediation Guarantee mode are considered as eligible to receive guarantees for Capital Fund, those EF complying with the following criteria:

1. Credits must be used for the benefits of MSEs to create new enterprises and expand or increase the productivity of existing ones.
2. The loan receiver must be a member to the Entrepreneurship National System.
3. The Guarantees may not exceed the amount of five hundred thousand balboas with 00/100 (B/.500,000.00).
4. None EF will receive two or more guarantees simultaneously within PROFIPYME.
5. Should not have incurred previously in any delinquency when paying their credits with PROFIPYME.

AMPYME may agree additional eligibility criteria, which shall be informed to all member credit entities within fifteen (15) business days prior its application.

AMPYME together with EF will agree mechanisms to effectively apply these criteria during the loan evaluation, as well as to grant loans to companies performing activities that are not eligible according to this regulation.

**Article 75:** In any of the two modes will not be eligible to participate in the guarantee program, those companies or EF involved in the development of the following activities:

1. The ones considered as sex, such as: hostess bars and taverns, push buttons, strippers services, sex shops, and massage parlors, in which the staff was not trained by certified chiropractors.
2. Companies engaged in distribution and sale of alcoholic beverages, such as bars, taverns, stores, and restaurants with licenses to sell liquor in open containers.
3. Companies in technical bankruptcy or under cautionary measures affecting their assets and working capital.

## SECTION IV

# TRANSLATION

## PROCEDURE FOR GUARANTEE COLLECTION

**Article 76:** When a credit granted by EF under PROFIPYME is under capital or interest delinquency, according to its policies, the creditor shall submit a report to AMPYME within five (5) business days after the date in which the last payment should be made, explaining the following:

1. If EF considers that it is the debtor's temporal difficulty that can be solve.
2. If the situation is considered insuperable, it must be informed on the collection management made while the term to enact the guarantee is effective.
3. In case that the economic condition of the debtor changes after the initial report is submitted, EF may inform this change to AMPYME and will notify what measures will be taken due to this new situation.

EF shall be obliged to make all necessary diligences to collect the credit granted under PROFIPYME.

**Article 77:** EF may claim before AMPYME the guarantee payment against the Fund when the credit disappears from the creditor's assets according to the provisions of article 72 of this regulation. In case of loans to micro enterprises, it is until the delinquency or minimum maturity of one-hundred twenty (120) days to pay the credit obligation by the debtor is presented.

In case of a small enterprise, also two of the following situations must be presented:

1. Debtor's insolvency statement duly certified by a Certified Public Accountant not related to EF.
2. Impossibility of saving the company even though there is an alternative of an administrative agreement supported by the creditor through a report.
3. Delinquency or maturity of one-hundred (120) days in paying the credit obligation by the debtor.

**Article 78:** When the credit granted under PROFIPYME is considered irretrievable, the EF may file its claim to AMPYME complying with the following requirements:

1. Formal submittal of the application.
2. Documents evidencing the uncollectable account condition that must include the collection management made, be them judicial or extrajudicial, as well as any other information that may prove the claim precedence.
3. Evidence of having started the judicial collection of the obligation in case the delinquent credit exceeds B/.2,500.00 and is not about a joint credit.

**Article 79:** When there is a credit guarantee claim filed, AMPYME, after evaluating and determining there is a dispute, shall settle this within thirty (30) business days after the claim was filed.

If AMPYME does not inform, during this period, that it accepts or rejects the claim, it will be tacitly considered as valid and will proceed with its immediate settlement.

# TRANSLATION

In case of the existence of disputes on the claim validity, AMPYME shall solve them in a period no longer than ninety (90) business days after the claim was filed.

**Article 80:** AMPYME will proceed to analyze the documentation prior to the payment assuming that all claim is made based on good faith unless otherwise. If there is information that allows suspecting of a false claim, the Authority may proceed to verify the documentation of the creditors related to the case, with a financial analysis of the debtor's finances taking into consideration the on-site examinations, third-party inspections, the request of evidences to other governmental agencies and any measures deemed necessary to verify the truthfulness of the claim.

AMPYME may use the documentation provided by the claimant and those documents that may be obtained to validate the legitimacy of the claim.

From the moment the claim is received by AMPYME the investigation period will start. This will not last more than sixty (60) business days in which the claim validity will be determined.

**Article 81:** AMPYME may only reject any claim filed against the Guarantee Fund when it is determined that they have incurred in one of the following situations:

1. Noncompliance with the provisions of Rule No. 6-2000 of the Superintendency of Banks or any rule amending it or replacing it and the procedures agreed upon with AMPYME on the risk management and analysis.
2. The claimant sent reports to AMPYME with false information on the affected credit.
3. The claimant hide information requested by AMPYME on the credit claimed.
4. The claimant incurred in any of the prohibitions contained in this regulation.

**Article 82:** When the credit exceeds one thousand balboas with 00/100 (B/.1,000.00), the collected information will be submitted to AMPYME. Prior evaluation, the Directorate General of AMPYME will proceed with a considered resolution to authorize or reject the payment to EF of the Guarantee Fund. In case of an administrative act, the Reconsideration resources may be filed before the Authority or an Appealing resource may be filed before the Directorate Committee of AMPYME within the periods established by Law.

**Article 83:** In case the Authority disburses amounts of money as payment of the guarantees and there is a retrieval of these amounts, AMPYME may replace itself of all rights.

**Article 84:** In case of replacement, claiming EF will commit itself to the following:

1. Creditor shall follow with the credit retrieval with the same diligence of a similar non-guarantee credit by the Guarantee Fund.

## **TRANSLATION**

2. Creditor shall allow AMPYME to be aware of the judicial collection proceedings, when applicable, and shall grant access to any documentation related to the case.
3. The amounts retrieved by EF exceeding the amount that it shall assume as risk, must be reimbursed to the Guarantee Fund through AMPYME.

If failing to comply with the above or in case a false claim is evidenced, the EF shall pay to AMPYME the disbursements made by the Authority and for any loss incurred to the Guarantee Fund without prejudice to the corresponding legal actions.

### **CHAPTER VIII FINAL PROVISIONS**

**Article 85:** AMPYME may create special reserves in the Entrepreneurship Fund to assure that the amount given by national and international institutions will be allocated to the specific projects of the Fund.

**Article 86:** AMPYME will review this regulation every two years after evaluating the experiences acquired in management period together with the Entrepreneurship System and with the companies registered in the program in order to adapt it to the needs of the moment and at the same time constantly update it.

**Article 87:** This Executive Decree derogates the Executive Decree No. 18 of 10 April 2001.

**Article 88:** This Executive Decree will be in force since its promulgation.

Given in the city of Panama, on the twenty-third (23<sup>rd</sup>) July, two thousand ten (2010.)

**RICARDO MARTINELLI BERROCAL**  
President of the Republic

**ROBERTO C. HENRÍQUEZ**  
Minister of Trade and Industry