

TRANSLATION

Republic of Panama *Superintendency of Banks*

RULE No. 002-2012¹
(dated 18 April 2012)

“Whereby Contracting Nonbanking Correspondents for the provision of certain services on behalf of banks is regulated”

THE BOARD OF DIRECTORS

In use of its legal powers, and

CONSIDERING:

That due to the issuance of Decree Law 2 dated 22 February 2008, the Executive Branch reedited Decree Law 9 of 1998 and all of its amendments as a sole text, and that this text was approved by means of Executive Decree 52 dated 30 April 2008, hereinafter referred to as the Banking Law;

That Article 2 of the Banking Law establishes that only those persons who have obtained a banking license may engage in the banking business in or from the Republic of Panama. Public legal entities authorized to that effect may also engage in the banking business in or from the Republic of Panama;

That pursuant to the provisions of article 5 of the Banking Law, the objectives of the Superintendency of Banks are to safeguard the soundness and efficiency of the banking system, to strengthen and foster favorable conditions for the development of the Republic of Panama as an international financial/banking center, and to promote public trust in the banking system;

That pursuant to the provisions of article 11, paragraph I, number 5 of the Banking Law, the technical responsibility of the Board of Directors is to interpret and establish the reach of the legal provisions on banking matters within the administrative sphere;

That although the level of monetization of the economy (credit/GDP) is the highest of the region, the level of banking is relatively low;

That for the Superintendency, the development of an inclusionary financial strategy implies the adoption of various measures, including opening new channels for banks to offer certain financial services and creating new payment, credit and savings products that will cover the needs of poorer people, and that it will also require the establishment of a regulatory risk-based framework that will facilitate the development of these innovative business models and products;

That in other countries contracting public service networks to provide several services and operations on behalf of banks (known as nonbanking correspondents) has been an effective channel for further broadening of financial services, allowing banks to operate in places where they do not have branches or automated teller machines and to reduce transaction costs without incurring excessive risk;

¹ Amended by Rule 11-2015 dated 18 August 2015.

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That the issuance of a regulation for contracting nonbanking correspondents will allow the state-owned and general license banks to carry out banking within the Republic of Panama, to achieve higher levels of efficiency at lower operating costs, alleviate congestion at bank branch offices and, at the same time, take a more prominent role in the important task of facilitating access to financial services for population segments where the offer of services has not been extended through the establishment of branches or automated teller machines;

That the provision of certain services and operations through nonbanking correspondents will require the adoption of appropriate controls and measures for the correct management of operating and technology risks associated with the use of this channel, ensuring transactional security as well as the prevention of improper use of banking services;

That the adoption of rules fostering the creation of nonbanking correspondents will contribute significantly to increased participation in banking, favoring an increase in new banking customers and the development of the national economy;

That during the Board of Directors' working sessions it became obvious that it was necessary and advisable to establish the minimum requirements banks must comply with when contracting nonbanking correspondents to provide certain services and operations on their behalf.

RESOLVES:

ARTICLE 1. SCOPE OF APPLICATION. The provisions of this Rule shall be applicable to state-owned and general license banks.

ARTICLE 2. DEFINITION OF NONBANKING CORRESPONDENTS. Nonbanking correspondents are natural persons or legal entities, working in their own or third-party establishments and connected with the bank through real time data transmission systems, with whom the bank enters into an agreement to provide, through these persons and under the bank's responsibility, one or more of the services or operations in article 3 and any other service or operation the Superintendency may authorize.

Nonbanking correspondents must be engaged in another principal commercial activity such that the correspondent services offered constitute only a sideline.

ARTICLE 3². SERVICES. Banks may provide one or more of the following services through a nonbanking correspondent:

1. Cash deposits and withdrawals from checking and savings accounts, as well as the transfer of funds relative to those accounts.
2. Balance inquiries and movements on checking and savings accounts.
3. Balance inquiries on loans or other credit facilities.
4. Disbursements for credit operations.
5. Payments relative to credit operations.
6. Disbursements and payments from social/welfare programs.
7. Transfer and reception of checks and remittances.

² Amended by Rule 11-2015 dated 18 August 2015.

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8. Payment for services.
9. Withdrawals with debit cards.
10. Issuance of statements of account.
11. Mobile payment/wallet services through mobile phone companies, which will act as nonbanking correspondents.
12. Opening simplified process accounts in accordance with the current provisions.
13. Other operations and services the Superintendency of Banks may authorize.

The services mentioned in paragraphs 1, 4, 5, 6, 7, and 9 herein will be made within the limits approved by the board of directors of the bank.

The operations to be made through nonbanking correspondents must be made solely and exclusively through electronic terminals connected to the technology platform of the bank, and must be registered in real time.

ARTICLE 4. OTHER ACTIVITIES ON BEHALF OF THE BANK. The services provided by nonbanking correspondents on behalf of the bank may be extended to the following activities:

1. To promote, collect and furnish documentation and information related to the services mentioned in Article 3 of this Rule, including information related to the opening of bank accounts and to credit applications.
2. To provide information to clients and users about the conditions and characteristics of other financial products and services offered by the bank with whom they have entered into a correspondent agreement.

ARTICLE 5. SERVICE TRANSPARENCY. Services offered by nonbanking correspondents must comply with the rules and regulations issued by the Superintendency on transparency and access to information.

ARTICLE 6. BANK RESPONSIBILITIES. The implementation of the bank's policy to operate through nonbanking correspondents will rest with the bank's board of directors, as will the approval of the operating model to provide services and operations through this channel, as described in Article 10 of this Rule.

Banks operating through nonbanking correspondents will be fully liable to their clients and users for the operations and services provided.

Claims filed by banking consumers will be governed by the provisions of Title VI of the Banking Law and its enabling regulations.

The bank must take the necessary steps to ensure that the nonbanking correspondent protects privileged information belonging to both the bank and its clients, in order to prevent such information from being intentionally or unintentionally revealed to third parties that by Law are not authorized to receive it.

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ARTICLE 7. MINIMUM CONTENTS OF THE AGREEMENT. The agreement that banks enter into with nonbanking correspondents shall have, as a minimum, the following characteristics:

1. The service or services to be contracted with the nonbanking correspondent.
2. The fee to be paid by the bank to the nonbanking correspondent and the payment method.
3. The identification of risks associated to the provision of financial services that will be assumed by the nonbanking correspondent with the bank, including among others, the risks inherent risks in the handling of cash.
4. The duties of the nonbanking correspondent, including as a minimum:
 - a. Depositing cash received in accordance with the procedure established by the bank, in order to remain within the approved limits of operation.
 - b. Providing transaction receipts to clients and users issued by the electronic terminal located within the facilities of the nonbanking correspondent. The receipt must include, as a minimum, the date, time, type and amount of the transaction, and the names of the nonbanking correspondent and bank, respectively.
 - c. Complying with the nonbanking correspondents' operations manual provided by the bank.
 - d. Maintaining banking confidentiality with regard to information on clients making transactions at the establishment.
 - e. Carrying out only the services and operations specified in the agreement and only during the hours agreed on.
 - f. Informing the bank of any anomaly or irregularity with the electronic connection provided to carry out authorized transactions.
 - g. Safeguarding the equipment furnished by the bank, if applicable.
 - h. Identifying the establishment as a "nonbanking correspondent," specifying the services and operations it is authorized to provide on behalf of the contracting bank.
5. Those activities prohibited to nonbanking correspondents.
6. Causes for the termination of the contractual relationship.
7. Any information related to the characteristics, restrictions and/or limitations of the service that will be provided by the nonbanking correspondent.

ARTICLE 8. ACTIVITIES PROHIBITED TO NONBANKING CORRESPONDENTS. The agreement entered into between the bank and the nonbanking correspondent must indicate that the following activities are prohibited to the correspondent:

1. To operate when circumstances impede the furnishing of the receipt for the operation to the client or user.

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2. To operate when there is a communication malfunction making the registration of the transactions in the bank's system impossible.
3. To transfer the rights and duties of the agreement in total or in part, without the bank's express agreement.
4. To charge the client or user any fee not previously authorized by the bank, for the operations or services provided on behalf of the bank.
5. To acquire on the bank's behalf any obligation or responsibility not expressly authorized in the relevant agreement or by the general rules governing the operations of nonbanking correspondents.
6. To exceed the limits established by the bank with regard to the number of transactions per client and the maximum amounts prescribed in the operations manual. These may be modified by the bank only in writing.
7. To condition performing operations or provision of services contracted by the bank to the acquisition of the nonbanking correspondent's own products or services.

ARTICLE 9. IMPAIRMENT. Any natural person or legal entity may provide services to the public through its own or a third party's facilities, as long as its charter or social purpose does not prohibit it.

Natural persons or legal entities that have been convicted of economic crimes against property or against the public order cannot act as nonbanking correspondents.

ARTICLE 10. OPERATING MODEL. The board of directors of the bank must approve the operating model that will be used for the provision of certain services and operations on its behalf through nonbanking correspondents. The model must include administrative, control, security, technology and communication procedures that will guarantee an adequate performance of the operations and provision of services to the public, and must include, as a minimum, the following:

1. To establish policies for the profile and recruitment of nonbanking correspondents including personal characteristics, type of business, physical conditions of the establishment, functioning, hours of operation, and training for the adequate provision of the services that will be contracted.
2. To establish policies, procedures and internal controls to prevent the improper use of the banking services offered through nonbanking correspondents.
3. To establish policies, procedures and controls for the management of risks associated with the provision of services through nonbanking correspondents.
4. To establish a contingency plan for the resumption of operations after a failure in the bank's systems related to the nonbanking correspondents' services.
5. To establish, pursuant to the provisions contained in the Rule on Transparency of Information for the use of banking products and services, appropriate means of dissemination to inform clients and the general public of the location and services provided through nonbanking correspondents, the security measures that must be taken to use them, the necessary data to permit identification of authorized nonbanking correspondents, and the fees that will be charged for those services.

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6. To establish mechanisms by which the clients or users can file claims or complaints related to operations or services rendered through a nonbanking correspondent.
7. To ensure that the technology systems and controls used by nonbanking correspondents guarantee and comply with the principles for the security of transmission and handling of information, in order to ensure the integrity, trustworthiness, confidentiality and availability of information.
8. Definition of users' access and identification passwords, as well as the description of the process implemented by the bank for the client's identification and approval to make transfer of funds, remittance of checks, withdrawals, balance inquiries, issuance of statements of account, and outlays of credits through the nonbanking correspondent.
9. To establish a maximum limit regarding the amount, frequency, number of allowed transactions per client or user, and type of transaction made with nonbanking correspondents over a specific period of time.
10. To permanently monitor the nonbanking correspondent's compliance with its obligations including a periodic check of the operations made by each one of the nonbanking correspondents.
11. To prepare a nonbanking correspondents' operating manual which must include, as a minimum, the basic concepts and description of banking operations and services that are authorized to be carried out; the limits set up by the bank with regard to the number of transactions per client and maximum amounts; steps to follow in handling operations and providing services through the relevant technology; technical specifications of the necessary equipment to be operated, and a quick troubleshooting guide and telephone numbers to use in case of emergencies or operating failure.
12. The description of equipment, software or applications to be used, the technical diagram for the submission and reception of information between the nonbanking correspondents and the bank's servers, the procedure for recording and maintaining the information on the transactions made, and any other documentation needed to understand the functioning of the computer and security systems.

ARTICLE 11. INTERNAL CONTROLS. Banks must implement internal control mechanisms for the appropriate performance of nonbanking correspondents, providing reasonable levels of safety, accuracy and risk protection, when administering, registering and carrying out the transactions and operations that will be generated.

The provisions of Rule 1-2007 dated 21 November 2007, whereby the minimum security rules for banking entities are established, are not applicable to nonbanking correspondents.

The bank must ensure that the operations carried out through nonbanking correspondents are adjusted to the system for the prevention of money laundering and financing of terrorism, pursuant to current regulations.

ARTICLE 12. TECHNOLOGY PLATFORM. In order to guarantee that the information from operations carried out through the nonbanking correspondent are handled under adequate conditions of security and quality, banks must use a technology platform that is connected to the electronic terminals located at the nonbanking correspondents' facilities and

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that has the necessary technical capacity to ensure integrity, trustworthiness, confidentiality and availability of information.

ARTICLE 13. TRAINING STAFF. Banks are responsible for training the staff of the nonbanking correspondents that will be performing and executing the duties and activities inherent in the provision of the agreed services, as well as to maintain that training current regarding changes or modifications the bank makes to their operating manuals when those are related to contracted services, changes or modifications to equipment, software or applications. Banks will also provide training when the nonbanking correspondents so requests due to staff rotation.

This training must include, as a minimum, providing the nonbanking correspondent with an operating manual specific to its operations, the simulation of transactions, general information about the bank, the objectives of nonbanking correspondents, a description of the banking operations and services that the correspondent is authorized to perform and the handling of equipment.

ARTICLE 14. SIGNS FOR THE IDENTIFICATION OF THE NONBANKING CORRESPONDENT AND OTHER RELEVANT INFORMATION. Banks are responsible for furnishing the notices or signs that identify the provision of authorized financial services to the nonbanking correspondent. These must be affixed in a public, visible place. These signs must show, as a minimum, the following information:

1. The designation “nonbanking correspondent,” stating the name of the contracting bank and the liaison with the bank where people can verify the information on the nonbanking correspondent. The above does not preclude the bank’s using a trade name for this service along with the information stated above.
2. That the contracting bank is fully responsible to clients and users for the services rendered through the nonbanking correspondent.
3. That the nonbanking correspondent is not authorized to provide financial services on its own.
4. A description of the services that it is authorized to provide.
5. The limits that the bank has established for the provision of financial services, such as amount per transaction, frequency, number of transactions per client or user, or type of transaction.
6. Any fee that the bank may charge for the services offered through the nonbanking correspondent, if applicable.
7. The hours of operation of the service.
8. That the bank will be bound to honor cash withdrawal requests through the nonbanking correspondent only to the extent that the nonbanking correspondent has enough resources. This does not negate the bank’s obligations to attend clients in a timely manner through its own network of branches or customer service offices.
9. Information about the bank’s contact telephone numbers or emails to lodge any complaint or claim by the clients or users of the nonbanking correspondent.

PROVISO 1: The information referred to in paragraphs 1 and 2 of this Article shall be provided on the stationery and all other documentation used by the correspondent.

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PROVISO 2: The nonbanking correspondents that are contracted by several banks at the same time must comply with the identification signs contained herein for each of the banks.

ARTICLE 15. AUTHORIZATION OF THE SUPERINTENDENCY OF BANKS.

Banks shall request the prior authorization of the Superintendency to use nonbanking correspondents. The request for approval of the provision of services and operations through nonbanking correspondents must be submitted to the Superintendency along with:

1. A copy of the Board of Directors' meeting minutes containing the bank's decision to operate through nonbanking correspondents.
2. The operating model to be used by nonbanking correspondents.
3. Modifications required to the organization and duties, policies and procedures, risk control and internal audit manuals, as well as improvements to the bank's internal control system to incorporate nonbanking operations, if necessary.
4. A report prepared by the bank's risk unit containing an assessment of the risks associated with the services and operations that will be provided through nonbanking correspondents and the establishment of measures to be taken to mitigate those risks.
5. A report providing the internal auditor's opinion on the adequacy of internal controls adopted to provide services and carry out operations through nonbanking correspondents.
6. A report issued by the bank's compliance officer on the adequacy of the controls implemented to prevent the improper use of banking services that will be offered through nonbanking correspondents.
7. A report providing a description of the equipment, the software or application to be used, a technical diagram of the submission and reception of information between the nonbanking correspondents and the bank's servers, and the computer controls that will be implemented to guarantee computer security, confidentiality, integrity, transfer and availability of information.
8. The model of the agreement that will be entered into with nonbanking correspondents.

The bank must inform the Superintendency of any amendments to previously-approved agreements or business strategies prior to their implementation. The Superintendency must provide notice of no objection.

The Superintendency may also require modifications to the terms of previous authorizations if necessary.

ARTICLE 16. CANCELATION OF AUTHORIZATION TO USE NONBANKING

CORRESPONDENTS. If during its inspections of a bank, the Superintendency determines that the bank has not complied with the internal policies, controls and procedures established by the bank for the functionality of nonbanking correspondents, or if the nonbanking correspondents suffer from important deficiencies, the Superintendency will require the discrepancies to be remedied within a period of not more than thirty (30) days; otherwise the authorization previously granted will be canceled.

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ARTICLE 17. SANCTIONS. Failure to comply with the Articles contained herein will be punishable under the provisions of Title IV of the Banking Law.

ARTICLE 18. ENACTMENT. This Rule shall become effective from its promulgation.

Given in the city of Panama, on the eighteenth (18th) day of April, two thousand twelve (2012).

LET IT BE KNOWN, PUBLISHED AND ENFORCED.

THE CHAIRMAN,

THE SECRETARY,

Arturo Gerbaud De La Guardia

Félix B. Maduro