# Republic of Panama
# Superintendency of Banks

**RULE No. 2-2023**
(Dated 28 March 2023)

**"Addition of Article 3-A and Amendments to Articles 13 and 27 of Rule 5-2011 on Corporate Governance"**

**THE BOARD OF DIRECTORS**
in the exercise of its legal powers and,

**WHEREAS:**

Upon the issuance of Decree Law 2, dated 22 February 2008, the Executive Branch re-edited Decree Law 9 of 1998 and all its amendments as a consolidated text, which was approved by means of Executive Decree 52, dated 30 April 2008, hereinafter referred to as the Banking Law,

Under Article 5(1) and (3) of the Banking Law, safeguarding the soundness and efficiency of the banking system and promoting public trust in the banking system are objectives of the Superintendency of Banks,

Under Article 11(1) of the Banking Law, approving general standards for the identification, regulation, and consolidated supervision of banks and banking groups is a technical duty of the Board of Directors,

Under Article 11(5) of the Banking Law, establishing the administrative interpretation and scope of the legal stipulations and regulations on banking matters is a technical duty of the Board of Directors,

Under Article 16(9) of the Banking Law, ordering the banks to remove their directors, officers, or executives if, in the judgment of the Superintendent, there is sufficient reason to do so is a technical duty of the Superintendent,

Under Article 48(1) of the Banking Law, establishing the identification of the principal shareholders and the professional competence of the administrative staff based on their experience, integrity, and professional background is one of the criteria for the approval or refusal of a banking license,

Under Article 55 of the Banking Law, banks are required to comply with the corporate governance regulations issued by the Superintendency,

Under Articles 107 and 108 of the Banking Law, it is established that, without prejudice to the provisions of the Commercial Code and other legislation in force, any person who serves as a director or dignitary or holds a managerial position in a bank will cease their functions and be barred from serving those positions in any bank when declared bankrupt or involved in insolvency proceedings, found guilty of crimes against property or public trust, or found guilty of grievous mismanagement of the affairs of the bank, as determined by the Board of Directors of the Superintendency, and when the person has been found responsible for actions leading to the compulsory liquidation of the bank,

Under Article 112 of the Banking Law, banks and other entities supervised by the Superintendency are required to establish policies, procedures, and internal control structures to prevent their services from being misused for money laundering, terrorist financing, and other crimes that are related or similar in nature or origin,

Under Rule 8-2010, dated 1 December 2010, the provisions on comprehensive risk management were established,

Under Article 4(6) of Rule 8-2010, reputational risk is one of the different types of risks to which banks are exposed. This risk is defined as the possibility that, due to the affectation of the bank's reputation, the bank incurs economic losses, Under Rule 5-2011, dated 20 September 2011, the provisions on Corporate Governance were updated,

Under Article 2(a) of Rule 5-2011, Corporate Governance is defined as the set of rules guiding the relationship between a bank's Top Management, its Board of Directors, shareholders, and/or bank holding companies, and other stakeholders that establish the structure by which the strategic objectives of the enterprise and the means to attain these objectives are set and determine the monitoring system,

Under Article 3(a) and (b) of Rule 5-2011, good corporate governance for banks shall include, as a minimum, documents clearly stating the corporate values, strategic objectives, codes of conduct, and other appropriate behavior standards, and documents clearly stating compliance with these requirements,

A good banking practice for banks is to ensure that shareholders, board members, senior managers, and key staff always have recognized suitability, reputation, moral standing, and economic solvency, regardless of the nature, sophistication, and risk profile of the bank, to mitigate the reputational risk of the entity,

According to the Basel Committee on Banking Supervision's Core Principles for Effective Banking Supervision, an essential component of good corporate governance is a corporate structure that reinforces appropriate standards for responsible and ethical behavior. This includes policies defining acceptable and unacceptable actions, as well as emphasizing the importance of timely and open discussion of problems and their referral to higher hierarchical levels of the organization,

According to the Basel Committee on Banking Supervision's Core Principles for Effective Banking Supervision, supervisors should take appropriate and effective supervisory measures when necessary. Therefore, supervisors are required to have the ability to establish and enforce suitability and integrity standards for shareholders, board members, senior managers, and key staff of banks,

During its working sessions, the Board of Directors determined it was necessary and advisable to amend Rule 5-2011 on Corporate Governance to establish basic guidelines that allow banks to adopt measures or mechanisms regarding the integrity of shareholders, board members, senior managers, and key staff.

**RESOLVES:**

**ARTICLE 1. ADDITION.** Article 3-A is added to Rule 5-2011, dated 20 September 2011, as follows:

> "**ARTICLE 3-A. INTEGRITY OF SHAREHOLDERS, BOARD MEMBERS, SENIOR MANAGERS, AND KEY STAFF.** Banks and bank holding companies under the home supervision of the Superintendency must ensure that shareholders, board members, senior managers, and key staff always have recognized suitability, reputation, moral standing, and economic solvency, regardless of the nature, sophistication, and risk profile of the bank.
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> For these purposes, banks and bank holding companies under the home supervision of the Superintendency must adopt integrity policies, procedures, and control mechanisms approved by the board of directors to continuously identify, assess, and monitor the reputation, moral standing, and economic solvency of shareholders, board members, senior managers, and key staff, as well as any natural or legal person legally associated with them. This is done to mitigate the potential risks that could jeopardize the continuity of bank operations, depositors' funds, and the stability, sustainability, reputation, and security of the bank, the banking group, or the banking system.
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> In case shareholders, board members, senior managers, and key staff do not meet the integrity criteria defined in the bank's policies, the bank must take the measures established in these policies and immediately inform the Superintendency of the reasons that motivated the measure taken."

**ARTICLE 2. AMENDMENT.** Article 13 of Rule 5-2011, dated 20 September 2011, will be read as follows:

"**ARTICLE 13. RESPONSIBILITIES OF THE BOARD OF DIRECTORS.** The board of directors shall have the following duties and responsibilities:

a. Promote the bank's soundness and security.

b. Understand the regulatory framework and oversee that the bank has an effective relationship with its regulators.

c. Establish an effective corporate governance structure, including an internal control system that will contribute to the effective internal supervision of the bank and its subsidiaries.

d. Oversee that the overall working conditions are appropriate for the performance of the tasks assigned to each hierarchical level involved in the corporate governance structure.

e. Promote, together with top management, highly ethical and integrity standards.

f. Establish an organizational culture showing and emphasizing to all employees why the internal control process is important, the role of each of them within the bank, and their full commitment to it.

g. Approve and regularly review the bank's business strategies and other important policies.

h. Learn and understand the main risks to which the bank is exposed, set reasonable limits and procedures for such risks, and ensure that senior management adopts the measures required for their identification, assessment, supervision, and control.

i. Keep the Superintendency informed of the situations, events, and problems affecting or that may affect the bank and the specific actions to address and/or correct the identified deficiencies.

j. Duly document and have access to all the information required for decision making, in the exercise of their executive and supervisory duties.

k. Approve the organizational and operational structure of the internal control system and ensure that top management checks its effectiveness.

l. Choose and evaluate the general manager and the personnel responsible for external audit duties, except when the shareholders' meeting exercises this responsibility.

m. Choose and evaluate the manager or person responsible for internal audit duties.

n. Approve and review, at least once a year, the internal control system objectives and procedures, as well as organizational and job functions manuals, risk management manuals, and other bank manuals where these are stipulated, as well as the incentives, penalties, and corrective measures encouraging the adequate performance of the internal control system and systematically check their compliance.

o. Approve internal and external audit programs and review the bank's unaudited financial statements once every three months.

p. Oversee compliance with the provisions set forth in Rules issued by the Superintendency regarding the accuracy, reliability, and integrity of information contained in financial statements.

q. Ensure the existence of systems that will facilitate compliance with Rules issued by the Superintendency regarding the transparency of information of bank products and services.

r. Adopt policies and procedures aimed at mitigating risks that could jeopardize the continuity of bank operations or the security of depositors' funds, arising from shareholders, senior managers, board members, or dignitaries."

**ARTICLE 3. AMENDMENT.** Article 27 of Rule 5-2011, dated 20 September 2011, will be read as follows:

"**ARTICLE 27. CORPORATE GOVERNANCE REQUIREMENTS FOR BANK HOLDING COMPANIES.** Bank holding companies under the home supervision of the Superintendency of Banks shall maintain a corporate governance structure that ensures the strategic objectives of the banking group, the effective control of the board of directors, and the responsibilities of the board of directors towards the group and shareholders. For these purposes, the board of directors of the bank holding companies must ensure that corporate governance best practices are in place at the group level, and consequently, the board of directors will have the following responsibilities:

a. Establish the internal control policies, principles, standards, and procedures to guarantee appropriate risk management at the group level.

b. Ensure that there is due transparency in relation to the truthfulness, reliability, and integrity of the group's financial information and operations.

c. Oversee the group's financial health.

d. Maintain at the disposal of the Superintendency, upon its request, the information about the bank holding company's operations or activities.

e. Develop and implement appropriate conflict of interest management policies at the group level.

f. Adopt appropriate procedures to conduct transactions with related parties to the group.

g. Oversee that the group's companies always have a corporate structure in place as provided for in the law and the applicable regulations.

h. Adopt policies and procedures aimed at mitigating any risks that could jeopardize the continuity of the group's companies' operations or the security of depositors' funds, arising from shareholders, senior managers, board members, or dignitaries."

**ARTICLE 4. ADJUSTMENT PERIOD.** Banks and bank holding companies under the home supervision of the Superintendency of Banks will have an adjustment period of nine (9) months to comply with the provisions of this rule, starting from the date of its enactment.

**ARTICLE 5. EFFECTIVE DATE.** The provisions herein shall become effective upon enactment.

Given in Panama City this twenty-eighth (28th) day of March, twenty twenty-three (2023).

**FOR COMMUNICATION, PUBLICATION, AND ENFORCEMENT.**

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| **THE CHAIRMAN,** | **THE SECRETARY,** |
| Felipe Echandi Lacayo | David Alberto Davarro |