

CERTIFIED TRANSLATION

^{6[7]} **Executive Decree No. 16**
of October 3, 1984

Whereby is regulated Law No. 1 of January 5, 1984 that regulates the exercise of the Trust business.

THE PRESIDENT OF THE REPUBLIC
In use of his legal powers,

CONSIDERING:

That by means of Law 1 of January 5, 1984, Trusts are regulated in Panama and other provisions are adopted, and

That in accordance with the provisions set forth in Article 36 of Law 1 of January 5, 1984, it corresponds to the Executive Branch through the Ministry of Planning and Economic Policy to regulate the exercise of the trust business.

DECREES:

FIRST: The exercise of the trust business is hereby regulated.

SECOND: The following Regulations are hereby approved.

TITLE I
Preliminary Provisions

CHAPTER I
About the Scope of Application and Definitions

Article 1. These regulations shall be applied to every person, whether natural or juridical, engaged professionally and customarily in conducting the trust business, in or from the Republic of Panama, with the exception of official banks.

Article 2. For the application of the present Regulations, it is hereby understood by:

- a. **Trust:** A juridical act by virtue whereof a person named founder of trust transfers assets to a person named trustee for the latter to administer or dispose of them in favor of a beneficiary, who may be the founder of trust himself.
- b. **Founder of Trust:** A natural or juridical person who organizes the trust.
- c. **Trustee:** A natural or juridical person to whom the assets are transferred to him to execute the will of the founder of trust.

^{6[7]} Published in the Official Gazette 20.165 of October 18, 1984.

- d. **Beneficial Owner or Beneficiary:** A natural or juridical person in whose favor the trust is organized.
- e. Trust company: Banks, insurance companies, lawyers and any natural or juridical person that is engaged professionally or customarily in the exercise of the trust business, prior authorization by the Commission.
- f. ^{7[8]} Commission: The National Banking Commission.

Article 3. The Commission, based upon the legal provisions governing it, shall supervise and watch for the adequate functioning of the trust business, in accordance with the Law and these Regulations.

TITLE II About the Fiduciary System

CHAPTER I About Authorizations

Article 4. For a trust company to be able to conduct the trust business, it must obtain the prior authorization from the Commission, which shall award it by means of the issuance of the respective fiduciary license, prior compliance of the requirements demanded in the present Regulations. The provisions set forth in this article are without prejudice of obtaining the respective commercial license.

^{8[9]} **Article 5.** Every natural person proposing to act as a trust company in or from Panama shall submit an application in the Commission, through a lawyer, accompanied by the following documents:

- a. Curriculum vitae and documents evidencing the professional qualifications of the persons that are going to conduct the company.
- b. Personal and commercial references.
- c. Duly audited financial statements.
- ch. Criminal and police records.
- d. Sworn statement of not having been disqualified for the exercise of the commerce.
- e. Certification issued by a Certified Public Accountant, wherein it is certified that the requirement set forth in Article 14 of the Regulations has been met.
- f. Certified or cashier's cheque in the amount of one thousand balboas (B/.1,000.00), to cover the investigation expenses wherein it incurs.
- g. Project of activities to be developed.
- h. Any other document required by the Commission.

^{7[8]} Note: By mandate of Decree-Law 9 of 1998, creating the Banks Superintendence, in its article 164, it was set forth that "Every reference to the National Banking Comisión in laws, decrees and other provisions, previous to the present Decree-Law, shall be understood as made in connection with the Superintendence". (G.O. 23.499 of March 12, 1998).

^{8[9]} It appears such as it was subrogated by Art. 1 of Executive Decree 53 of December 30, 1985. (G.O. 20.462 of December 31, 1985).

^{9[10]} **Article 6.** Every juridical person that intends to act as a trust company in or from Panama shall submit an application in the Commission, through a Lawyer, accompanied by the following documents:

- a. Authentic copy of the partnership agreement and its reforms, with the respective certification of validity issued by the Public Registry.
- b. Curriculum Vitae and documents evidencing the professional qualifications and expertise of the Directors, officers, managers, and other persons to conduct the company.
- c. Personal and commercial references of the shareholders, directors, officers, who will conduct the company.
- d. Sworn statement of not having been disqualified for the exercise of commerce.
- e. A certification issued by a Certified Public Accountant wherein it is made of record who are the shareholders and their percentage participation.
- f. Duly audited Financial Statements.
- g. A certification issued by a Certified Public Accountant, wherein it is made of record that the requirement set forth in Article 14 of these Regulations has been met.
- h. A certified or a cashier's cheque in the amount of ONE THOUSAND BALBOAS (B/.1,000.00) to cover the investigation expenses incurred thereby.
- i. Projections of the activities to be developed.
- j. Any other document required by the Commission.

In the case of corporations that are to be organized for the purpose of conducting trust businesses in or from Panama, the license application shall by a Lawyer be accompanied with the Draft Partnership Agreement. In these cases, the requirements established in paragraphs b, c, d, and e in this Article shall be applied regarding the future shareholders, directors, officers, and managers, and the Certification required in paragraph f) shall not be previously demanded.

^{10[11]} **Article 7.** Once the Trust License application has been submitted, the Commission shall conduct or have someone conduct the investigations that it may deem necessary and shall request the additional information that it may deem convenient, to the end of confirming the authenticity of the submitted documents, the financial status and background of the applicant, the sufficiency of his capital and any other elements of judgment.

The public shall be informed about every Fiduciary License application by means of a notice which shall be published, charged to the applicant, three (3) times in a newspaper of wide national circulation. A copy of the notice shall be fixed for three (3) consecutive days in the offices of the commission in a place that is accessible to the public. With the exception of the provisions set forth in Paragraph 2 in this Article, the Commission shall have a term of ninety (90) days to resolve on the License application.

Paragraph 1. In the case of corporations that are going to be organized, once their application has been approved, the notarial protocolization and registration in the Public Registry of their partnership agreement, charged to the applicant, and once this has been

^{9[10]} It appears such as it was subrogated by Art. 2 of Executive Decree 53 of December 30, 1985. (G.O. 20.462 of December 31, 1985).

^{10[11]} It appears such as it was subrogated by Art. 3 of Executive Decree 53 of December 30, 1985. (G.O. 20.462 of December 31, 1985).

met, the Commission shall issue the respective Trust License to the corporation already organized.

Paragraph 2. If within the thirty (30) days following to the last publication referred to in this Article, objections to the Trust License application are submitted, the term conceded to the Commission to decide on said application shall be counted from said publication. The Commission shall fix the procedure to process these objections.

Article 8. Those natural or juridical persons who, within a term of one hundred and eighty (180) days, counted from the effective date of these Regulations prove in the Commission that they are engaged in conducting the trust business, shall be authorized to continue operating and shall have a term of two (2) years, counted from the effective date of these Regulations to come under it. Once said term has elapsed without the requirements set forth therein have been met, the Commission shall order the operations to be ceased and shall communicate said decision to the Ministry of Commerce and Industries.

When it is about juridical persons, such communication shall also be made to the General Director of the Public Registry to the end that it proceeds to cancel the registration thereof.

^{11[12]}**Article 9.** From the effective date of this Decree only those persons authorized by the Commission may use the word trust or its derivatives in any language, or any other expression that implies that he is engaged in exercising the trust business in his name or corporate name, in his commercial denomination or in invoice, letter letterheads, notices, advertisements or publications. Those corporations organized in accordance with the Panamanian legislation prior to the effective date of this Decree may maintain in their name or corporate name or in its corporate purposes, the word trust or its derivatives. However, if said corporations are engaged in acting in or from Panama as trust company, they shall meet all of the requirements established in the present Regulations.

Those corporations operating in Panama may consign in their corporate purposes that they are engaged in trust activities, provided that such activity is not performed professionally or customarily. Those corporations that are not operating in or from Panama as trust companies may include in their corporate purposes that they are engaged in trust activities, provided that it is consigned in all the documents mentioned in the above paragraph and in their corporate purposes, that such activities are not covered by any license or authorization by the Panamanian authorities and such circumstance must be set forth expressly to the founders of trust.

^{12[13]}**Article 10.** It is hereby prohibited to Notaries to issue public deeds or copies thereof, statement minutes or any other instruments typical of their trade and authentications of signatures contravening the above article.
The same prohibition is made to the Public Registry regarding their registrations.

Article 11. Those companies which upon the effective date of these Regulations do not prove that they are engaged in conducting the trust business and that their corporate

^{11[12]} It appears such as it was subrogated by Art. 4 of Executive Decree 53 of December 30, 1985. (G.O. 20.462 of December 31, 1985).

^{12[13]} It appears such as it was subrogated by Art. 5 of Executive Decree 53 of December 30, 1985. (G.O. 20.462 of December 31, 1985).

name or commercial name does not adjust to the provisions set forth in Article ninth, shall have a term of one hundred and eighty (180) days to be voluntarily dissolved, apply for the trust license or amend their partnership agreement to the end of changing their name or corporate name.

Once said term has elapsed without their having proceeded as indicated above, the Commission shall order by means of resolution, its dissolution or disqualification depending on whether it is a national or a foreign corporation, and shall notify to the Public Registry for it to place a marginal note on to the registration thereof. This notification shall also be made to the Ministry of Commerce and Industries to it to proceed to cancel the respective commercial license. The Commission shall publish the resolution referred to in this article in a newspaper of wide circulation throughout the Republic for three (3) consecutive days and only one time in the Official Gazette.

Article 12. Trust companies shall carry a numbered register of the trusts they perform.

To the effect of paying the annual rate referred to in Paragraph second in Article 35 of Law 1 of 1984, it shall suffice a sworn statement from the trust company making reference to the numbering corresponding to the respective trust.

Article 13. Every reform to the agreement organizing trust companies shall require of the prior approval from the Commission.

^{13[14]}CHAPTER II About Guarantees

^{14[15]} **Article 14.** Every trust company conducting the Trust business in or from Panama, shall maintain at all times in the Republic of Panama, at the disposal of the Commission, a guarantee in the amount of TWO HUNDRED AND FIFTY THOUSAND BALBOAS (B/.250,000.00), for the due compliance of its obligations. This guarantee may be constituted in cash deposits, Government bonds, insurance company policies, by means of bank guarantee or in cheques drawn or certified by local banks. Not less than TEN PERCENT (10%) of the guarantee shall consist in deposits in the Banco Nacional de Panamá or in Caja de Ahorros.

Article 15. Corporations being authorized to act as trust companies shall issue the shares representing its corporate capital on a nominative basis.

Every transfer of shares shall require of the prior approval from the Commission.

The Commission may exempt from this obligation those corporations performing a public bid of their shares and certain corporations that demonstrate that they have sufficiently justified reasons.

^{13[14]} The denomination of this Chapter appears such as it was subrogated by Art. 6 of Executive Decree 53 of December 30, 1985. (G.O. 20.462 of December 31, 1985).

^{14[15]} It appears such as it was subrogated by Art. 6 of Executive Decree 53 of December 30, 1985. (G.O. 20.462 of December 31, 1985).

CHAPTER III

About Reports and the Inspection

Article 16. Trust companies shall submit within the three (3) months following to the closing of each fiscal year, the respective Balance Sheets and Profits and Losses Statements, duly authorized by a Certified Public Accountants, professionally qualified in the opinion of the Commission.

Article 17. The Commission is hereby empowered to perform and order the inspections that it may deem convenient, to the end of confirming the due compliance of the legal provisions regulating the exercise of the trust business.

Article 18. If the Commission considers that a trust company is conducting the trust business in a way that is harmful to the public interest or to its customers, or is violating the legal or regulatory provisions on the trust business, the Commission may require of said company to take the actions that it may deem convenient to remedy the violations or, in accordance with the gravity of the case, suspend or cancel the license.

The Commission may also order the intervention of a trust company, taking hold of its assets and assuming its administration in the terms foreseen in Articles 83 and following of Cabinet Decree No. 238 of 1970.

CHAPTER IV

About Trust Secrecy

Article 19. The obligation to keep the trust secrecy is maintained even after the trust, the professional or labor relationship is terminated, or the trust license has been cancelled.

^{15[16]} **Article 20.** The information obtained by the Banks Superintendence and other Government entities authorized by Law to perform inspections or collect documents related to trust operations and their respective officers may only be disclosed to the competent administrative and judicial authorities, exclusively for the exercise and compliance of the legal and regulatory duties thereof.

^{16[17]} **Article 21.** The competent authorities shall maintain in strict reserve the information obtained by them, when it is not conducive to the compliance of the respective legal requirements.

Article 22. Every person providing information in violation of the trust secrecy such as it appears regulated in Article 37 of Law 1 of 1984 and in the provisions of the present Regulations, shall be sanctioned with a penalty of confinement or prison of up to six (6) months and a fine of up to FIFTY THOUSAND BALBOAS (B/.50,000.00).

^{15[16]} It appears such as it was subrogated by Art. 1 of Executive Decree 213 of October 3, 2000 (G.O. 23.133 of October 4, 2000).

^{16[17]} It appears such as it was subrogated by Art. 2 of Executive Decree 213 of October 3, 2000. (G.O. 23.133 of October 4, 2000).

CHAPTER V

About Cancellation of the Trust License

^{17[18]} **Article 23.** The Commission shall cancel the license at the request of the trustee itself or when it decides it, for the trustee having incurred in any of the following causes:

- a. To stop conducting the trust business for one year or more.
- b. Not to start operations within the year following to the concession of the license.
- c. When, by means of an executed judicial sentence he is condemned for not being subject to the purposes of the trust and to the conditions or obligations imposed by the laws regulating the trust.
- ch. When it becomes disqualified to conduct business.
- d. In the event of bankruptcy or dissolution of the corporation.
- e. For violating the prohibitions established in the present Regulations, or the non-compliance of any whatever of the provisions contained therein.

Paragraph. If by reason of the cancellation of the Trust License, a substitute Trustee must be appointed, the procedure foreseen in Article 32 of Law 1 of 1984 shall be followed.

Article 24. Every trust company that decides not to continue conducting the trust business shall submit a petition for cancellation of trust license in the Commission, through a lawyer, accompanied with the following documents:

- a. Sworn statement attesting that it has honored the trust agreements.
- b. An authentic copy of the judicial statement whereby the resignation is approved.
- c. The office resignation, in the cases wherein the trust instrument authorizes him to do so.
- d. In the cases of paragraphs b and c, when there are trust pending for execution, the acceptance by the new trustee shall be submitted in writing.

Article 25. Once the cancellation petition has been submitted in due form, the Commission shall have a term of thirty (30) business days to issue the resolution canceling the license.

Article 26. The provisions set forth in Article 9 of these Regulations, shall apply to the juridical persons to whom the trust license is cancelled.

CHAPTER VI

Miscellaneous Provisions

Article 27. The trust companies not engaged exclusively in conducting the trust business, shall maintain, in everything, an accounting functional separation between the trust department and other departments.

^{18[19]} **Article 28.** If the founder of trust does not provide otherwise, trust companies are forbidden to invest the assets placed in trust in:

^{17[18]} The Paragraph appears such as it was added up by Art. 7 of Executive Decree 53 of December 30, 1985. G.O. 20.462 of December 31, 1985).

1. Shares of the trust company and in other assets owned thereby.
2. Shares or assets of companies wherein it has any participation or wherein its directors or officers are partners, directors, officers, advisors or counselors, unless it is about shares of corporations registered with the National Securities Commission of Panama or shares offered to the public under authorization of the equivalent governing authority abroad, prior authorization from the National Banking Commission.
3. To grant a loan, with funds coming from the trusts to its officers, directors, shareholders, employees, subsidiary companies, companies affiliated or related to the trust company.
4. To acquire by itself or through third parties, the assets given in trust.

Article 29. The resolutions issued by the Commission shall be notified in accordance with the provisions set forth in Law 1 of August 22, 1916.

They shall admit only, through the Government procedure the recourse to reconsider, which shall be perfected within the term of five (5) business days, counted from its notification.

The Commission shall have sixty (60) days to decide on the recourse.

Article 30. The breach of the prohibitions established in the present Regulations or the non-compliance of any whatever of the provisions contained therein, shall be sanctioned with a fine of up to FIFTY THOUSAND BALBOAS (B/.50,000.00) in accordance with the gravity of the case.

Article 31. Provided that there is cognizance or grounded reasons to believe that a person is conducting the trust business in contravention of the provisions set forth in these Regulations, the Commission shall be empowered to examine its books, accounts and documents to the end of determining whether it has violated or is violating any whatever provision of these Regulations. Once the violation has been proven, the Commission shall sanction the infringer.

Every refusal to submit the documents referred to in the above article, shall be considered as a presumption of the fact of conducting the trust business without authorization.

The repetition of this type of fault shall empower the Commission to request, through the Public Ministry, the disqualification of the infractor to conduct the commerce.

Article 32. Every person performing operations stating or suggesting the existence of links of any kind with a trust company authorized by the Commission and without mediating the consent thereof, shall be sanctioned with a fine which shall be imposed by the Commission.

In the cases of repetition of the violation, the Commission shall proceed in accordance with the provisions set forth in the final paragraph of the above article.

^{18[19]} It appears such as it was subrogated by Art. 8 of Executive Decree 53 of December 30, 1985. (G.O. 20.462of December 31, 1985).

Article 33. The sanctions imposed by the Commission are regardless of the penal and civil responsibility that may correspond.

Article 34. The judicial officers shall inform the Commission of the proceedings wherein the trust companies make a part in their capacity as defendants.

Likewise, it shall remit a copy of the sentence that is pronounced in said proceedings.

Article 35. The Commission shall adopt its decisions in accordance with the provisions set forth in Chapter II of Cabinet Decree No. 238 of July 2, 1970.

THIRD: This Executive Decree shall start to be in force and effect counting from its promulgation.

Given in the City of Panama, this third (3) day of the month of October of the year nineteen hundred and eighty-four (1984).

THE ABOVE IS A FAITHFUL TRANSLATION OF THE ORIGINAL DOCUMENT IN SPANISH PRESENTED TO ME. Panama, June 3, 2002. Mireya Delgado Debali, Certified Public Translator, Resolutions No. 209 and 304.