

# TRANSLATION

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**MINISTRY OF LABOR  
EXECUTIVE DECREE NO. 106  
(Of 26 December 1995)**

**“WHEREBY THE ORGANIZATION, MANAGEMENT, AND SUPERVISION OF SEVERANCE TRUST FUNDS TO BE ESTABLISHED IN ACCORDANCE WITH CHAPTER III OF TITLE VI OF BOOK I OF CABINET DECREE No. 252 OF 1971 (LABOR CODE) ARE RULED”**

**THE PRESIDENT OF THE REPUBLIC  
in use of his powers**

**Decrees:**

**Chapter I  
DEFINITIONS**

**Article 1:** To the effects of this Decree and its complementary provisions it will be understood as:

1. Severance Trust Fund: It is the trust contract that consists of rights and duties of the employers, employees and trustee and describes the investment policy of the Fund, according to the Law and this Decree.
2. Severance Fund: The independent trustee's capital, subject to rights and duties, arise as a result of executing the Severance Fund.
3. Payments: It is the amount that the employer is obliged to quote to the Severance Fund. It is equivalent to the part related to the employee's seniority premium, plus 5% of the monthly aliquot for the compensation in case the employee is dismissed unfairly or if the employee resigns with justified reasons, in the work contracts for indefinite time, in accordance with Article 229-B of the Cabinet Decree No. 252 of 1971.
4. Voluntary Payment: The amount from the employee's monthly salary that voluntarily he pays to the Severance Fund according to Article 229-N of Cabinet Decree No. 252 of 1971.
5. Benefit: Payment of employees' rights from the Severance Fund.
6. Withdrawals: Benefits that the employer can receive when there is a surplus, as requested by law, in the Severance Fund. Employees' benefits when those make voluntary payments to the Fund.
7. Beneficiary: It will be the employee or the person appointed by him when, because of the termination of employment, those benefits were obtained. It will be the employer if the sums of money deposited in the Fund exceeds the amount requested by Law.
8. Administrator: The person in charge of investing the sums of money entrusted to the Severance Fund.

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9. Trustee: The person authorized, by means of a Trust License, to create Severance Funds.
  
10. Trustor: The employer that creates a Severance Fund or the employee making voluntary payments.
  
11. Individual Trust Funds: Are those Severance Trust funds created by a sole employer, from which there will be only one trust capital by company.
  
12. Collective Trust Funds: Are those trust funds created with contributions of two or more employers, in which case will be the same amount of separate and independent capitals as quantity of employers.
  
13. Regulator: In case of banks, it will be the National Banking Commission; for the insurance companies will be the Superintendency of Insurance and Reinsurance; and the National Securities Commission will be in case of investment Corporations.

**Article 2:** Any contract made to organize a Severance Fund shall meet the following conditions, besides the provisions of Law 1 of 5 January 1984.

1. To fully identify the Severance Fund, the Administrator, the Trustee, trustor and generally any person involved in administering the Fund, when applicable.
  
2. To establish the procedures to pay the benefit to the employees, and the documents required to accredit the termination of work relationship, whether it is the seniority premium payment, compensation payment or both.
  
3. To establish the Trustee's obligation of:
  - a. Providing to the Employees through the Employer, at least once every quarter, the statement of payments made by the Employer to support the seniority premium right. The accumulate amount of the payments must be calculated taking into consideration the market value of investments.
  
  - b. Providing to the employer, at least once a year, a Severance Fund Report including the amount paid, the revenue obtained (historic and for the period), investment portfolio, and the withdrawals and/or expenses covered by the Severance Fund during that period.
  
  - c. Maintaining in their offices, during the whole year, and available upon employee's request, a detail of the amounts paid as seniority premium that can be used by the employee as a guarantee in loans authorized by Law 44 and this Decree.
  
4. To establish financial parameters to determine the revenues, investment policies, and management and risk assumption criteria.
  
5. To establish if the Trustee has or not a fidelity insurance in favor of the beneficiaries, providing the coverage amount and the insurance company that issues the policy.

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6. To establish the employee's right to compromise the payments supporting his seniority premium, as a guarantee of loans for the acquisition of his own household.
7. To establish the employer's right over the amounts exceeding the amount required by law to guarantee employees' rights.
8. To establish the conditions and procedure to substitute the Trustee and, in general, to modify the functioning regulations of the Fund.
9. To establish that the Trustor will be bound to have accounting records of the Severance Trust Fund, separate from the employer's, the administrator's and the trustee's, and in accordance with generally accepted the accounting principles.
10. To establish the remuneration that will be charged by the Trustee for the Severance Fund Administrator. To establish the cost of individual certifications to be issued and the expenses for all services in favor of the Trust Fund. At the same time, the Trustee must establish the source of that remuneration.
11. To establish the transfer fees from a Trust Fund to another, inside or outside of the Trustee.
12. To establish the legal liability of the employer in regards to the benefits and obligations with the employees.
13. To mention if it is about individual or collective trust funds. In case of collective trust funds or when it is about employees' voluntary payments, it shall be clearly establish the concerning sub-accounts to the fund of each participant (employer or employee) and shall be maintained a separate accounting for each sub-account.
14. To establish Trustee's obligation of issuing quarterly reports for each employee, when it is about sub-accounts established by employee's voluntary payments. This information shall contain, as minimum, the amount paid, the accumulate amount, the revenue, and the investment portfolio.

**Article 3:** The Severance Trust Fund can be created upon request of one or various companies. The Severance Trust Funds established by a sole company and where there is only a trust capital will be called Individual Trust Funds. The Trust funds created by several companies, in where there is more than a trust capital, will be known as Collective Trust Funds.

**Article 4:** The Collective Trust Funds shall meet the norms established in the original Severance Trust Fund; this means, any company that contributes to a common trust fund shall be ruled by the same norms.  
The trust companies administering collective trust funds, shall clearly establish in the contract with each trustor the sub-accounts concerning to the trust capital of each employer. Likewise, the trust company shall establish the concerning sub-accounts to the voluntary payments made by the employees, if any.

**Article 5:** The calculation for the compulsory payments will be as follows:

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- Compensation: The contribution of 5% of the monthly compensation quota, shall be calculated taking as base the amount that would be given to the employee, in case of unfair dismissal or justified resignation, at that moment. This means, if an employee that started to work at the company after the enactment of this law, earns in the first quarter of the year B/400, B/600, and B/.750, successively, at the moment of his dismissal, the calculation of his benefit will be established according to the average of the last six (6) months or thirty (30) days, whichever is greater. According to this regulation, the compensation will be calculated based on B/.750 and would be of B/.49.04 per month. From this calculation, the contribution to the fund will also be based on the average of the quarterly salaries or last salary, whichever is greater, and in this case will be (49.04) (5%) (3) or B/.7.36
- Seniority Premium: For the calculation effects of the Seniority Premium of those employees that does not have five (5) years or more working for the company, will be used as base for the calculation of this benefit, the average of the salary earned during the work relationship. Likewise, for the calculation of contributions to the Seniority Premium, will be taken as base the average of quarterly salaries or the last salary of the period in which the contribution is made, whichever is greater.

**Article 6:** The employer shall made his compulsory payments to the Fund, adding or subtracting any difference originated by variations in the market value of his investment, adding or subtracting any difference originated by benefits paid by the Fund as a surplus of what could be quoted, no later than, thirty (30) days after the dates established, as follows: 31 March, 30 June, 30 September, and 31 December. The Trustee shall issue the reports established in this Decree, no later than, thirty (30) days after the payment dates previously established.

**Article 7:** All resources of the Fund are not subject to embargo, without prejudice of the shares the employee or beneficiary has against said resources to be entitled to his right to receive the benefit, until the concurrence of the amount paid to support the right of that benefit and only may affect the trust capital constituted by the employer. The Trustee will not be responsible for those amounts exceeding the payments made by the employer in favor of an employee. If there is a demand for damages against the employer, the employer will be responsible for answering that demand, without this could affect the Severance Funds assets.

**Article 8:** Only charges could be made to the Severance Fund accounts to execute authorized investments, for the payment of Benefits, payment of withdrawals to which the Employer and Employee making the voluntary payments are entitled to, for the payment of remuneration on behalf of the Trustee and the parties agreed on the severance fund contract, and for payments authorized by the Severance Fund Contract, the Chapter III of Title VI of Book I of Cabinet Decree 252 of 1971, and this Decree.

**Article 9:** The period of annual economic exercise of the Severance Fund shall coincide with the calendar year.

**Article 10:** Terminated the work relationship and/or the unfair dismissal or justified resignation occurs, the concerning benefit shall be paid integrally and at once. In cases of termination by mutual agreement, shall be proceeded as immediate payment, total or partly of the compensation to the termination by mutual agreement, when it was agreed in writing by both parties. The employer is bound to make all concerning calculations to the payment. The General Director of the General Directorate of Labor of the Ministry of Labor or the person authorized by him will issue the certifications pursuant to this Article.

**Article 11:** The Severance contract shall set up the procedure for the payment of the benefit. It shall establish that the employer shall pay for the benefits and shall be stated the frequency in which he shall certify to the Trustee of the termination of the employees; also, the frequency to reimburse said benefit. In all these cases, it shall be established a frequency of at least once a year.

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The Trustee shall require to the employer a formal and written letter, in which the latter will detail the termination of contract. Said letter shall be signed by both parties (employer and employee), together with two copies of the ID cards of the interest parties, and when it is the case of an unfair dismissal or justified resignation, it shall include also, the resolution of the Ministry of Labor.

In cases in which the employer has not paid the benefit to the employee, the latter shall request to the Ministry of Labor the resolution that accredits the termination of employment, with which the employee may request to the Trustee to pay for his benefits.

**Article 12:** The employer is bound, after paying for the benefits, to remit the taxes of that benefit to the General Directorate of Income, no later than fifteen (15) business days after the date in which the benefits were paid off.

**Article 13:** Only authorized companies by means of Law 10 of 16 April 1993 and holding a trust license may act as Trustee in order to create the Severance fund pursuant to the provisions of the Labor Code.

**Article 14:** The Trustee may act as Administrators as long as it is established in that way in the Trust Contracts and are registered as Administrators in the National Securities Commission.

**Article 15:** The Trustee's net capital shall not be lesser than, at any moment, Four Percent (4%) of the total Severance Funds created by him, or the amount provided by the Regulator, whichever is greater. The Regulator shall verify as frequently as he deems convenient the compliance with this article.

**Article 16:** No person authorized by Law, whether a branch or a subsidiary of an Employer may act as Trustee of a Severance Fund to that Employee.

**Article 17:** The duties of the Trustee are as follows:

1. To keep the records of the Severance Fund individually for each employer and, likewise, when the employee opens voluntary accounts. In this accounting will be the registries concerning to the payments, withdrawals made, revenues obtained, and in general, all accounts affecting the administrative process of the Fund.
2. To certify, upon request of the employer or employee, the amount of the payments made and the withdrawals or benefits to which each one is entitled to.
3. To execute, because of the Severance Fund, the rights derived from the titles and other goods consisting of its capital.
4. To agree the terms and conditions of the contracts necessary for meeting the objectives of the Severance Fund and execute control over such.
5. To receive the concerning payments of the Severance Funds and register the rights to which the employer and employee are entitled.
6. To carry out all authorized activities and duties with due diligence.

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7. To submit to the Regulator, within the first three (3) months of every year, a report about the Severance Fund entrusted to the Trustee and the capital amount of each one of them.

**Article 18.** To the effects of the information that shall be submitted by the Trustee, in accordance with the provisions of paragraph three (3) of article two (2) of this Decree, the employer is bound to submit to his Trustee, together with the payment of its contributions, a report detailing the salaries earned by his employees for each period and the amount assigned to cover the rights of each one of them. This report shall be accompanied by a copy of the pre-processed form of the Social Security Fund.

**Article 19.** The Trustee shall publish his Audited Financial Statements within the first three (3) months of every year, in at least three (3) newspapers with nationwide circulation or send this information to his customers.

**Article 20.** The Trustee shall keep in his offices, available to the public, the documentation with the information about his organization and Financial Statements belonging to the two (2) previous years.

**Article 21.** To the effects of the certification that the trustee shall make regarding the amount that the employee can use as a loan guarantee to obtain a household, the former shall issue a certificate with this purpose, in order to state (i) the amount of payments deposited to guarantee the right of the employee, (ii) that it could only be used as a guarantee in a mortgage; and (iii) the validity period of the certificate. This period shall not be longer than thirty (30) calendar days.

**Article 22.** Only authorized persons according to Law 10 of 16 April 1993 are entitled to act as Funds Administrators. The persons that will administer severance funds shall be registered as Administrators based on the requirements set for by the National Securities Commission.

**Article 23.** Banks, Insurance Companies, Trust Companies, and Administrators of Investment Corporations that want to be registered as Funds Administrator, shall submit to the Regulator a registration application detailing, at least, the following:

1. The technical capacity of the company or the contract providing said capacity.
2. The operational capacity of the company or the contract providing said capacity.
3. A report about the person(s) that will be in charge of the decisions regarding the Funds. This Report shall include the résumé of each one of them. Likewise, it shall inform, timely, about any changes of this staff.
4. Any other information required by the Regulator from time to time.

**Article 24.** The Regulator shall review the documentation and keep record of all Fund Administrator companies. The Regulator is also bound to audit the operations of administrators with the frequency he deems necessary to protect the interests of the participants and procure the transparency of this activity.

**Article 25.** The Administrators are bound to submit, twice a year, to the Regulator a report detailing (i) the funds managed, (ii) the total amount of said funds, (iii) and the historical and periodic revenues.

**Article 26.** None authorized person by Law, whether subsidiary or branch of an Employer, may act as Severance Fund Administrator to that Employer.

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**Article 27.** The net capital of the Administrator shall not be lesser than, at any moment, four percent (4%) of total Severance Fund manage by it. The Regulator shall verify, as frequently as he deems convenient, the compliance with this Article.

**Article 28.** Any person lacking of authorization to act as Administrator may engage to act as such, neither to present himself as such nor pretending in any way, that he acts or may act as Administrator. The violations to this article shall be sanctioned with imprisonment of 12 months and a penalty of one hundred thousand balboas (B/.100,000.00) to the person or persons responsible for that violation.

**Article 29.** The duties of the Administrator are as follows:

1. To execute the investments according to the parameters established in the concerning trust contract, the Law, and this Decree.
2. To carry out all its transactions on behalf of the Fund, with prudence and diligence of a good parent.

**Article 30.** The investments made by the Severance Fund shall be adjusted to the criterions of safety, profitability, risk diversification, and term established in the Severance Trust Fund Contract and, in any case, shall be adjusted to the following provisions:

1. The investments in titles issued or supported by an entity shall not exceed of ten percent (10%) of the total outstanding shares issued or supported by that entity.
2. The total of investment in titles issued or supported by an entity, plus financing granted by the Fund to that entity shall not exceed ten percent (10%) of the total assets of the Severance Fund.

**Article 31.** The limits established in the preceding article shall not be applied to investment in titles and/or obligations issued by public sector entities, neither when it is about bank deposits, and in general, when it is about the following cases:

1. Notes issued by the State or supported by the State, having a maturity no longer than 180 days.
2. "Overnight" deposits, demand deposits or savings accounts deposits, and time deposits and bank acceptances with maturities no longer than 180 days, issued by general license or state-owned banks.
3. Investment funds whose assets consist, exclusively, according to the informational prospect, of assets meeting the limitations established in this chapter.

**Article 32.** The Regulator is empowered to determine if the interests of a group of natural and/or juridical persons is related among each other that should be considered as one entity to the purposes of the implementation of the limits established in Article 33 of this Decree.

**Article 33.** All transactions made with Severance Funds assets shall be made to prices and conditions established by an open and transparent market. Any person involved in administering a Severance Fund making transactions on their behalf, shall made those in an openly and transparent market.



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**Article 34.** The Funds collected through severance trust funds based on Law 44 and this Decree shall be invested in the following instruments:

1. Mortgages, mortgage loans, participants in mortgages, mortgage bonds for financing households, and other mortgage instruments issued by state-owned banks and other General License banks.
2. Deposits in state-owned banks and General License banks.
3. Values titles issued by the state or public sector entities supported by the State.
4. Values titles registered in the National Securities Commission and listed or in any other market authorized by the National Securities Commission that will allow a public, open, liquid, and transparent trading.

**Article 35.** The Administrators are not bound to keep a minimum of investments in neither of the items mentioned above.

**Article 36.** To the purposes of Employer's Income Tax, the payments made to the Severance Fund are tax-deductible. Also, the voluntary payments from the employee's monthly salary will be tax-deductible.

To that effect, the Trustee shall issue, upon Employer's and Employee's request, certifications proving:

1. The amounts were received accordingly by the Severance Fund; and
2. The amount of payments made during the year.
3. Both certifications shall be attached to the Employer's and Employee's Income Tax Statement.

**Article 37.** The employer shall calculate and include in its income tax statement, the Income Tax concerning to the amount of withdrawals made from the fund, in accordance with the provisions of Articles 229-F and 229-G of the Cabinet Decree No. 252 of 1971. The General Directorate of Income may request from the Trustee, with the frequency and form established by it, information about any withdrawal made by the Employer.

**Article 38.** The Employee who makes voluntary payments and wishes to benefit from the Law, is bound to calculate and include in his income tax statement, the Income Tax concerning to the amount of withdrawals made to the fund, in accordance with Article 229-I of the Cabinet Decree No. 252 of 1971.

The General Directorate of Income may require from the Trustee, with the frequency and form established by it, information about any withdrawals made by the employees making voluntary payments.

**Article 39.** The Trustee and the Administrator are subject to the supervision of the Regulator, who may carry out inspection on the books and operations of them, to verify that the Severance Fund administration was made in accordance with the Severance Fund Contract, the Law, and regulatory provisions. If according to the causes established in applicable Laws, the Trustee, Administrator or any other person involved in the administration of the Trust Fund is intervened, the Regulator shall



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order directly or by means of an Intervener appointed by the Regulator, the providences necessary to protect the interest of the Severance Fund, even though, if necessary and convenient to such purposes, the Regulator shall appoint new Trustee, Administrators or other agents, for the time the intervention lasts or other term. In this case, after one (1) month from the appointment, the Employer may confirm the designations made by the Regulator or appoint new persons. If so, he shall inform this to the employees.

LET IT BE KNOWN, PUBLISHED AND ENFORCED.

Given in the city of Panama on twenty-sixth December, nineteen ninety-five (1995).