

# TRANSLATION

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## Republic of Panama Superintendency of Banks

### TRUST RULE N°. 1-2017 (dated 11 July 2017)

**“Whereby the certification process of trustees holding trust licenses granted by the Superintendency of Banks is regulated”**

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

#### WHEREAS:

By means of Law 1 dated 5 January 1984 the trust business in Panama is regulated;

Law 21 dated 10 May 2017 established rules for regulating and supervising the trustees and the trust business and amended Law 1 of 1984;

Pursuant to Article 1 of Law 21 of 2017, the Superintendency of Banks has the exclusive competence to regulate and supervise the trustees holding a trust license and those entities authorized by law to engage in the trust business;

According to Paragraph 2 of Article 5 of Law 21 of 2017, one of the duties of the Board of Directors of the Superintendency of Banks on trust funds and trustees is to determine the documents permitting the verification of compliance with the requirements established in the Law to be granted a trust license;

Pursuant to the provisions of Article 131 of Law 21 of 2017, whoever holds a trust license at the time this Law is enacted must certify to the Superintendency of Banks his compliance with the new requirements provided in this Law, to continue acting as trustees;

According to Article 131 of Law 21 of 2017, the Superintendency of Banks will establish the documents required for the certification process by means of a Rule;

In accordance with Article 131 of Law 21 of 2017, the companies holding a trust license must start the certification process within six (6) months following the day after the enactment of the Law. Given that the Law was published in the Official Gazette on 12 May 2017, this period will expire on 13 November 2017;

Pursuant to Article 13 of Law 21 of 2017, to be granted a trust license, the applicant must certify to the Superintendency of Banks that it has all the appropriate levels of professionalism, specialization, and technical, financial, legal, administrative and operating capability to conduct the trust business. These requirements must also be met by trust companies that, as of the enactment of this Rule, hold a trust license; and

During the Board of Directors' working sessions it was determined that it was necessary and advisable to establish the additional requirements that the trustees holding trust licenses must certify, as well as the applicable procedure to apply for the certification.

#### RESOLVES:

**ARTICLE 1. OBJECTIVE AND SCOPE.** The provisions of this Rule establish the additional requirements that trustees holding trust licenses must certify to the Superintendency of Banks in compliance with the provisions of Law 21 of 2017, as well as the applicable procedure for the granting of the required adherence certificate that will permit them to continue acting as trustees.

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**ARTICLE 2. SCOPE OF APPLICATION.** The provisions of this Rule are applicable to the trustees holding a trust license as of the enactment of Law 21 dated 10 May 2017.

**ARTICLE 3. REQUEST FOR CERTIFICATION.** For the purposes of continuing to act as trustees, the holders of trust licenses must submit a written request for certification to the Superintendency of Banks through a lawyer or law firm.

If the six (6) –month period referred to in Law 21 of 2017 expires without having started the certification process by means of the relevant request, the Superintendency of Banks may order the cancelation of the trust license.

**ARTICLE 4. ADHERENCE REQUIREMENTS.** The request for certification provided in Article 3 must be submitted along with the following documentation and parameters:

- a. **Power of attorney.** A power of attorney granted to the trustee's agent;
- b. **Articles of Incorporation.** Draft amending the Articles of Incorporation with the adherence elements according to the new requirements in this Rule; specifically, the minimum paid-in capital and the objective of the corporation, in accordance with the provisions of the Law. For the objectives of the corporation, the activities described in Article 20 of Law 21 of 2017 must be taken into consideration;
- c. **Authorization granted by the Board of Directors or Shareholders Meeting, as appropriate.** Meeting minutes, meeting minutes brief or Secretary's certificate attesting to the approval of the amendments to the Articles of Incorporation in the previous subparagraph;
- d. **Updated Shareholder Record.** Certificate issued by a Certified Public Accountant detailing the shareholders, including the final beneficiary (individual) and their share percentage;
- e. **Résumé of the person responsible for AML.** The résumé of the person responsible for preventing money laundering, the financing of terrorism and financing the proliferation of weapons of mass destruction, attesting to his knowledge, experience, and professional suitability in topics relevant to the trust business and prevention;
- f. **Minimum capital.** Evidence that it has the minimum paid-in capital (or assigned capital for branch offices), net of losses, amounting one hundred and fifty thousand balboas (B/.150,000.00), which must be shown in the financial statements.

For the purposes of attesting to this requirement, the applicant must submit the interim financial statements certified by a Certified Public Accountant of the Republic of Panama;

- g. **Guarantee or Commitment of Guarantee.** For trust companies holding guarantees granted by an affiliate to that trust company, they must provide evidence that this guarantee was replaced by another created by a guarantor not related to the trustee, in accordance with Article 27 of Law 21 of 2017;
- h. **Claims Management System.** An established operating structure, rules and procedures to process claims, in accordance with the complexity of its operations, fitted to manage, handle and solve claims, complaints and disputes resulting from the relationship with customers.

For these purposes, the trustee must provide a copy of the ID card or passport and the résumé of the person responsible for managing claims, and the trustee must also describe the rules related to the claims management procedure.

- i. **Technology Capability.** Description of the technology resources the trust company has to manage trust business processes, including but not limited to, the description of software, applications, servers and backups guaranteeing the confidentiality and the continuity of the trust service. This information will be verified by the Superintendency of banks during the onsite inspection, to confirm that these resources are appropriate for the size and complexity of its operations;
- j. **Organization chart of the trust company.** Organizational structure of the trust company, including the positions and the names of the persons holding them. A copy

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of the résumés of the members of the organizational structure must be attached thereto;

- k. Payment of the trust regulatory and supervisory assessment fee.** Provide a copy of the payment of the trust regulatory fee, in accordance with Article 10 of Law 21 of 2017.

**ARTICLE 5. ADHERENCE CERTIFICATE.** Once the certification process is met, the Superintendency will issue the relevant adherence certificate, authorizing trustees holding trust licenses to continue acting as such.

That certificate will be granted by means of a substantiated resolution that must be formalized and registered in the Public Registry.

Once the 6-month period referred to in Law 21 of 2017 has expired without the trust company having not submitted the request for certification, the Superintendency of Banks will issue a list of the trust companies not meeting the certification procedure in order to issue the relevant notifications to the Public Registry to annotate that these companies are not authorized to engage in the trust business.

**ARTICLE 6. TRUST COMPANIES NOT MEETING THE CERTIFICATION PROCESS.** The trust companies that choose not to apply for the certification must inform to the Superintendency of Banks in writing, enclosing their liquidation plan to start the voluntary liquidation process and the cancelation or transfer of the relevant trust funds, as appropriate.

**ARTICLE 7. CERTIFICATION INSPECTION.** The trust companies that have been granted an adherence certificate pursuant to the new requirements provided in this Rule, must keep the required adherence documents and information available to the Superintendency of Banks.

The application and functioning of the policies, principles, processes, procedures, mechanisms, structure and other adherence requirements will be verified during the scheduled onsite inspection of trust companies.

If there are deficiencies resulting from the inspections, the Superintendency will urge the trustee to adopt the relevant measures to remedy or correct the indicated deficiencies by means of a substantiated resolution, for which the Superintendency will grant the time it deems appropriate, without prejudice to applying the sanctions provided by Law.

**ARTICLE 8.** This Rule shall become effective upon its enactment.

Given in the city of Panama on the eleventh (11<sup>th</sup>) day of July, two thousand seventeen (2017).

**FOR COMMUNICATION, PUBLICATION AND ENFORCEMENT.**

**THE CHAIRMAN,**

**THE SECRETARY,**

L. J. Montague Belanger

Nicolas Ardito Barletta