

TRANSLATION



December 6, 2006
Circular No. 065-2006

General Manager

Subject: Freedom to contract insurance companies and brokers. Article 36, Law 59 of 1996.

Dear General Manager:

We wish to remind you hereby of the provisions of Circulars 5-98 dated 20 July 1998 and 4-2000 dated 18 January 2000, whereby banks were requested to foster the necessary measures to strengthen the full exercise of the user's freedom to select an insurance company and broker in those credit operations requiring insurance.

Please bear in mind that Article 36 of Law 59 dated 26 July 1996 establishes that:

“Clients of private and state-owned banks, finance companies, trust companies, credit companies and car dealers are free to choose and appoint their insurance companies and insurance brokers (persons or legal entities) when carrying out transactions requiring any type of insurance.

“Clients of the above entities are also free to join the collective insurance policies of these institutions through their own broker, or submit an equivalent individual insurance policy. At no time may enrollment in such insurance policies be subject to surcharges or special conditions that are detrimental to the insured party.

“The Superintendency (of Insurance and Reinsurance) will rescind any provision contrary to the provisions of this Article.” (Emphasis provided)

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Additionally, please be advised that the 5 October 2006 ruling of the Third Chamber of the Supreme Court of Justice reinforces the provisions made by the Superintendency in both circulars, in the sense that Article 36 of Law 59 of 1996 grants full rights to any person entering into a loan agreement with a bank to choose and appoint his or her insurance company and insurance broker to issue the policies guaranteeing the loan. That ruling expressly provides that Article 36 *“does not place a time limit on when the client may choose or appoint his or her insurance company or broker, nor does it establish that the client loses this right by not invoking it at the beginning of the contract,”* thereby indicating that the customer has the right to choose his or her insurance company and his or her broker at any time during the contractual relationship.

In the same manner, the ruling plainly shows that the freedom that the bank borrower has in choosing his or her insurance company and broker at any time, even after having agreed at the outset to retain the bank’s collective insurance policy, in no way *“violates the principle of contractual freedom in the sense that what is agreed between the parties cannot be changed, precisely because when the parties enter into a contract, they cannot include clauses that violate the body of domestic laws.”*

We would greatly appreciate your providing your staff with the necessary instructions for compliance with the provisions of this circular.

Best regards,

Olegario Barrelier Chiari
Superintendent

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