

August 17, 2018
Circular N° SBP-DR-0072-2018

General Manager

Subject: Customer's freedom in contracting insurance policies

Dear General Manager:

We wish to reiterate the contents of the many circulars the Superintendency of Banks has issued on the customer's freedom in contracting insurance policies and the delivery of group insurance policies, topics that have been broadly addressed through circulars 5-98, 6-2003, 65-2006, 22-2007, and 51-2007.

We deem it important to remind banks that they must take the necessary measures to ensure the customers' right to choose the insurance company they prefer to contract the insurance policies required for a banking operation.

It is important to emphasize that Article 150 of Law 12 dated 3 April 2012 "Regulating the insurance activity and prescribing other provisions" established the following on freedom of contracting:

"Article 150. Freedom of contracting. All individuals and legal entities have the freedom to contract insurance policies directly from the insurance companies or through insurance brokers, insurance policy sellers, insurance executive accounts or through trading channels authorized herein, as well as the insurance type, the premium, the general and specific conditions and any other specific requirements.

The customers of private and state-owned banks, finance companies, trust companies, cooperatives and car dealers will be free to choose and appoint their insurance companies, insurance policy sellers and insurance brokers (whether individuals or legal entities) in transactions that require contracting any type of insurance policy."

Also, it is important to indicate that paragraph a, Article 11 of Rule 4-2011 "Providing the rules for the collection of certain fees and surcharges applied by banks" establishes that the following will be considered an abusive practice:

"Article 11. ABUSIVE PRACTICES. The following will be considered abusive practices by banks and shall not be included in banking contracts or applied in bank-client relationships:

- a. *A bank condition requiring the client to choose or appoint insurance companies related to the bank or the banking group, for any insurance policy required for the execution of a transaction with the bank;”*

As for group insurance policies, let us remind you of the provisions of Article 151 of Law 12 of 2012, which establishes that:

*“**Article 151.** Option to be affiliated with a group insurance policy and option to terminate the individual policy. The customers of private and state-owned banks, finance companies, trust companies, cooperatives and car dealers are also free to choose to be affiliated with the entity’s group insurance policies or to submit an equivalent individual insurance policy.*

At no time may choosing an individual insurance policy be penalized with surcharges or any conditions unfavorable to the insured.”

In view of the above, we refer to Title III, Chapter III on Special Provisions for Group Insurance of Law 12 of 2012, specifically Article 162 on the individual insurance policies, provides:

*“**Article 152.** Individual policy certificates. For group insurance policies, the clauses stipulated in the individual certificates will prevail over the general conditions of the policy and these certificates must include the relevant clause information from the contract.*

The insurance company must provide the policy certificate to the insured, the insurance broker or the person contracting that policy, who will be obliged to deliver it to the insurer and maintain proof of delivery.”

We would greatly appreciate your providing your staff with the necessary instructions for compliance with the provisions herein.

Best regards,

Ricardo G. Fernandez D.
Superintendent

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