

May 5, 2022
Circular N° SBP-DR-0038-2022

General Manager

Subject: Customer's freedom in contracting insurance policies

Dear General Manager:

We would like to reiterate the provisions established in Articles 150 and 151 of Law 12 dated 3 April 2012 "Whereby the insurance activity is regulated and other provisions are prescribed" regarding the banking customers' freedom in contracting insurance policies that are required when conducting a banking transaction.

It should be noted that this is a matter the Superintendency of Banks has repeatedly addressed through circulars, to communicate and remind banks about the banking customers' freedom in contracting insurance policies, including Circulars 5-98, 6-2003, 65-2006, 22-2007, 51-2007, 72-2018, and 32-2020, posted on our website: <https://www.superbancos.gob.pa/en/laws-and-reg/circulars>

Notwithstanding the foregoing, please be advised that the Superintendency of Insurance and Reinsurance of Panama has informed to the Superintendency of Banks its concern that its statistics show a rise in consumer claims due to limitation of the freedom to choose an insurance company and an insurance broker at the time of securing a contractual obligation with banks.

In this regard, the Superintendency of Insurance and Reinsurance of Panama informed us that they have issued Circular 5-2022 dated March 4, 2022, addressed to insurance companies and insurance associations, reminding them the right of consumers to contract the insurance company and insurance broker of their choice for banking operations, in accordance with the provisions of Article 150 of Law 12 dated 3 April 2012.

In connection with the above, we would like to remind you the concept previously expressed by the Superintendency of Insurance and Reinsurance, indicating the provisions of Articles 150 and 151 of Law 12 dated 3 April 2012 that read as follows:

"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

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insurance companies, insurance policy sellers and insurance brokers (whether individuals or legal entities) in transactions that require contracting any type of insurance policy.

“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. The customers that chooses to be affiliated to the existing group insurance policies must adhere to all of the contractual conditions previously agreed on by the entity; however, if the customer chooses to contract an individual insurance policy, he/she may not condition the transfer of an insurance policy from an insurance company to said entity to surcharges or special conditions in detriment of the insured party. At no time may choosing an individual insurance policy be penalized with surcharges or any conditions unfavorable to the insured.

The Superintendency will repeal any provision contrary to the provisions herein.”

On the other hand, we deem it appropriate to remind banks the provisions of Article 11 (a) of Rule 4-2011, “Whereby the rules for the collection of certain fees and surcharges applied by banks are provided,” as follows:

***“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;*
- b. ...”*

In view of the foregoing, we kindly request the bank to ensure that it complies with the regulatory spirit of Law 3 dated 12 April 2012 in terms of guaranteeing the natural or legal person’s right or freedom in contracting an insurance policy for securing banking transactions. We also require compliance with Article 192 of the Banking Law, which provides that banks are required to provide their services to bank customers with transparency, integrity, and equity, in conformity with the norms and principles of Title V of the aforementioned Law.

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

Best regards,

Michelle Arango
Acting Superintendent

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