

# TRANSLATION

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## Republic of Panama Superintendency of Banks

**RESOLUTION SBP-0108-2014**  
(dated 13 August 2014)

**THE SUPERINTENDENT OF BANKS**  
in use of his legal powers, and

### CONSIDERING:

That **ES BANK (PANAMÁ), S.A.** is a corporation established and existing according to the Laws of the Republic of Panama, filed under Micro jacket 403433, Document 253259 of the Microfilm (Mercantile) Section of the Public Registry of Panama and the holder of an International Banking License granted by Resolution SB 69-2001 dated 25 October 2001, which allows the bank to execute transactions to be concluded, consummated or have effect abroad from an office established in Panama;

That **ES BANK (PANAMÁ), S.A.** belongs to an Economic Group and is wholly owned by ESPÍRITO SANTO FINANCIAL GROUP, S.A. (ESFG) headquartered in Luxembourg;

That ESPÍRITO SANTO FINANCIAL GROUP, S.A. (ESFG) consists of corporations headquartered in Portugal, Europe and other regions of the world;

That ESPÍRITO SANTO FINANCIAL GROUP, S.A. (ESFG) run operations through leading corporate banks, insurance companies, investment banks and international portfolio management companies in Portugal;

That due to the Group's share structure and its distribution, Banco de Portugal is the Home Supervisor of the Banking Group and, therefore, conducts the consolidated supervision of the Group, including **ES BANK (PANAMÁ), S.A.**, whereby the Superintendency of Banks of Panama is **ES BANK (PANAMÁ), S.A.**'s Host Supervisor;

That supporting this assertion is the fact that in May 2013, Banco de Portugal, as Home Supervisor of the Group, certified that ESPÍRITO SANTO FINANCIAL GROUP, S.A. (ESFG), the Group to which **ES BANK (PANAMÁ), S.A.** belongs, complied with its consolidated capital adequacy requirements;

That the Group's business model specifically foresaw raising funds from the public and, especially, from Group entities, for placement as financing within the Group itself, such that the financial component of the group provided resources for the nonfinancial component of the same Group;

That, in this matter, it is important to emphasize that since **ES BANK (PANAMÁ), S.A.** was a subsidiary bank over which the Superintendency of Banks of Panama conducted host supervision, the applicable limits on risk concentration of economic groups and related parties were those established by its Home Supervisor, which in this case was Banco de Portugal;

That having no knowledge of any report issued by the regulator, Banco de Portugal, stating that the subsidiary in Panama was in violation of the regulations issued by the home supervisor, there was no evidence of, nor could we presume that there was, any noncompliance in this matter;

That Panamanian banking system Rule 5-2001 on Market Risk requires subsidiaries of foreign banks to provide the Superintendency an annual certification from the external auditors of their main branch asserting that they fulfill this Rule and confirming that they

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have the necessary structures and controls for solid and safe market risk management of its positions on and off the balance sheet;

That complying with this requirement, the External Auditors of ESPÍRITO SANTO FINANCIAL GROUP, S.A. (ESFG) in Portugal submitted that Certification on 17 June 2014, adding that the market risk structures and controls of ESFG, under Banco de Portugal's supervision, included the Panamanian subsidiary **ES BANK (PANAMÁ), S.A.**;

That the Superintendency of Banks, in compliance with the provisions of Rule 5-2011 dated 20 September 2011, also received a Certification issued by ESPÍRITO SANTO FINANCIAL GROUP, S.A., the sole owner of the shares of **ES BANK (PANAMÁ), S.A.**, whereby that Economic Group confirmed that it had the structures, organization and controls to ensure that the group of businesses controlled by ESFG had the Corporate Governance in place conforming to best and safe banking practices as well as the requirements specified by Banco de Portugal;

That affidavits signed on 14 March 2014 by the President of the Corporation, the Chief Executive Officer and Legal Representative of the Bank, and the most senior Financial Officer of the Bank reside in the Superintendency's files, verifying the review and accuracy of the information contained in the Financial Statements of **ES BANK (PANAMÁ), S.A.** and issued in full knowledge of the responsibilities stipulated in the laws of the Republic of Panama;;

That in May 2014, the European regulators found over 1.3 billion Euros in accounting irregularities within the Group's corporations and uncovered the high concentration of loans to related parties caused by the great amount of financing granted to Group companies;

That due to these discoveries and their disclosure, stock values dropped between June and July, resulting in the inability to secure financing and the tightening of the liquidity of the banks and the Group, making it impossible for them to meet accountholder withdrawal demands;

That **ES BANK (PANAMÁ), S.A.** does not escape this global reality, brought about by the speed of today's communications. Consequently, the bank's customers could not access their deposits.

That it must be noted that this is an International License Bank. Therefore, it did not collect resources from the domestic market, accepting deposits primarily from Group entities and placing those resources as loans to intra-Group corporations. Deposits by persons and entities not related to the Group amount to less than 4% of total deposits according to accounting records;

That because of the critical situation faced by the Group and, specifically, **ES BANK (PANAMÁ), S.A.**, the Superintendency summoned the Senior Management and members of the Board of Directors of the Bank, who, among other things, explained that the working capital that the Bank in Panama was counting on had been blocked due to the developments in the Banking Group in Portugal, lowering the liquidity position of the Bank in Panama;

That the Superintendency contacted Banco de Portugal to ascertain the actions it would take, given its overall responsibility for the Group as Home Supervisor. Banco de Portugal chose to allocate resources only to the Bank in Portugal and a few other banks, including the subsidiary in Miami, Florida, while leaving the other banks around the world without support and the holding companies connected with the issue of the loan portfolios, ESPÍRITO SANTO INTERNATIONAL, RIO FORTE INVESTMENT and ESPÍRITO SANTO FINANCIAL GROUP, under creditor protection from the authorities in Luxembourg;

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That because of these events and pursuant to the provisions of Article 131 of the Banking Law<sup>1</sup>, by means of Resolution SBP-0097-2016 (sic) dated 16 July 2014, which became effective at noon (12:00 p.m.) on 17 July 2014, the Superintendency ordered the Seizure of Administrative and Operating Control of **ES BANK (PANAMÁ), S.A.** including control of the Bank's property and the exercise of its administration in accordance with the grounds set forth in paragraphs 2 and 7 of Article 132, for the best protection of the depositors and creditors;

**Article 132:**

“....

2. *If the bank cannot continue operations without endangering the interests of the depositors.*
7. *If the Superintendency confirms that the capital adequacy, solvency or liquidity of the bank has deteriorated to the point that it requires the Superintendency's action.”*

That the ordered Seizure of Administrative and Operating Control of **ES BANK (PANAMÁ), S.A.** also provided for the suspension of all banking operations of that Entity and appointed Doctor Jaime de Gamboa Gamboa, holder of personal identification number E-8-95145, as Interim Administrator, to exclusively execute the legal representation of the Bank on behalf of the Superintendency, with the powers and duties provided for in the Law and herein;

That the Interim Administrator submitted a management report dated 7 August 2014, which lists the following:

- At the time of the seizure of control, the Bank was in default, there were past due bank deposits and unpaid borrowed funds of about USD500 million.
- There is a portfolio with a high concentration in related parties, secured by shares belonging to the same parties.
- Credit portfolio parties, be they debtors, guarantors or issuers of pledged shares (i.e. Espirito Santo International, Rio Forte Investments and Espirito Santo Financial Group) have requested, and received creditor protection in Luxembourg.
- The payment capacity of a sole debtor through its own shares, by direct loans and collateral from other loans, are the source for the payment of over 96% of the total portfolio, which is equal to one debtor assuming 16 times the value of the existing capital funds.
- The portfolio rating does not reflect the qualitative criteria required by the rule in effect at that time (Rule 6 of 2000). The required adjustment is of great material relevance to ensuring the financial statements reasonably reflect the Bank's condition.
- The asset represented by preferred shares of the related companies, recorded as securities available for sale, has zero value.
- The Bank's exchange risk exposure is significant, as it holds long positions in currency other than dollars. This generates a contingency that would further affect the Bank's figures should it materialize.

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<sup>1</sup> Decree Law 9 of 1998, amended by Decree Law 2 of 2008, whose Sole Text was adopted by means of Executive Decree 52 of 2008.

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- Liquid assets in Panama over which we were able to take control amount to approximately one million five hundred thousand dollars (US\$1,500,000.00) in bank deposits.
- Liquidity management before the Seizure of Control drained approximately eighteen million dollars (US\$18,000,000.00) in two operations, a significant part of the Bank's liquid resources:
  - Funds made available by Banco Espirito Santo of Portugal, in clearing a loan account with a transference, and
  - Dividend disbursements made in June 2014.
- Despite the fact that treasury management had been outsourced to Luxembourg, all operations affecting balances and accounting records required the authorization and approval of the top management of the Bank in Panama.
- At the moment of this report, over half of the portfolio is past due. During the next seven days 99% of this portfolio will be past due.
- The Bank's liabilities consist basically of private client deposits, interbank deposits from Group banks in Dubai and Switzerland and financing received from Banco Espirito Santo of Portugal.

That the appointed Interim Administrator of **ES BANK (PANAMÁ), S.A.** concludes his report stating that the institution is not viable under any scenario, due to the poor quality of the Bank's assets, caused by the business model and inappropriate management processes. Consequently, he recommends the Compulsory Liquidation of the Bank as soon as possible, pursuant to the provisions set forth in the Banking Law;

That the Superintendency has carefully considered the situation **ES BANK (PANAMÁ), S.A.** is experiencing and the international condition of GRUPO ESPÍRITO SANTO, including the lack of willingness and disposition of the failed Group and of its Home Supervisor to address the Panamanian Bank's particular situation, and has also evaluated the Interim Administrator's report and recommendation;

That pursuant to subparagraph 4 of paragraph I of Article 16 of the Banking Law, the Superintendent of Banks has the authority to order, among other actions, the Compulsory Liquidation of Banks in those cases provided for in this Law.

## RESOLVES:

**FIRST: TO ORDER the COMPULSORY LIQUIDATION of ES BANK (PANAMÁ), S.A.,** a corporation established and existing according to the laws of the Republic of Panama, filed under Micro jacket 403433, Document 253259 of the Microfilm (Mercantile) Section of the Public Registry of Panama and holder of an International Banking License granted by means of Resolution SB 69-2001 dated 5 October 2001, which allows the bank to execute transactions to be concluded, consummated or have effect abroad from an office established in Panama, pursuant to the provisions of Article 154 and following articles of Chapter XVIII, **COMPULSORY LIQUIDATION**, Title III of the Banking Law.

**SECOND: TO APPOINT** Mr. Edgardo Galarza Altamiranda, an adult Panamanian male, holder of personal identification card No. 4-100-121 and a Certified Public Accountant and practicing lawyer domiciled in Panama and having over five (5) years of experience in the banking sector, to exclusively execute the legal representation, administration and control of **ES BANK (PANAMÁ), S.A.**

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**THIRD: TO ORDER** the continued suspension of all **ES BANK (PANAMÁ), S.A.** banking operations:

**FOURTH: TO DECLARE**, as stated in Article 159 of the Banking Law, that as **ES BANK (PANAMÁ), S.A.** is under compulsory liquidation, the statute of limitations related to all of the rights and legal actions to which the Bank is a principal and the deadlines of all trials and proceedings to which the bank is a party are suspended for up to six months, with the exception of proceedings to foreclose on a pledge, mortgage or other property right.

**FIFTH: TO ORDER** the cessation of the accrual of interest on the obligations of **ES BANK (PANAMÁ), S.A.** under compulsory liquidation, with the exception of those secured by collateral or mortgage on assets of the Bank, as provided for in Article 160 of the Banking Law.

**SIXTH: TO STIPULATE** that the Liquidator, Mr. Edgardo Galarza Altamiranda, hereby appointed, acts under the aegis of the Superintendent of Banks, and will report his actions to the Board of Directors of the Superintendency through the Superintendent, as set forth in Article 155 of the Banking Law.

**SEVENTH: TO REQUIRE** the appointed Liquidator, Mr. Edgardo Galarza Altamiranda, to maintain a clear, orderly and easily verifiable record of his administration and to undertake the compulsory liquidation with celerity, diligence, simplicity and transparency, and with respect for the rights and precedence recognized by the Banking Law.

**EIGHTH: TO ESTABLISH** that the Liquidator will have the powers expressed in the Law and those that are relevant during the process, including:

1. To stop or limit payment on the Bank's obligations and on the debts of the assets subject to liquidation, subject to the availability of funding.
2. To employ the necessary personnel and dismiss those employees whose fraudulent or negligent behavior has created or abetted the conditions leading to the liquidation, as well as those employees that are no longer needed due to a reduction in the activities of the Bank.
3. To manage the bank's correspondence and issue any document on behalf of the Bank.
4. To assign or sell assets according to their marketable value, net of provisions, reserves, and any other adjustment required by the Superintendency, according to existing prudential norms and regulations.
5. To totally or partially transfer the assets and liabilities of the Bank to an institution licensed to exercise the trust business in Panama, with the prior authorization of the Superintendency.
6. To execute those acts and enter into those agreements within the scope of his responsibilities that would permit the initiation, fulfillment and execution of the liquidation through the transfer of assets and liabilities and the trust fund.
7. To establish the requirements, terms and conditions in the trust contract for the proper liquidation of assets and liabilities transferred to the trust fund.
8. Any other powers which may be authorized by the Superintendent for a specific purpose based on a justified request from the Liquidator.

**NINTH: TO ORDER** the posting of a Notice with a transcription of this Resolution ordering the Compulsory Liquidation in a visible and public place of the Bank's main offices, indicating the hour of the enactment of the liquidation. This notice shall be affixed for five (5) business days, and must remain affixed during the entire liquidation. After the notice has been posted for five business days in the bank's main offices, notification will be deemed to have been made.

**TENTH: TO ORDER** the publication of this Resolution in a newspaper with broad national circulation for five (5) business days, once the posting cited above has been made.

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**ELEVENTH: TO ORDER** the Public Registry to make the relevant marginal notation of the Compulsory Liquidation of **ES BANK (PANAMÁ), S.A.**, a corporation filed under Micro jacket 403433, Document 253259 of the Microfilm (Mercantile) Section of the Public Registry of Panama, as well as the appointment of Mr. Edgardo Galarza Altamiranda as the Bank's Legal Representative as Liquidator of the Bank.

**TWELFTH: TO DECLARE** that this Resolution shall become effective at two o'clock (2:00 p.m.) on 14 August 2014.

This Resolution can be impugned only by means of an appeal to the Third Chamber of the Supreme Court of Justice pursuant to the Law, within fifteen business days after the last publication of the Notice referred to in the Banking Law and herein. Filing an appeal against the Resolution ordering the Compulsory Liquidation of **ES BANK (PANAMÁ), S.A.** will not suspend the liquidation or its effects, because the liquidation protects a social interest.

**LEGAL GROUNDS:** Article 16, Paragraph I, Subparagraph 4; Article 154 and following articles of Chapter XVIII, Title III of the Banking Law.

Given in the city of Panama on the thirteenth (13<sup>th</sup>) day of August, two thousand fourteen (2014).

**LET IT BE KNOWN, PUBLISHED AND ENFORCED,**

**THE SUPERINTENDENT OF BANKS,**

Alberto Diamond R.

/jca