

**Rule No. 005-2008<sup>1</sup>**  
(dated October 1, 2008)

"Whereby capital standards for credit risk applicable to the Banking Entities are stipulated"

**THE BOARD OF DIRECTORS**

using its legal authority, and

**WHEREAS:**

In light of the enactment issuance of Decree Law No. 2 of February 22, 2008, the Executive Branch performed a systematic ordering in form of a single text of Decree Law 9 of 1998 and all its modifications, which was approved by way of Executive Decree No. 52 of April 30, 2008, hereinafter the Banking Law;

Pursuant to the faculty of technical nature that is stipulated in Article 11, literal I, numerals 3 and 5 of the Banking Law, it pertains to this Superintendency to approve the general criteria for risk asset rating and to set in the administrative realm, the interpretation and scope of the legal or regulatory provisions in banking matters;

Pursuant to Article 67 of the Banking Law, it pertains to this Superintendency to define and establish the main equity elements and the deductions that apply;

Due to the growth and the evolution of the risk profiles in the existing loan portfolios of General License and International License banks, seen in work sessions of this Board of Directors, the need and convenience is evident of updating the standards to apply what is stipulated by articles 67, 70 (previously article 45 of Decree Law 9, according to the text in effect until August 24, 2008) and 71 of the Banking Law.

**RESOLVES:**

**ARTICLE 1: APPLICATION REALM AND SCOPE.** This Rule will apply to Official Banks, General License Banks and International License Banks whose home supervisor is the Superintendency of Banks.

This Rule will be applied in consolidated basis pursuant to the International Financial Information Standards (IFIS) or the United States' Generally Accepted Accounting Principles (USGAAP).

---

<sup>1</sup> This Rule rescinds in all its parts Rules 5 and 6 dated 14 October 1998 and all their amendments. Art. 12 (ENACTMENT) was amended by Rule 9-2009 dated 25 March 2009. Art. 4 (CAPITAL DEDUCTIONS) was amended by Rule 4-2009 dated 9 June 2009.

The Superintendency of Banks will determine the rating applicable to the equity instruments for their inclusion as elements of primary or secondary capital.

**ARTICLE 2: PRIMARY CAPITAL.** For the purposes of calculating the capital adequacy index, primary capital comprises: the corporate capital paid in stocks, the declared reserves, the retained earnings and the representative shares of the minority interests in equity accounts of consolidating subsidiaries.

**1. The paid-up corporate capital is comprised by:**

- 1.1. The common stocks issued and fully paid, excluding the stocks in treasury.
- 1.2. Non-accruing preferred stocks, issued and fully paid, that observe the following requirements:
  - 1.2.1. They do not have a maturity date.
  - 1.2.2. They do not grant the holder an early redemption option.
  - 1.2.3. They are subsequently payable, in liquidation, to the depositors and the creditors.
  - 1.2.4. They do not allow accruing interest or dividends or deferred payments in any way, including payment in other common or preferred stocks. The issuing bank can eliminate the payment of interest or dividends only in the absence of earnings.
  - 1.2.5. They do not allow, automatically or at the holder's option, the conversion to another type of stock different than primary capital.
  - 1.2.6. The payable interest rate will not vary in function of the financial condition or result of the issuer's operations.
  - 1.2.7. The payable interest rate is fixed or is set based on an independent market's index.
  - 1.2.8. They do not include clauses that, due to their potentially unfavorable conditions, encourage the bank to an early redemption.
  - 1.2.9. The issuer is not obligated to repurchase.

**2. The declared reserves** are those classified by the bank as Capital Reserve to reinforce its financial situation, proceeding from retained earnings in its books and subject to what is stipulated in Article 69 of the Banking Law.

**3. The retained earnings** are the undistributed earnings of the current period and of previous periods.

**PARAGRAPH:** The Banks subject to this Rule must report to the Superintendency any decrease in the Primary Capital elements stipulated by numerals 1 and 2 of this article.

**ARTICLE 3: SECONDARY CAPITAL.** For the purposes of calculating the capital adequacy index, the secondary capital comprises the undeclared reserves, the reassessment reserves, the general provisions for losses and the equity and debt hybrid instruments. The sum of the elements computed as secondary capital will be limited to a maximum of 100% of the sum of the primary capital elements. The secondary capital elements are described below:

**1. Undeclared reserves:**

They comprise the part of retained earnings after taxes, as long as they are of the same quality as the declared reserves. As such, they are completely and immediately available to absorb unforeseen future losses and are not burdened by any obligation. Nonetheless, unlike the declared reserves, a specific end is not attributed to them and they are posted in a special reserve entry.

**2. Reassessment reserves:**

Those that result from reassessing the securities posted at historical cost in the investment portfolio. Said reassessment must be done considering the market rates in force for assets of similar characteristics and it must be authorized by this Superintendency. The banks are not allowed to include in this heading the reassessments of those securities received by the banks as payment in the course of their operations.

**3. General provisions for losses:**

They are provisions (allowances) that have not been required from the banking entities by this Superintendency, neither by law or regulation. They are those that the banks create voluntarily against the possibility of losses that have not been identified yet. The general provisions can only be computed as part of the secondary capital up to a maximum of 1.25% of the assets weighted in function of their risks, as long as they have been calculated pursuant to the International Financial Information Standards (IFIS) or the United States' Generally Accepted Accounting Principles (USGAAP).

Once the general provisions are computed as part of the secondary capital, the banks cannot decrease them if in so doing they infringe the adequacy index contemplated in Article 70 of the Banking Law and the other legal or regulatory margins and limits set based on the Capital Stock.

**4. Equity and debt hybrid instruments.**

For the purposes of this Rule, instruments with the following characteristics will be deemed equity and debt hybrid instruments:

**4.1. Accruing preferred stocks, issued and fully paid, that observe the following requirements:**

**4.1.1.** They do not have a maturity date.

- 4.1.2. They do not grant the holder an early redemption option.
- 4.1.3. In liquidation they are subsequently payable to the depositors and the creditors.
- 4.1.4. They do not allow, automatically or as the holder's option, the conversion to another type of stock different than primary capital.
- 4.1.5. The payable interest rate will not vary in function of the financial condition or result of the issuer's operations.
- 4.1.6. The payable interest rate is fixed or is set based on an independent market's index.
- 4.1.7. They do not include clauses that, due to their potentially unfavorable conditions, encourage the bank to an early redemption.
- 4.1.8. The issuer is not obligated to repurchase.

**4.2. Subordinated Debt:** This instrument will have the following characteristics:

- 4.2.1. Original maturity term greater than 5 years or of indefinite duration.
- 4.2.2. The debt will be subordinated to the depositors and creditors in general.
- 4.2.3. It will have no clauses with an early redemption option by the holder.
- 4.2.4. The early redemption or payment, or uptake as guarantee of credit facilities from the Bank, requires the Superintendent's previous approval, so that its solvency is not affected. This requirement will be stated in the instrument's terms and conditions and in the prospect, if any.
- 4.2.5. If clauses exist in the instrument's terms and conditions that encourage the bank to an early redemption, the application date of the incentive will be considered to determine the duration of the original term and to apply the reduction of the instrument as secondary capital.

**4.3. Subordinated Debt Convertible to Common Stocks:** the one wherein the bank commits to repaying the principal, fully or partially, by issuing new common stocks. This instrument will have the following characteristics:

- 4.3.1. A maximum maturity term of ten (10) years.
- 4.3.2. The debt will be subordinated to the depositors and creditors in general.
- 4.3.3. They do not grant the holder a repurchase, conversion or early redemption option.

- 4.3.4. The early redemption or payment by the bank requires the previous approval of the Superintendent, so that the bank's solvency is not affected. This requirement will be stated in the instrument's terms and conditions and in the prospect, if any.
- 4.3.5. The terms and conditions of the instrument and the prospect, if any, must stipulate the convertibility or repayment formula towards common stocks.
- 4.3.6. If clauses exist in the instrument's terms and conditions that encourage the bank to an early redemption, the application date of the incentive will be considered to determine the duration of the original term and to apply the reduction of the instrument as secondary capital.
- 4.3.7. The terms and conditions of the instrument and the prospect, if any, must state that it is not acceptable as guarantee of credit facilities before the issuing bank.

**4.4. Subordinated Debt Convertible to Non-Accruing Preferred Stocks:** the bank commits to repaying the principal, fully or partially, by issuing new non-accruing preferred stocks. This instrument will have the following characteristics:

- 4.4.1. A maximum maturity term of ten (10) years.
- 4.4.2. The debt will be subordinated to the depositors and creditors in general.
- 4.4.3. They do not grant the holder a repurchase, conversion or early redemption option.
- 4.4.4. The early redemption or payment by the bank requires the previous approval of the Superintendent, so that the bank's solvency is not affected. This requirement will be stated in the instrument's terms and conditions and in the prospect, if any.
- 4.4.5. The terms and conditions of the instrument and the prospect, if any, must stipulate the convertibility or repayment formula towards non-accruing preferred stocks.
- 4.4.6. If clauses exist in the instrument's terms and conditions that encourage the bank to an early redemption, the application date of the incentive will be considered to determine the duration of the original term and to apply the reduction of the instrument as secondary capital.
- 4.4.7. The terms and conditions of the issuance and the prospect, if any, of the instrument must state that it is not acceptable as guarantee of credit facilities before the issuing bank.

**PROVISO 1:** Under no circumstances, may the total equity and subordinated debt instruments payable in cash exceed 50% of the primary capital.

**PROVISO 2:** To calculate their weighting in the secondary capital, the subordinated debt instruments will be appraised at the placement price and said

value will decrease 20% for each year that elapses from the sixth year before its maturity, as set in the following table:

<b>Remaining Years</b>	<b>Secondary capital computable percentage</b>
Over 5 years	100%
Over 4 years up to 5 years	80%
Over 3 years up to 4 years	60%
Over 2 years up to 3 years	40%
Over 1 year up to 2 years	20%

**ARTICLE 4<sup>2</sup>: CAPITAL DEDUCTIONS.** In the calculation of the amount of the Capital Funds shall be taken into account the deductions mentioned as follows:

**1. Of the primary Capital:**

- 1.1. Any and all increased value of commerce fund shall be deducted directly from the primary capital. The decreases are a passive and shall not affect the structure of the capital funds. It is prohibited the compensation of the accounts of increases and decreases.

**2. Of the total Capital:**

- 2.1. The investment in instruments of capital, or hybrid instruments of capital and debt, issued by banking Enterprises or financial subsidiaries of the banking group, but not the bank.
- 2.2. The investment in instruments of capital, or hybrid instruments of capital and debt, issued by non banking Enterprises or non financial subsidiaries of the banking group, but not the bank.
- 2.3. The investment in instruments of capital or debt in other banks or their subsidiaries, under reciprocity conditions.

These deductions will be effected quarterly. These actives shall be classified as actives in Category No. 1 (0%).

**TRANSITORY PARAGRAPH:** The banks that at time the present agreement enters into effect maintain investments of those mentioned in this article shall have a term of two years to adequate to what is provided in the same.

**ARTICLE 5: CAPITAL ADEQUACY INDEX.** Subject to what is stipulated by Article 70 of the Banking Law, the total capital adequacy index cannot be less than eight percent (8%) of the total of its weighted assets and off-balance-sheet operations that represent an irrevocable contingency, weighted in proportion to their risks.

---

<sup>2</sup> Amended by article 1 of Rule 4-2009 dated 9 June 2009.

A bank's primary capital cannot be less than four percent (4%) of its assets and off-balance sheet operations that represent an irrevocable contingency, weighted in proportion to their risks.

In the case of those banks subject to this Rule, whose Banking Groups include insurance companies that are consolidating subsidiaries, the reserves of said subsidiaries that are not of equity type will not be included as part of the capital stock.

**ARTICLE 6: CAPITAL ADEQUACY REQUIREMENT.** For the purposes of this Rule, the Capital Adequacy requirement will be calculated in group basis.

The banks subject to this Rule, except for those mentioned in the following article, must comply with the capital adequacy index set in Article 70 of the Banking Law.

The capital adequacy report will be submitted quarterly by all the banks, except the branches of Foreign Banks with General and International License. This report must break down the capital stock, assets and off-balance sheet operations that represent an irrevocable contingency, weighted in proportion to their risks.

**ARTICLE 7: BRANCHES OF GENERAL LICENSE FOREIGN BANKS AND INTERNATIONAL LICENSE BANKS SUBJECT TO HOST COUNTRY SUPERVISION.** The branches of General License Foreign Banks and International License Banks subject to host country supervision will comply at all times with the capital adequacy requirements of their home country legislation in group basis with their Parent Bank. To this end, they must deliver every year to the Superintendency an External Auditor certification, or a Home Supervisor certification, which states what is the home country regulatory index and what is the consolidated index of the Bank or Banking Group as of the term closing.

**ARTICLE 8: ASSET RATING BY CATEGORY.** For the effects of their risk weight, according to what Article 70 of the Banking Law provides, assets will be rated in the following categories and the risk percentage is shown below:

<b>Category</b>	<b>Risk Weight (%)</b>
1	0
2	10
3	20
4	50
5	100
6	125
7	150

The following assets correspond to each of the following categories:

**1. Category 1 (0%):**

- 1.1. Available funds kept in cash.
- 1.2. On-demand deposits in banks established in Panama.
- 1.3. On-demand deposits in banks established in member countries of the Organization for Economic Cooperation and Development (hereafter OECD), as long as these banks have investment grade international rating. These on-demand deposits include the documents in collection process, deposited or included in the clearing.
- 1.4. On-demand deposits in banks established in non-OECD member countries, as long as both the country and the bank have investment grade international rating. These on-demand deposits include the documents in collection process, deposited or included in the clearing.
- 1.5. Instruments issued or secured by the Panamanian State or by its autonomous institutions.
- 1.6. Investments in other companies not related to the banking business, which are deducted according to Article 4 of this Rule.
- 1.7. Loans duly secured by pledging deposits in the same Bank for up to the secured amount.
- 1.8. Gold and silver in the way the Superintendency approves.

**2. Category 2 (10%):**

- 2.1. Instruments issued by OECD member countries or by their government institutions as long as they have the guarantee or endorsement of their governments, issued in the currency of their countries.
- 2.2. Instruments issued or secured by the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Financial Corporation (IFC), the Inter-American Development Bank (IDB), the European Investment Bank (EIB), the Asian Development Bank (ADB), the African Development Bank (ADB), the International Fund for Agricultural Development (IFAD), the Andean Development Corporation (CAF) and by any other multilateral development Banks approved by the Superintendency.
- 2.3. Loans duly secured by pledging deposits in other Banks established in Panama for up to the secured amount.
- 2.4. Loans secured by Instruments issued or secured by the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Financial Corporation (IFC), the Inter-American Development Bank (IDB), the European Investment Bank (EIB), the Asian Development Bank (ADB), the African Development Bank (ADB), the International Fund for Agricultural Development (IFAD), the Andean Development Corporation (CAF) and by any other multilateral development Banks approved by the Superintendency.

**3. Category 3 (20%):**

- 3.1. Time deposits and any other credit against banks:
  - a. Established in Panama, or
  - b. Established in OECD member countries, as long as these banks have investment grade international rating, or
  - c. Established in non-OECD member countries, as long as both the country and the bank have investment grade international rating.
- 3.2. Confirmed credit letters payable when submitted for foreign trade operations, issued by foreign banks belonging to OECD member countries or to countries with investment grade risk rating, in the latter case as long as said banks have a risk rating not less than the sovereign risk rating of the country involved. To this end, the bank rating will be considered the short term instrument rating of the foreign issuer involved. The banks will be able to include in this category the contingent credits corresponding to on-demand credit letter confirmations, issued by foreign banks rated in the first risk category by an internationally renowned risk rating entity, in favor of Panamanian exporters. To this end, the credit conversion factor (CCF) to which Article 9 of this Rule refers will apply.
- 3.3. Loans secured with bank uptakes with a term not less than 186 days, issued by banks established in Panama or by banks established in OECD member countries.
- 3.4. Loans duly secured by pledging deposits in other Banks established in an OECD member country for up to the secured amount.
- 3.5. Securities with mortgage guarantee with investment grade international rating issued by private foreign agencies.

**4. Category 4 (50%):**

- 4.1. Housing loans secured with mortgages granted to the final acquirer of said real estate; except the non-performing portfolio included in Category 6.
- 4.2. Other loans secured by mortgages, as long as the loan balance does not exceed 60% of the mortgaged good's value.

**5. Category 5 (100%):**

- 5.1. Financing in effect whose purpose is the purchase of vehicles for personal use with an original or remaining term of five (5) years or less.
- 5.2. Financing in effect without guarantee as risk mitigant acceptable by this Superintendency, intended for the debtor's personal consumption with an original or remaining term of five (5) years or less.
- 5.3. Financing in effect without guarantee as risk mitigant acceptable by this Superintendency, intended for the debtor's purchase of other commercial vehicles with an original or remaining term of five (5) years or less.
- 5.4. Loans duly secured by pledging deposits in other banks established in non-OECD member countries for up to the secured amount.

5.5. All the other assets not described in the previous categories or in Categories six (6) and seven (7).

**6. Category 6 (125%):**

6.1. Financing in effect, whose purpose is the purchase of vehicles for personal use originally granted for a term greater than five (5) years. Exceptions of this category are the financing of cars for personal use with a remaining term of less than five (5) years, which are included in Category 5.

6.2. Financing in effect without guarantee as risk mitigant acceptable by this Superintendency, intended for the debtor's personal consumption with a remaining term greater than five (5) years. Exceptions of this category are the financing with these characteristics intended for personal consumption of retired or pensioned debtors, which are included in Category 5.

6.3. Financing in effect of any kind intended for the purchase of vehicles for personal use or for the personal consumption of the debtor whose payment plan does not contemplate its total amortization by the effective interest method in a term of five (5) years.

6.4. Mature loans, pursuant to what is stipulated in the Rule on Loan Rating, except those included in Category seven (7).

**7. Category 7 (150%):**

7.1. Mature loans, pursuant to what is stipulated in the Rule on Loan Rating, for the purchase of personal vehicles granted for a term greater than five (5) years.

7.2. Mature loans, pursuant to what is stipulated in the Rule on Loan Rating, without guarantee as risk mitigant acceptable by this Superintendency, granted for any purpose and for any term.

**PARAGRAPH:** For the purposes of this article, mature loans will be understood as those specified in the Rule that regulates loan rating and the constitution of provisions.

**ARTICLE 9: IRREVOCABLE CONTINGENCIES PENDING PAYMENT.**

Irrevocable contingencies pending payment, the latter being understood as those wherein the bank does not have the capacity to suspend or end the payments at its discretion, will become credit equivalent through the "Credit Conversion Factor" (CCF).

A "Credit Conversion Factor" (CCF) will be applied to the irrevocable contingencies pending payment, of:

1. Twenty percent (20%) for those contingencies for less than one (1) year.
2. Fifty percent (50%) for those contingencies for more than one (1) year.

Once the corresponding "Credit Conversion Factor" (CCF) has been applied, irrevocable contingencies pending payment will be weighted as follows:

- a. Totally secured by Fixed Term Deposits in the same bank. 0%
- b. Secured by other acceptable guarantees at the Superintendency of Banks' judgment. 50%
- c. Unsecured. 100%

**ARTICLE 10: PROCEDURE FOR DETERMINING THE CAPITAL ADEQUACY INDEX.** To determine the Capital Stock adequacy index pursuant to what Article 70 of the Banking Law stipulates, the banking entities will observe the following steps:

1. Determining the Capital Stock pursuant to what Articles 2 and 3 of this Rule stipulate;
2. Determining the sum of weighted assets, pursuant to what Article 8 of this Rule stipulates;
3. Adding the appropriate amounts to the credit equivalent of the irrevocable contingencies pending payment, pursuant to the calculating procedure set forth in Article 9 of this Rule;
4. Subtracting the sum of the total provisions constituted on the risk assets and the off-balance-sheet operations that represent an irrevocable contingency. It will be understood that these provisions cannot be added as part of the regulatory capital.

Once the Capital Stock and risk assets have been determined, the capital adequacy index will be determined based on the percentage that Capital Stock represents of the risk asset total.

**ARTICLE 11: ANNULMENT.** This Rule rescinds in all their parts, Rules No. 5 and No. 6 of October 14, 1998 and all their modifications.

**ARTICLE 12<sup>3</sup>: EFFECT.** The present Rule shall enter into effect on July first (1<sup>st</sup>) of two thousand nine (2009).

Given in the city of Panama, on the first (1<sup>st</sup>) day of the month of October, two thousand eight (2008).

---

<sup>3</sup> Amended by the Sole Article of Rule 2-2009 dated 25 March 2009.