

**Republic of Panama**  
**Superintendency of Banks**

**RULE N°. 5-2009<sup>1</sup>**  
(dated 24 June 2009)

**“Whereby Article 215 of the Banking Law on Inactive Assets is developed”**

**THE BOARD OF DIRECTORS**  
in use of its legal powers and,

**WHEREAS:**

In light of the 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 February 28, 1998 and all its modifications, which was approved by way of Executive Decree No. 52 of April 30, 2008, henceforth the Banking Law;

Pursuant to Numeral 1 of Article 5 of the Banking Law, the Superintendency of Banks has among its goals to preserve the soundness and efficiency of the Banking System;

Pursuant to Numeral 5 of Article 11 of the Banking Law, the Board of Directors must set, in the administrative realm, the interpretation and scope of the legal or regulatory provisions in banking matters;

It is a universally accepted principle that banks cannot keep or retain third-party funds for themselves, even when the same have not been claimed;

In applying the previously declared principle and pursuant to Article 215 of the Banking Law, all banks must inform the Superintendency of Banks of any goods, funds and valuables held by it which remain inactive for five (5) years and which belong to persons of unknown whereabouts, so that once this fact has been confirmed, their liquid value may be transferred to the Banco Nacional de Panamá;

Heeding the experience of Banking Supervision, the need to standardize and customize the banking practice regarding the declaration of Inactive Goods has become evident, according to what Article 215 of the Banking Law provides;

Article 216 of the Banking Law stipulates that Banco Nacional de Panamá will reimburse said funds to their owner without interests, as long as they are claimed within the ten years following the date when they were transferred; once said term has elapsed, the funds will be transferred to the National Treasury;

By way of General Resolution No. 3-2004 of December 22, 2004, it was stipulated that the reports of inactive accounts and valuables belonging to holders of unknown whereabouts will be submitted within the first ten (10) days of the month following the corresponding quarter's closing;

In work sessions of this Board of Directors, the need and convenience has become evident of setting the scope and interpretation of the legal provisions regarding the goods, funds and valuables held by banking institutions which remain inactive for five (5) years and which belong to persons of unknown whereabouts, as well as the procedures for their corresponding reimbursement.

**RESOLVES:**

**ARTICLE 1: APPLICATION SCOPE.** The provisions of this Agreement will apply to Official Banks, General License Banks and International License Banks.

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<sup>1</sup> Rescinds Rule 3-2005 dated 26 January 2005. Amended by Rule 3-2013 dated 16 April 2013. Amended by Rule 2-2014 dated 27 May 2014 and by Rule 5-2017 dated 30 May 2017. See General Resolution 3-2009 dated 29 October 2009 and Resolution SBP-GJD-0005-2014 dated 27 May 2014.

**ARTICLE 2: DEFINITIONS.** For the purposes of this Agreement, the following terms will be understood as follows:

**1. Inactive Funds:**

- 1.1. All those current accounts, savings accounts or of another nature, which have had no deposits or withdrawals by the holder's order in five (5) consecutive years, and which belong to persons of unknown whereabouts after confirmed undeniable attempts have been made to locate them.

The charges originated by the bank that are applied to these accounts during the five (5) years mentioned earlier, as well as the interests that they generate, will not be considered activity in said accounts.

- 1.2. For all those time deposits whose automatic renewal has not been agreed upon, the bank will try to locate the holder at the maturity of the term agreed upon, leaving evidence of these attempts in the customer's file. Until the customer is located the funds will be transferred to an "Other On-Demand Deposits" account, and they will be treated pursuant to what is stipulated by previous numeral 1.1.
- 1.3. All those time deposits whose automatic renewal has not been agreed upon in the contract will be deemed inactive when they are automatically renewed for one or more terms that in total add up to five (5) or more consecutive years, counted from the first renewal, the holder's whereabouts being unknown after confirmed undeniable attempts have been made to locate him/her.
- 1.4. All certified or cashier checks, money orders or transfers, as well as any other debts that are in liquid form and that have not been claimed in (5) consecutive years of being available to beneficiaries whose whereabouts are not known after confirmed undeniable attempts have been made to locate them.

**2. Inactive Goods and Valuables:**

- 2.1. When by virtue of the leasing contract held between the parties, the bank has proceeded to opening a safe deposit box, those goods and valuables that may be found inside the latter will be deemed inactive goods and valuables:
- 2.1.1. When the goods and valuables have not been claimed by the interested party after five (5) years have elapsed counted from when the banking entity opened the safe box, and
- 2.1.2. When the interested party's whereabouts are unknown after confirmed undeniable attempts have been made to locate him/her.
- 2.2. The content of accounts in escrow or in custody that have not had movement are also deemed inactive goods, whose beneficiary has not been located after confirmed undeniable attempts have been made to locate him/her during five (5) years after the term agreed upon between the parties.

**3. Customer:** Natural or legal person that acquires a banking service from a bank.

**ARTICLE 3<sup>2</sup>: ARTICLE 3: LOCATING THE HOLDER OF INACTIVE FUNDS, PROPERTIES AND SECURITIES.** One (1) year before the period of inactivity of the funds, goods or securities expires, the bank must notify the holders of this situation verbally or in writing, pursuant to the provisions herein, using the data or references kept in the bank's files and retaining evidence of the notification efforts conducted.

In the event that during the localization process, the bank finds out that the holder of the inactive funds, goods or securities is dead, the bank must ascertain if there is any beneficiary designated according to Article 219 of the Banking Law. Otherwise, the bank must submit a document issued by the Civil Registry of the Electoral Court, be that a death certificate or an imprint of the Identity Verification System database, to support reporting these funds as inactive to the Superintendency in order to obtain the approval to remit those funds to the Banco Nacional de Panamá.

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<sup>2</sup> Amended by Rule 3-2013 dated 16 April 2013. Amended by Rule 2-2014 dated 27 May 2014.

**PROVISO.** These notification efforts shall not be applicable to those accounts whose amounts are equal to or less than twenty balboas (B/.20.00).

**ARTICLE 4: NOTIFYING THE SUPERINTENDENCY OF BANKS.** Once the conditions have been met and the diligences depicted in the previous articles have been made, the banking institution must inform the Superintendency of Banks by way of the SB (CUIN) Inactive Accounts Form, about any inactive accounts and inactive goods and valuables that it holds which remain inactive for five (5) years and which belong to persons of unknown whereabouts. Said notice must be made within the ten (10) working days following the maturity of each quarter.

**ARTICLE 5: SPECIAL INSPECTION.** Once the Superintendency has received the SB (CUIN) Inactive Accounts Form, a Special Inspection to the bank will be programmed, so as to ascertain the fact, the information sent and the due diligence carried out by the banking institution to locate the holders of inactive accounts, inactive goods and valuables. If the special inspection reveals that the bank has not carried out the due diligence to corroborate this fact, the Superintendency will sanction the bank as appropriate.

**ARTICLE 6<sup>3</sup>: ORDER TO TRANSFER THE LIQUID FUNDS TO BANCO NACIONAL DE PANAMÁ.** Once the special examination is concluded, the Superintendency of Banks will send the corresponding report to the bank, wherein it will order, in the cases where it is suitable, the transfer of the liquid funds to Banco Nacional de Panamá, in compliance with Article 215 of the Banking Law.

The bank will transfer the liquid funds to Banco Nacional de Panamá, leaving evidence of this transfer by sending the Superintendency of Banks a copy of the check and the remittance letter sent to Banco Nacional de Panamá with their notice of receipt.

**PROVISO:** To comply with the provisions herein, the bank shall transfer the liquid funds in the currency in which the bank account was opened. In cases where Banco Nacional de Panamá does not have accounts in a currency other than the United States dollar and cannot receive the transfer in the currency in which the account was opened, the bank will transfer these funds in balboas or United States dollars, for which the bank shall make the corresponding conversion using the exchange rate available on the effective date of the transfer.

For the purposes of the above paragraph, the bank holding inactive liquid assets in a foreign currency other than the United States dollar shall inform Banco Nacional de Panamá prior to the transfer, in order to verify the viability of the transfer of these funds. If it is not viable, the bank shall convert the currency to balboas or United States dollars.”

**ARTICLE 7: NON-LIQUID GOODS AND VALUABLES.** The non-liquid goods and valuables that are in the bank’s possession and that have been reported by way of the SB (CUIN) Inactive Accounts Form, will be treated by the bank according to what was agreed upon in the safe deposit box safekeeping or leasing contract.

Nevertheless, it is understood that if there are liquid funds in the safe deposit boxes, the same must be transferred to Banco Nacional de Panamá pursuant to what Article 6 of this Agreement stipulates.

**ARTICLE 8: REIMBURSEMENT OF LIQUID SUMS OF MONEY.** The liquid money funds that enter the Banco Nacional de Panamá due to their inactive condition will be reimbursed to their holder or beneficiaries or to the drawee bank, depending on the case, and the reimbursement will be ruled by the provisions stipulated in the Resolution approved for such purpose by the Banco Nacional de Panamá. In all cases, the reimbursement of liquid money funds will be done without interests, pursuant to what is stipulated by Article 216 of the Banking Law.

If before the term described by Article 216 of the Banking Law expires, the beneficiary goes to the drawee bank carrying the instrument or acceptable evidence of his/her claim, the drawee bank may return the value of the debt to the beneficiary, in which case it will request to Banco Nacional de Panamá the reimbursement thereof in his/her favor. Banco Nacional will be bound to reimburse the drawee bank the value of the funds that were originally transferred in this way.

In the case of reimbursement of liquid funds of money transferred before August 25, 2008 to the National Treasury, the same will be ruled by the provisions stipulated by Decree No. 49 of January 11, 1977 of the Ministry of the Treasury. In all cases, the reimbursement of liquid money funds will be done without interests.

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<sup>3</sup> Amended by Article 1 of Rule 5-2017.

**ARTICLE 9: SANCTIONS FOR BREACH OF THE AGREEMENT.** The breach of the provisions set forth in this Agreement will be sanctioned pursuant to the provisions of Title IV of the Banking Law.

**ARTICLE 10:** This Agreement repeals Agreement No. 3-2005 of January 26, 2005.

**ARTICLE 11: EFFECT.** This Agreement will be in effect from the time it is proclaimed.

Given in the city of Panama, on the twenty fourth (24<sup>th</sup>) day of the month of June of two thousand nine (2009).

**TO BE RELEASED, PUBLISHED AND FULFILLED.**

**THE CHAIRMAN,**

**THE SECRETARY,**

Arturo Gerbaud

L.J. Montague Belanger