

**RULE 6-2009<sup>1</sup>**  
(Dated June 24, 2009)

“Whereby the standards are stipulated for Risk Concentration limits to Economic Groups and Related Parties”

**THE BOARD OF DIRECTORS**  
Using its legal authority, 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 1998 and all its modifications, which was approved by way of Executive Decree No. 52 of April 30, 2008, henceforth the Banking Law;

Title III, Chapter X of the Banking Law stipulates the prohibitions and limitations on the concentrations of risks;

Pursuant to Numeral 2 of Article 11 of the Banking Law, a technical attribution of the Board of Directors is to approve general application standards for the definition and identification of credits to customers related amongst themselves or related to the banks or to the banking groups;

In work sessions of this Board of Directors the need and convenience to develop provisions on the concentration in a single person and concentration in related parties, has become evident.

**AGREES:**

**CHAPTER I**  
**GENERAL STANDARDS**

**ARTICLE 1<sup>2</sup>: APPLICATION REALM AND SCOPE.** This Rule will apply to the following entities:

1. Owners of bank stocks of banks of which the Superintendency of Banks of Panama is home country supervisor,
2. Official banks,

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<sup>1</sup> This Rule rescinds Rules 1, 2, 7, 8, 9, and 10 of 1999 and all their amendments since 1 January 2010. This Rule was amended by Rule 5-2013 dated 13 August 2013.

<sup>2</sup> This Article was amended by Article 1 of Rule 5-2013 dated 13 August 2013. This amendment shall enter into force as of its promulgation. However, the Superintendent may grant an additional adjustment period based on the needs of a particular bank.

3. All banks of which the Superintendency of Banks is the home country supervisor, which henceforth will be denominated "THE BANK" except when another use is needed for reasons of clarity of form.

**PROVISO:** All banks of which the Superintendency of Banks is the host country supervisor will apply the risk concentration limits that their home country jurisdiction stipulates for that effect.

**ARTICLE 2: DEFINITIONS.** For the purposes of this Rule, the following terms are defined as:

**1. CONTROL.** It means:

- 1.1. Directly or indirectly owning more than 50% of the voting rights of the HOLDER'S issued and circulating stocks, except if in the Superintendency's judgment other control elements exist.
- 1.2. Directly or indirectly having the capacity to perform, by way of exercising the voting right or by way of participation Rules or covenants, any of the following acts:
  - 1.2.1. Electing most of the directors or their equivalents;
  - 1.2.2. Appointing the Legal Representative;
  - 1.2.3. Appointing the General Attorney-In-Fact;
  - 1.2.4. Appointing the highest level Executive;
  - 1.2.5. Vetoing decisions.
- 1.3. Any other circumstances that in the Superintendency's judgment entail exercising control on the HOLDER.

**2. MATERIAL EXPOSURE.** That credit facility whose balance exceeds ten percent (10%) of the capital stock of the entities subject to this Rule.

**3. CREDIT FACILITY.** It means loans, investments in fixed revenue securities or off-balance sheet operations that represent an irrevocable contingency, as well as any other instrumentation or documentation modality whereby a bank assumes a credit risk.

**4. REAL COLLATERAL.** A pledged security, mortgage, antichresis, guarantee trust or any other contractual relation whereby a good or right is affected, to ensure compliance with an obligation.

**5. RECIPROCITY.** It means that the amount, term, interest and/or guarantee conditions of both credit facilities are similar or, in the Superintendency's judgment, they reveal that their intention is avoiding the related party attribute.

6. **HOLDER.** The counterpart in whose name the credit facility is extended, and is liable for paying it.
7. **TRIANGULATION.** It means that more than two banks or financial entities intervene for ends similar to the reciprocity mentioned earlier, even if not all the participants are subject to this Rule.

**ARTICLE 3: CONCENTRATION RISK MANAGEMENT.** THE BANK must have policies, procedures and internal controls that mitigate the material exposure risk that may derive in losses that affect the main business of the bank or its banking group in an important or significant manner.

For this purpose, they must observe at all times the quantitative concentration limits set by Articles 95 and 96 of the Banking Law. Similarly, they must develop a healthy banking management conducive to monitoring the concentration risk, including specific exposures in: (i) economic sectors; (ii) industries; (iii) geographic regions; and (iv) products or services.

**ARTICLE 4: RESPONSIBILITIES OF THE BOARD OF DIRECTORS IN CONCENTRATION RISK MANAGEMENT.** It is a responsibility of the Board of Directors of each bank subject to this Rule to adopt policies, controls and procedure manuals to ascertain that:

1. The material concentration exposures on a single person, or on someone that forms an economic group with that person, as well as concentrations on related parties of THE BANK, on and off balance sheet, are adequately monitored and controlled by Management.
2. The Board of Directors of THE BANK periodically reviews the material exposures on a single person and on related parties.
3. The transactions with related parties of THE BANK that exceed the levels authorized by management due to their high amounts will be sent to the Board of Directors for their approval or rejection; this process will not have the participation of any member that, due to the transaction, has a conflict of interests.
4. The entity has systems that allow it to obtain the information needed to identify, measure and monitor the concentration risk.

**ARTICLE 5: CERTIFICATION.** Before the approval of credit facilities in favor of companies wherein some of the directors or stockholders that directly or indirectly own 5% or more of THE BANK'S circulating voting stocks, or of the company that owns THE BANK's stocks, who is also the borrower's stockholder, THE BANK must demand from said director or stockholder a certification stating the sum of the borrower's shares that he/she owns.

This certification will be kept in THE BANK and will be available to the Superintendency.

**TEMPORARY CLAUSE:** THE BANK must also procure this certification regarding the loan portfolio in force.

**ARTICLE 6: ECONOMIC GROUP.** The following persons will be deemed to form an economic group with a credit facility HOLDER:

1. Any legal person over whom the HOLDER exerts control.
2. Any natural or legal person that exerts control on the HOLDER.
3. Any legal person with whom the HOLDER has a common controller.
4. Any legal person who is the bank's main debtor in another credit facility wherein the HOLDER is also a co-debtor or guarantor.
5. The HOLDER'S spouse.

## **CHAPTER II CONCENTRATION ON A SINGLE PERSON**

**ARTICLE 7: CONCENTRATION LIMIT ON A SINGLE PERSON.** The concentration limit on a single person, individually or jointly, is twenty-five percent (25%) of the capital stock stipulated by Article 95 of the Banking Law. The measurement of the limit set will be based on the consolidated capital stock.

**ARTICLE 8: EXCEPTIONS.** The following exceptions are recognized in the application of the limit stipulated by the previous Article:

1. When the credit facility is duly secured by pledging deposits in the same bank for up to the secured amount;
2. When the credit facility is granted to the Panamanian State or is secured by the same;
3. When the credit facility is granted to a Foreign State or is secured by the same, as long as the same has investment grade international risk rating.

## **CHAPTER III CONCENTRATION IN RELATED PARTIES**

**ARTICLE 9: RELATED PARTIES.** For the purposes of applying Articles 96 and 98 and the definition contained in Article 3, numeral 27 of the Banking Law, any natural or legal person that forms an economic group with an entity subject to this Rule is deemed a related party of said entity. The following are also deemed related parties:

1. For the purposes of what is stipulated by Article 96, numeral 1:

- 1.1. Any of their employees.
- 1.2. Any natural or legal person that forms an economic group with the employees.
2. For the purposes of what is stipulated by Article 96, numeral 2:
  - 2.1. Their managers, executive officers and employees.
  - 2.2. Any natural or legal person that owns five percent (5%) or more of the circulating voting stocks.
  - 2.3. Any natural or legal person that forms an economic group with the previous persons.
3. For the purposes of what is stipulated by Article 96, numeral 3, subheading a:
  - 3.1. Director or executive officer of any corporation that forms part of its banking group or of any of its non-banking affiliates.
  - 3.2. A legal person that owns five percent (5%) or more of the circulating voting stocks of the entity subject to this Rule.
  - 3.3. Legal persons that have the entity subject to this Rule as common "controller".
  - 3.4. Any natural or legal person that forms an economic group with the previous persons.
4. For the purposes of what is stipulated by Article 96, numeral 3, subheading b:
  - 4.1. Any legal person wherein one or more of the directors of an entity subject to this Rule is also a director or executive officer of said person.
  - 4.2. Any legal person who is a debtor of the entity subject to this Rule in a credit facility whose co-debtor or guarantor is director or executive officer of the entity subject to this Rule.
  - 4.3. Any natural or legal person that forms an economic group with the previous persons.
5. For the purposes of what is stipulated by Article 96, numeral 3, subheading c:
  - 5.1. Any natural or legal person that exerts control on the entity subject to this Rule.
  - 5.2. Any legal person on whom the entity subject to this Rule exerts control.
  - 5.3. Any legal person of whom a natural person, stockholder or attorney-in-fact of the former, exerts control on the entity subject to this Rule.
  - 5.4. Any legal person with whom the entity subject to this Rule has a common controller.
  - 5.5. Any legal person wherein the owner of 20% or more of the circulating voting stocks is at the same time director or executive officer of the entity subject to this Rule.
  - 5.6. Any legal person of whom the entity subject to this Rule owns 20% or more of the circulating voting stocks.

- 5.7. Any legal person wherein a stockholder that owns 20% or more of the corporation's circulating voting stocks also owns 5% or more of the circulating voting stocks of the entity subject to this Rule.
  - 5.8. Any natural or legal person that forms an economic group with the previous persons.
6. For the purposes of what is stipulated by Article 96, numeral 3, subheading d:
- 6.1. The General Manager, the executive officers and any management hierarchy employee of the bank and of any corporation that is part of its banking group or of any of its nonbanking affiliates.
  - 6.2. The spouse of any person mentioned in the previous literal.
  - 6.3. Any natural or legal person that forms an economic group with the previous persons.

**ARTICLE 10: ASSUMED RELATED PARTIES.** The Superintendency of Banks may require from the entities subject to this Rule any additional information that, in its judgment, is considered necessary so as to clarify if the holder or beneficiary of the credit facility is the Entity's related party. In the case when the entity refuses to provide the information or when the latter is insufficient, the Superintendency reserves the right to consider the holder or beneficiary an assumed related party and consequently will apply the limits set by Article 96 of the Banking Law, until it receives the pertinent information that in the Superintendency's judgment proves the contrary.

**ARTICLE 11: CONCENTRATION LIMIT ON RELATED PARTIES.** The concentration limits on related parties set by Article 96 of the Banking Law will apply to the bank as well as the owners of bank stocks subject to this Rule. The measurement of the limit set will be based on the consolidated capital stock.

**ARTICLE 12: CONCENTRATION LIMIT ON SUBSIDIARIES OF BANKING OR FINANCIAL NATURE.** In the case of credit facilities granted by any bank subject to this Rule to any of its consolidating subsidiaries related to the banking or financial business, so that the latter grant credit facilities to third persons, the concentration limits set by Articles 95 and 96 of the Banking Law, applicable to the bank subject to this Rule, are transferred to the credit facilities granted by the subsidiaries of the case, as long as the latter strictly comply with the customary discretion parameters set by the credit policy of the bank subject to this Rule. The measurement of the limit set will be based on the consolidated capital stock of the bank and its subsidiaries.

**ARTICLE 13: EXCEPTIONS.** The following exceptions are recognized in the application of the concentration limits set for related parties to which Article 96 of the Banking Law refers:

1. When the credit facility is granted for the main dwelling of the directing staff, executive officers and employees of the bank, or their spouses, with mortgage

guarantee, pursuant to the plans stipulated by the entity subject to this Rule for that purpose.

2. When the credit facility is granted for the personal consumption of the directing staff, executive officers or employees of the entity subject to this Rule, or their spouses, with real collateral.
3. When the credit facility granted is duly secured by pledging deposits in the same bank for up to the secured amount.
4. When the credit facility granted is backed up by real collateral other than deposits in the same bank; in this case, instead of 5%, the applicable limit will be 10% of the consolidated capital stock of the entity subject to this Rule.
5. In case of credit facilities granted to an Investment Fund, Pension Fund or Severance Pay Fund managed by the entity subject to this Rule or one of its subsidiaries, destined to finance the authorized investments of said Funds as long as:
  - 5.1 They are public or open funds;
  - 5.2 The credit facility granted to the Fund strictly complies with the bank's credit policy.
6. When the credit facilities granted to a subsidiary of the bank are exclusively to finance the acquisition by purchase or construction of the real property that houses the bank's offices, in any of its establishments, as long as:
  - 6.1 The borrowing subsidiary consolidates with the bank;
  - 6.2 The subsidiary is only devoted to acting as the owner of the real property that houses the bank's offices, in any of its establishments, abstaining from acting with similar purposes with respect to real property intended for operations of other companies;
  - 6.3 The credit facility granted to this subsidiary strictly complies with the bank's credit policy.
7. When the credit facility is granted to the Panamanian State or is secured by the same.
8. When the credit facility is granted to foreign states as long as both the credit facility and the issuer have an investment grade international risk rating.

#### **CHAPTER IV MISCELLANEOUS PROVISIONS**

**ARTICLE 14: SUBMISSION OF CONCENTRATION LIMIT REPORTS.** The entities subject to this Rule must submit to the Superintendency, in the way, periodicity and contents stipulated, a report with the credit facilities granted to a

single person or someone who forms an economic group with the latter, as well as to related parties.

**ARTICLE 15: DIRECT OR INDIRECT MODALITY.** The application of the limits set pursuant to Articles 95 and 96 of the Banking Law will proceed the same even when the credit facility is not granted directly to the person qualified as a member of the economic group and related party, but by mediation of one or more corporations or other persons, but that the person thus qualified is the real beneficiary, in the Superintendency's judgment.

**ARTICLE 16: ANNULMENT.** This Rule repeals in all their parts, Rules No. 1, 2, 7, 8, 9 and 10 of 1999 and all their modifications.

**ARTICLE 17: EFFECT.** This Rule will be in force starting on January 1°, 2010. In the case of International License Banks and stock owners of International License Banks of which the Superintendency is the home country supervisor, they will have a customizing time period until August 25, 2010.

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,**

Nicolás Ardito Barletta

Antonio Dudley A.