

TRANSLATION

Republic of Panama Superintendency of Banks

RULE No. 4-2014¹
(dated 8 July 2014)

“Whereby the criteria for imposing sanctions due to the late submission of information required by the Superintendency is updated”

THE BOARD OF DIRECTORS
In use of its legal powers, and

CONSIDERING:

That due to the issuance of Decree Law 2 dated 22 February 2008, the Executive Branch reedited Decree Law 9 dated 26 February 1998 and all of its amendments as a sole text, and that this text was approved by means of Executive Decree 52 dated 30 April 2008, hereinafter referred to as the Banking Law;

That pursuant to the provisions of Paragraph 5 of Article 11 of the Banking Law, the Board of Directors is responsible for establishing the administrative interpretation and scope of the legal provisions and regulations on banking matters;

That pursuant to the provisions of Paragraph 16 of Article 16, the technical duties of the Superintendent include the imposition of the relevant sanctions for violations of the provisions of the Banking Law and the regulations issued thereby;

That according to Article 86 of the Banking Law, the Superintendency is authorized to request documentation and reports regarding their operations and activities from any bank, any firm in the banking group, bank holding companies and nonbanking affiliates;

That pursuant to the provisions of Paragraph 3 of Article 91 of the Banking Law, all banks must submit all information required by the Superintendency, in the frequency and manner it determines;

That pursuant to the provisions of Article 184 of the Banking Law, the Superintendent will assess the proper administrative sanctions for the violation of the provisions of the Banking Law and the laws and rules that regulate and modify it, taking into consideration the seriousness and recurrence of the offense, and the magnitude of the losses and damages caused to third parties;

That according to the provisions of Subparagraph d, Paragraph 2 of Article 185 of the Banking Law, the Superintendency may impose fines of up to five hundred thousand balboas (B/.500,000.00) for violations of the provisions of Title III, Chapter IX regarding documents and reports;

That in accordance with the provisions of Article 36 of Law 1 of 1984, the Superintendency of Banks will supervise and oversee the proper functioning of the trust business;

That according to the provisions of Article 3 of Executive Decree 16 of 1984, trust companies will submit, within three (3) months following the closure of each fiscal period, the respective Balance Sheets and Income and Loss Statement, duly audited by Certified Public Accountants who are professionally qualified in the opinion of the Superintendency of Banks;

That according to the provisions of Article 17 of Executive Decree 16 of 1984, the Superintendency of Banks is authorized to carry out or order the examinations it deems advisable in ensuring due compliance with the legal provisions that regulate the trust fund business;

¹ Amended by Rule 10-2017 dated 21 November 2017.

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That in accordance with the provisions of Article 18 of Executive Decree 16 of 1984, the Superintendency of Banks is authorized to require a trust company to take measures necessary to correct violations of the legal or regulatory provisions of the trust business;

That by means of Article 30 of Executive Decree 16 of 1984, amended by Executive Decree 53 of 1985, which regulates the trust business in the Republic of Panama, a trust company failing to comply with any of the provisions contained therein will be fined up to fifty thousand balboas (B/.50,000.00), depending on the severity of the case;

That by means of Article 8 of Law 42 of 2000, regulated by Executive Decree 1 of 2001, failure to comply with the provisions of this Law or those enacted for its application by the organizations for the supervision and control of each activity, will be fined from five thousand balboas (B/.5,000.00) to one million balboas (B/.1,000,000.00), depending on the severity of the case and the degree of recurrence;

That Rule 12-2002 dated 11 December 2002 established the criteria for imposing progressive sanctions due to the late submission of Reports, Atoms, BAN Charts and/or documents that were previously required by legal provisions, Circulars and/or letters issued by the Superintendency;

That General Resolution SBP-RG-0005-2012 dated 30 March 2012 established the contents, format and frequency for the submittal of information to the Superintendency;

That during the Board of Directors' working sessions it became obvious that it was advisable to update the criteria regarding the imposition of progressive fines due to the late submission of Reports, Atoms, BAN Charts and/or documents that were previously required by legal provisions, Circulars and/or letters issued by the Superintendency.

RESOLVES:

ARTICLE 1. DEFINITIONS. For the purposes of this Rule, the following terms will be understood as:

1. **Atom and BAN Chart:** Structured data submitted to the Superintendency. Banks submit this information through the Information Transfer System (ITBank) and trust companies do so through the FIDSYS System at an established frequency.
2. **Reports:** Any information or documentation periodically required by the Superintendency of Banks through Circulars, Resolutions, Rules, Examination Reports, letters, and any other legal provisions applicable to the banking and trust systems, to banks and trust companies, in hard copy or through any other means.
3. **Other documents:** Any other documentation or information duly required from banks and trust companies.

ARTICLE 2. SANCTIONS ON BANKS. When banks are late reporting Atoms, BAN Charts, Reports or any other documents required through Circulars, Superintendent's letters and any other legal provision, the Superintendency of Banks will impose, at its discretion, any of the following sanctions according to the severity of its noncompliance and the damages caused to third parties:

1. Private admonition.
2. A fine of up to **five hundred thousand balboas (B/.500,000.00)**, to be calculated for each business day, cumulatively, that the report is late, as follows:
 - a. A fine of **one hundred fifty balboas (B/.150.00)** to **two hundred fifty balboas (B/.250.00)** for each of the first ten (10) business days that the report is late;

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- b. A fine of **two hundred fifty balboas (B/.250.00)** to **five hundred balboas (B/.500.00)** for each of the next ten (10) business days that the report is late;
- c. A fine of **five hundred balboas (B/.500.00)** to **one thousand balboas (B/.1,000.00)** for each of the next ten (10) business days that the report is late;
- d. In the case of delays of over thirty (30) business days in reporting required Atoms, BAN Charts, reports and other documents, a fine of **one thousand balboas (B/.1,000.00)** to **one thousand five hundred balboas (B/.1,500.00)** for each business day exceeding the first thirty (30) business days that the report is late.

The Superintendent will determine the amount of the fine that will be applied according to the provisions above and according to the each particular case, taking into consideration the relevant information and the degree of recurrence.

ARTICLE 3. SANCTIONS ON TRUST COMPANIES. When trust companies are late reporting Atoms, BAN Charts, reports and other documents required through Circulars, Superintendent's letters, and any other legal provision, the Superintendency will impose the following sanctions:

1. A fine of up to **fifty thousand balboas (B/.50,000.00)**, to be calculated for each business day, cumulatively, that the report is late, as follows:
 - a. A fine of **one hundred balboas (B/.150.00)** to **two hundred balboas (B/.250.00)** for each one of the first ten (10) business days that the report is late;
 - b. A fine of **two hundred balboas (B/.250.00)** to **five hundred balboas (B/.500.00)** for each one of the next ten (10) business days that the report is late;
 - c. A fine of **five hundred balboas (B/.500.00)** to **one thousand balboas (B/.1,000.00)** for each one of the next ten (10) business days that the report is late;
 - d. In the case of delays of over thirty (30) business days in reporting required Atoms, BAN Charts, reports and other documents, a fine of **one thousand balboas (B/.1,000.00)** to **one thousand five hundred balboas (B/.1,500.00)** for each business day exceeding the first thirty (30) business days that the report is late.

The Superintendent will determine the amount of the fine that will be applied according to the provisions above and according to the each particular case, taking into consideration the relevant information and the degree of recurrence.

ARTICLE 4². SANCTIONS ORDERED BY LAW 23 OF 2015. With regard to delays in reporting information that must be submitted by banks, trust companies and other regulated entities to the Superintendency in accordance with Law 23 dated 27 April 2015 and its regulations, the penalties established in the above law and its regulations will be applied.

ARTICLE 4-A³. PROCEDURE FOR IMPOSING PENALTIES DUE TO THE LATE SUBMISSION OF INFORMATION. For the purposes of Articles 2, 3 and 4 of this Rule, with regard to the late submittal of information, the Superintendency will impose the appropriate penalties in accordance with the following procedure:

1. The Quality Control Department (Bank support) of the Superintendency will send the bank, trust company or other regulated entities a prior notice, informing the entity of the beginning of the punitive process and will request explanations on the circumstances of the late submittal of information, along with which the entity may furnish and/or provide any documentation or evidence supporting their defense;

² Added by Article 1 of Rule 10-2017 dated 21 November 2017.

³ Added by Article 2 of Rule 10-2017 dated 21 November 2017.

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2. Once the notice sent by the Superintendency is received, the bank, trust company or other regulated entity will have three (3) business days to provide the required explanations;
3. If the bank, trust company or other regulated entity does not provide the explanations within the three (3) business days following the submittal of the notice, the relevant penalty will be imposed;
4. Once the explanations sent by the bank, trust company or other regulated entity are received, the Superintendency of Banks, through the relevant Division, will evaluate whether these explanations are sufficient grounds to justify considering the late submittal of information a case of force majeure or a fortuitous case;
5. If the Superintendency of Banks deems the delay justified, it will inform the bank, trust company or other regulated entity by means of a letter;
6. If the Superintendency of Banks deems the delay not justified, he/she will impose the appropriate penalty by means of a Resolution, without the need for further proceedings;
7. The communications and notifications referred to in this Article (except for the final resolution) will be made by scanned letter (e-mail) submitted to the Compliance Officer or the person appointed by the bank, trust company or other regulated entity and directly in writing to the Superintendency.

The penalties due to late submittal may be appealed only for reconsideration.

ARTICLE 4-B⁴. PROCEDURE FOR IMPOSING PENALTIES DUE TO SUBMITTAL OF INCORRECT INFORMATION. When the information is submitted with errors, the above procedure will be applied. During the time granted to provide explanations, the bank, trust company or other regulated entity may provide and/or furnish evidence.

In those cases in which the bank, trust company or other regulated entity justifies or remedies the deficiency in the time granted and the Superintendency accepts it, the entity will be informed by letter.

In those cases in which there is no justification for what the bank, trust company or other regulated entity did, the appropriate penalty will be imposed by means of a Resolution that will be served on that entity's General Manager or registered agent, as may be the case.

This type of sanction due to delay may be appealed only for reconsideration.

ARTICLE 5. SUBMITTAL OF INCORRECT INFORMATION. Without prejudice to the provisions established above with regard to reporting delays, when banks and trust companies submit Atoms, BAN Charts, reports and other required documents to the Superintendency of Banks with incorrect information, or when that information infringes any of the provisions in the Banking Law and its enabling regulations, the Superintendency will proceed according to the provisions of Article 185 of the Banking Law and the Trust Regime, respectively.

ARTICLE 6. REPORTING RESPONSIBILITY. Payment of the fine does not exempt banks and trust companies from their responsibility to report Atoms, BAN Charts, Reports and other documents previously required from them by the Superintendency of Banks, with the correct information.

ARTICLE 7. REPEAL. This Rule rescinds Rule 12-2005 dated 11 December 2002.

⁴ Added by Article 3 of Rule 10-2017 dated 21 December 2017.

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ARTICLE 8. ENACTMENT. This Rule shall become effective as of its promulgation.

Given in the city of Panama on the eighth (8th) day of July, two thousand fourteen (2014).

TO BE COMMUNICATED, PUBLISHED AND ENFORCED.

THE CHAIRMAN,

THE SECRETARY,

L.J. Montague Belanger

Luis Alberto La Rocca