

TRANSLATION

Republic of Panama Superintendency of Banks

RULE No. 12-2015
(dated 24 November 2015)

“Punitive Administrative Proceedings to be conducted by the Superintendency of Banks for those processes without a special administrative proceeding”

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

WHEREAS:

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 its amendments as a consolidated text, and this text was approved by means of Executive Decree 52 dated 30 April 2008, hereinafter referred to as the Banking Law;

Pursuant to paragraph 1 of Article 5 of the Banking Law, safeguarding the soundness and efficiency of the banking system is an objective of the Superintendency of Banks;

Pursuant to paragraph 2 of Article 5 of the Banking Law, strengthening and fostering favorable conditions for the development of the Republic of Panama as an international financial center is an objective of the Superintendency of Banks;

Article 184 of the Banking Law provides that the Superintendent will impose the proper administrative sanctions for the violation of the provisions of this law and other laws and rules that regulate and modify it, taking into consideration the seriousness, recidivism and the magnitude of the damages and damages to third parties;

Pursuant to Article 186 of the Banking Law, if no specific sanction has been established for a particular violation, the Superintendent may determine what sanctions to impose at his/her discretion and without prejudice to any criminal prosecution that may apply;

Article 190 of the Banking Law establishes that the procedures for imposing sanctions will be developed by the Superintendent of Banks;

Pursuant to the provisions of Law 38 of 2000, whereby the General Administrative Proceeding is established, public entities can institute a special regulation that will govern the Administrative Proceedings for specific cases or matters, Law 38 of 2000 being of supplementary application;

By means of Rule 9-2015 dated 27 July 2015, the punitive administrative proceedings for potential violations of the provisions for the prevention of money laundering, the financing of terrorism and financing the proliferation of weapons of mass destruction applicable to regulated entities were established;

During the Board of Director's working sessions it became manifest and advisable to establish, by means of this Rule, the punitive administrative proceedings to be conducted by the Superintendency of Banks for possible noncompliance with the regulations and for which there is no special administrative proceeding established.

RESOLVES:

ARTICLE 1. OBJECTIVE AND SCOPE. This Rule establishes the procedure to be followed in formalizing punitive administrative proceedings to be conducted by the Superintendency of Banks for possible noncompliance with the provisions contained in:

1. The Banking Regime.
2. The Trust Regime.
3. The provisions that must be met by banks and trust companies regarding the regime for the custody of bearer shares.

TRANSLATION

4. Any other special regulation for which the Superintendency has the authority or competence to investigate and sanction and for which there is no special administrative proceeding.

ARTICLE 2. SCOPE OF APPLICATION. The provisions herein are applicable to punitive administrative proceedings for:

1. Entities regulated and supervised by the Superintendency.
2. Persons and legal entities not regulated by the Superintendency of Banks when there are reasonable grounds to consider they have breached the rules in Article 1 herein.
3. Directors, managers, employees and other persons that have been involved in breaching the rules in Article 1 herein and for which the Superintendency has the authority or competence to investigate and sanction.

ARTICLE 3. BANKING REGIME. For the purposes of this Rule, the banking regime will be understood as any provision referred to in the Banking Law, Decrees, Rules, Resolutions, Circulars, and other provisions adopted by the Superintendency of Banks, excluding the regulatory provisions for the prevention of Money Laundering, the Financing of Terrorism and Financing the Proliferation of Weapons of Mass Destruction.

ARTICLE 4. TRUST REGIME. For the purposes of this Rule, the trust regime will be understood as any provision referred to in the Trust Law, Decrees and Circulars, excluding the regulatory provisions for the prevention of Money Laundering, the Financing of Terrorism and Financing the Proliferation of Weapons of Mass Destruction.

ARTICLE 5. ADMINISTRATIVE PROCEEDINGS. The Superintendency of Banks will start the relevant investigation when there is evidence of the commission of a violation of the provisions in Article 1 herein. The investigation may result in the initiation of proceedings based on administrative initiative, a justified request or a formal complaint.

In these administrative proceedings, “days” will be understood as business days.

ARTICLE 6. PROCEEDINGS BASED ON ADMINISTRATIVE INITIATIVE. The Superintendency of Banks may start administrative proceedings by administrative initiative if it has direct or indirect knowledge of acts that may constitute violations of the provisions in Article 1 herein.

ARTICLE 7. PROCEEDINGS BASED ON A JUSTIFIED REQUEST. The Superintendency of Banks may start administrative proceedings based on a justified request made by any administrative entity that has knowledge of acts or events that may constitute an offense but not the competence to initiate the process.

ARTICLE 8. PROCEEDINGS BASED ON A FORMAL COMPLAINT. The Superintendency of Banks may start administrative proceedings for the purpose of investigating a formal complaint, received by any means, charging the commission of an act contrary to the provisions in Article 1 herein.

Complaints lodged with the Superintendency of Banks may be filed in writing, either by e-mail or any other suitable means, without special formats or procedures. It is sufficient that the complaint contain the identification of the complainant and the accused, and the regulations which the complainant considers have been violated. The complainant will not be considered a party to the process as long as he/she proves to the Superintendency’s satisfaction that he/she has a subjective right or a lawful interest that has been affected or compromised.

ARTICLE 9. INVESTIGATION. Once the Superintendency is made aware of acts that appear to constitute a violation of the provisions in Article 1 herein, the Superintendency may start an investigation of the facts.

The Resolution ordering such an action cannot be appealed, because it is procedural in nature.

ARTICLE 10. INITIATION OF ADMINISTRATIVE PROCEEDINGS. If preliminary investigations determine that there are sufficient reasons to believe there may have been a violation of the provisions in Article 1 herein, the punitive administrative proceeding will be initiated.

TRANSLATION

Once a complaint has been lodged, it may be accepted for the purpose of permitting the accused to present his/her arguments, explanations and any evidence he/she deems appropriate, within the period provided by law.

The legal period for submitting the arguments and explanations indicated above will be established by the Superintendency and shall be not less than five (5) nor more than ten (10) business days, depending on the seriousness of the events being investigated.

The Superintendency of Banks will take all measures it deems appropriate to determine the accused's compliance or noncompliance with legal and regulatory provisions.

The Resolution admitting the complaint cannot be appealed because it is procedural in nature.

ARTICLE 11. WITHDRAWAL OF THE COMPLAINT. If a complaint of potential violation of the provisions in Article 1 herein is withdrawn, the Superintendent may accept the withdrawal of the complaint while also continuing proceedings by administrative initiative, if warranted.

There can be no appeal of the Resolution admitting the withdrawal of the complaint.

ARTICLE 12. CHARGES. If, after the investigative process and the initiation of the administrative proceeding established in Articles 9 and 10 herein, there are well-founded reasons to believe that there has been a violation of the provisions in Article 1 herein, the Superintendency will press charges by means of a justified resolution and will identify the individuals or legal entities involved in the acts.

The Resolution of Charges must contain, as a minimum:

1. The identification of the individual, individuals or legal entities allegedly responsible.
2. An explanation of the facts motivating the initiation of the proceeding, without prejudice to the results of the inquest.
3. The competent authority for the proceedings and the regulation attributing that competence.
4. The legal and regulatory standards that were considered to have been violated and the range of sanctions established by law.
5. The provisional precautionary measures that must be adopted at the initiation of the punitive administrative proceedings, without prejudice to those that may be adopted during the process.
6. Notice of the period within which to submit rebuttals and to exercise the right of defense. This period shall be not more than ten (10) business days from the date of notification.
7. Notice that proof must be adduced and/or provided along with the rebuttals.

Only a Request for Reconsideration is admissible against the Resolution of Charges.

To be a party in the administrative proceeding and to have access to the file, the interested party or the holder of a right that is affected or compromised must claim it expressly and prove his/her legitimate interest to the Superintendency's satisfaction.

ARTICLE 13. EVIDENCE. Once the period for presenting rebuttals has passed, if evidence was adduced and/or provided, the Superintendency must issue a Resolution in which it determines the admissibility or inadmissibility of the evidence furnished and identifies the evidence that it will include in the record.

The Superintendency of Banks will confirm in the Resolution of Admissibility that the evidence submitted has been properly examined. A normal period of no less than five (5) business days nor more than twenty (20) business days shall be granted for the examination of any evidence requiring it, as noted in the Resolution of Admissibility.

The Superintendency shall have the authority to grant an extended period for examination of the evidence admitted when the facts so warrant.

The Superintendency of Banks can conduct examinations on its own authority.

TRANSLATION

ARTICLE 14. PLEAS. Once the normal or extended period for the examination of evidence has expired, each affected party shall have a period of five (5) business days, to run concurrently, to provide written arguments, declarations and/or briefs.

ARTICLE 15. JUDGMENT. After analyzing the facts, the admitted evidence and the applicable arguments, declarations and briefs, the Superintendent will issue a justified Resolution of Judgment.

ARTICLE 16. CRITERIA FOR IMPOSING PENALTIES. The Superintendency shall impose the relevant administrative penalties for the violation of the provisions in Article 1 herein, taking into consideration the following criteria:

1. The seriousness of the violation.
2. Recidivism.
3. The extent of the damage caused.
4. The harm done to third parties.

ARTICLE 17. NOTIFICATION. The resolution admitting the complaint, the resolution of charges and the resolution of judgment will be personally notified to the parties. All other resolutions issued during the process will be published.

Personal notifications shall be made at the domicile known to the Superintendency. If the person to be notified cannot be contacted at the known domicile on two (2) different business days, proof of these attempts will be recorded in the reports to be issued by the server or the person serving notification. In this case, the Office of the Clerk will draft a report and the person will be notified by means of a public notice posted on the door of his domicile or office. This notification shall serve the purpose of personal notification.

In the case of notification by public notice, the notice must be posted for five (5) business days in a public and visible place designated by the Superintendency of Banks. The notification shall have legal effect once the decree is removed.

The person to be notified will be informed of the posting of the public notice by the Superintendency by means of an e-mail, text message or any other electronic means available. These actions will be entered into the record.

ARTICLE 18. NULLIFICATION. Procedural actions may be nullified following the provisions of Law 38 dated 31 July 2000.

ARTICLE 19. RECOURSE. Requests for Reconsideration and Appeals may be made against the resolutions adopted by the Superintendent under the following circumstances:

1. A **Request for Reconsideration** is admissible on:
 - a. The resolutions that cannot be appealed.
 - b. The Resolution of Charges.
 - c. The Resolution of Judgment.

The request for reconsideration must be announced and filed within the five (5) business days following the notification of the resolution in question.

2. **Appeals** before the Board of Directors are admissible only for the following resolutions:
 - a. The Resolution denying the admissibility and/or examination of evidence.
 - b. The Resolution on procedural nullification
 - c. The Resolution of Judgment.

The Appeal must be announced and filed by a lawyer within five (5) business days following the notification of the resolution in question. The filing period does not require an interlocutory order.

Once the Appeal is filed, the Superintendent will issue a Pro Forma Resolution acknowledging receipt and forwarding of the appeal.

TRANSLATION

Rule N.º 12-2015
Page 5 of 5

The appellate ruling shall exhaust all administrative remedies, without prejudice to recourse to relevant contentious-administrative means.

ARTICLE 20. EFFECT OF APPEALS. The filing of administrative appeals against the decisions made by the Superintendent in the exercise of his/her functions will cause a stay of decision.

The appeal of the resolution denying the admissibility and/or examination of evidence submitted or proposed by the parties shall not cause a stay of decision.

When proceedings due for potential noncompliance with Articles 44 and 45 of the Banking Law and in those cases when public interest may be affected, the appeal may be granted without a stay of decision.

ARTICLE 21. EXECUTION OF THE ADMINISTRATIVE RESOLUTION. The Superintendent's decision must be complied with within a period of ten (10) business days from the execution of the resolution, unless the resolution indicates otherwise.

When the legal entity or individual against whom the ruling was issued does not comply within the stated period, the relevant penalty for noncompliance shall be imposed, and can be progressive during the period of recalcitrance. In these cases the procedure to be followed will be abbreviated, i.e. the time is cut in half.

ARTICLE 22. ABBREVIATED – SUMMARY PROCEEDING. When there is noncompliance with the explicit requirements of the regulations in Article 1 herein, the abbreviated proceeding shall apply, taking into consideration the seriousness of the facts and the reluctance to comply with the Superintendency's ruling. The same procedure will be applied in any other case, in the Superintendent's reasoned judgment.

In summary proceedings, the time established for normal proceedings is cut in half.

ARTICLE 23. PREVENTIVE MEASURES. By means of a justified resolution, the Superintendent may order the suspension of any action, practice or transaction, when there are reasons to believe that they affect public interests and an individual or legal entity is:

1. Raising funds from the general public by accepting deposits or by any other method.
2. Using the word bank or any of its derivatives in any language, be it in their corporate name, their commercial denomination, description, letterheads, invoices, printed letter paper, announcements, advertising or by any other means or form that may indicate or induce anyone to think that they are engaged in or dedicated to the banking business.
3. Engaging in the banking business without authorization.

When there are breaches to the trust regime, the Superintendency of Banks may order the application of the preventive measures established in that regime by means of a justified resolution,

ARTICLE 24. PUBLICITY ON SANCTIONS. Pursuant to the provisions of Article 189 of the Banking Law, the penalties imposed by the Superintendent of Banks may be published as he/she deems convenient, be it wholly, in excerpt or summary, in accordance with the powers granted by the Banking Law.

ARTICLE 25. ENACTMENT. This Rule shall become effective as of its promulgation.

Given in the city of Panama on the twenty-fourth (24th) day of November, two thousand fifteen (2015).

FOR COMMUNICATION, PUBLICATION AND ENFORCEMENT.

THE CHAIRMAN,

Luis Alberto La Rocca

THE SECRETARY,

L. J. Montague Belanger