

# TRANSLATION

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## Republic of Panama Superintendency of Banks

**RULE No. 9-2015**  
(dated 27 July 2015)

**“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”**

**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 that 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 112 of the Banking Law requires banks and other entities supervised by the Superintendency to establish policies and procedures and the internal control structures to prevent their services being used improperly for criminal purposes in Money Laundering, the Financing of Terrorism and other crimes that are related or similar in nature or origin;

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 and recidivism of the offense and the magnitude of the losses 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;

Law 50 dated 2 July 2006 criminalized terrorism and terrorism financing in the Penal Code as separate crimes and established the relevant sanctions;

Law 23 dated 27 April 2015 adopted measures to prevent money laundering, the financing of terrorism and financing the proliferation of weapons of mass destruction;

The objective of the cited Law is to strengthen the prevention functions of Regulatory Bodies and set the criteria and recommendations for imposing sanctions for noncompliance with the Law;

Article 19 of the cited Law establishes the Superintendency of Banks as a Regulatory Body and Article 22 designates the Regulated Entities that will be subject to supervision;

Article 20 of the cited Law authorizes Regulatory Bodies to apply the relevant measures and sanctions to Regulated Entities for violations of the Law;

Article 59 of the cited Law stipulates that Regulatory Bodies will impose relevant administrative penalties for violations of the provisions of the Law and its enabling regulations, taking into consideration the seriousness of the offense, recidivism, the magnitude of the damage and harm done to third parties, as well as establishing the sanctioning process to be followed in complying with the provisions of the Law and the Special Laws;

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Rule 7-2015 dated 9 June 2015 established a Warning Signs Catalog for the detection of suspicious transactions related to Money Laundering, the Financing of Terrorism and Financing the proliferation of weapons of mass destruction;

During the Board of Director's working sessions it became manifest and advisable to establish the punitive administrative proceedings applicable to Regulated Entities for potential violations of the regime on the Prevention of Money Laundering, the Financing of Terrorism and Financing the Proliferation of Weapons of Mass Destruction.

## RESOLVES:

**ARTICLE 1. OBJECTIVE AND SCOPE.** This Rule establishes the procedure to be followed in executing punitive administrative proceedings to be conducted by the Superintendency of Banks for potential violations of the provisions contained in the regime on the Prevention of Money Laundering, the Financing of Terrorism and Financing the Proliferation of Weapons of Mass Destruction.

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

1. Banks and banking groups as defined by the Superintendency of Banks.
2. Trust companies, including any other activity they conduct.
3. Finance companies.
4. Leasing companies
5. Factoring companies
6. Issuers or processors of debit, credit and prepaid cards, whether individuals or legal entities, including those issuing and operating their own cards.
7. Issuers of payment instruments and electronic money.
8. Any other regulated entity assigned to the Superintendency of Banks.
9. Any individual or legal entity which the Superintendency of Banks is authorized or competent to investigate or penalize.

**ARTICLE 3. PREVENTION REGIME.** For the purposes of this Rule, prevention regime will be understood as any legal or regulatory provision applicable to regulated entities established for the prevention of Money Laundering, the Financing of Terrorism and Financing the Proliferation of Weapons of Mass Destruction.

For punitive administrative proceedings, the time frames and periods will be understood to refer to business days.

**ARTICLE 4. ADMINISTRATIVE PROCEEDINGS.** The Superintendency of Banks will start the relevant investigation when there is evidence of the commission of a violation of the prevention regime. The investigation may result in the initiation of proceedings based on administrative initiative, a justified request or a formal complaint.

**ARTICLE 5. PROCEEDINGS BASED ON ADMINISTRATIVE INITIATIVE.** The Superintendency of Banks will start administrative proceedings under administrative initiative if it has direct or indirect knowledge of acts that may constitute violations of the prevention regime.

**ARTICLE 6. 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.

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**ARTICLE 7. 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, denouncing an act contrary to the prevention regime.

Complaints lodged before 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 rules which the complainant considers have been violated. The complainant will not be considered a party to the process.

**ARTICLE 8. INVESTIGATION.** Once the Superintendency is made aware of acts that appear to constitute a violation of the prevention regime, the Superintendency may start the investigation of the facts.

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

**ARTICLE 9. INITIATION OF ADMINISTRATIVE PROCEEDINGS.** If preliminary investigations determine that there are sufficient reasons to believe there may have been a violation of the prevention regime, the punitive administrative proceeding will be initiated.

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

The legal period for submitting the arguments and explanations indicated above will be established by the Superintendency and shall not be less than five (5) or 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 10. WITHDRAWAL OF THE COMPLAINT.** If a complaint of potential violation of the prevention regime is withdrawn, the Superintendent may accept the withdrawal of the complaint while also continuing with proceedings by administrative initiative, if warranted.

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

**ARTICLE 11. CHARGES.** If, after the investigative process and the initiation of the administrative proceeding established in Articles 8 and 9 herein, there are well-founded reasons to believe that there has been a violation of the prevention regime, 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 or 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 be violated and the range of sanctions established by law.
5. The provisional measures necessary to be adopted at the initiation of the punitive administrative proceedings, without prejudice to those that may be adopted during them.
6. Notice of the period within which to submit rebuttals and to exercise the right of defense. This period shall not be greater than ten (10) business days from the date of notification.
7. Notice that proof must be adduced and/or provided along with the rebuttals.

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

**ARTICLE 12. 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 or 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.

**ARTICLE 13. 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. This period shall begin once the period for the examination of the evidence expires, without the need for an interlocutory order.

**ARTICLE 14. 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 15. CRITERIA FOR IMPOSING PENALTIES.** The Superintendency shall impose the relevant administrative penalties for the violation of the provisions of the prevention regime, 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 16. NOTIFICATION.** The resolution admitting the complaint, the resolution of charges and the resolution of judgment shall be personally notified to the parties. All other resolutions issued during the process will be notified by edict.

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 an edict posted on the door of his domicile or office. This notification shall serve the purpose of personal notification.

In the case of notification by edict, it 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 edict 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 17. NULLIFICATION.** Procedural actions may be nullified following the provisions of Law 38 dated 31 July 2000.

**ARTICLE 18. 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.

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- 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 admission 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.

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

**ARTICLE 19. EFFECT OF APPEALS.** The filing of administrative appeals against the decisions made by the Superintendent in the exercise of his functions will place the decisions in abeyance temporarily. The Superintendent may, when he deems it appropriate, impose alternate parameters when accepting an appeal.

**ARTICLE 20. 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 will 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. ENACTMENT.** This Rule shall become effective as of its promulgation.

Given in the city of Panama on the twenty-seventh (27<sup>th</sup>) day of July, two thousand fifteen (2015).

**FOR COMMUNICATION, PUBLICATION AND ENFORCEMENT.**

**THE CHAIRMAN,**

Luis Alberto La Rocca

**THE SECRETARY,**

L. J. Montague Belanger