

Republic of Panama Superintendency of Banks

**TRUST RULE N°. 1-2021
(dated 5 October 2021)**

“Whereby the criteria and requirements to be granted with a Trust License are established”

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

WHEREAS:

Law 1 dated 5 January 1984, amended by Law 21 dated 10 May 2017, regulates the trust business in Panama;

Law 21 dated 10 May 2017 establishes rules for regulating and supervising the trustees and trust business, Law 1 of 1984 is amended and Executive Decree 16 dated 3 October 1984 is repealed;

Pursuant to Article 1 of Law 21 of 2017, the Superintendency of Banks will have the exclusive competence to regulate and supervise trustees holding a trust license or authorized by Law to engage in the trust business, in accordance with the provisions of the Law and its regulations, as well as to ensure the proper functions of the trust business;

In accordance with Article 3 of Law 21 of 2017, only the persons granted a trust license and other individuals authorized by Law may act as trustees;

In accordance with Article 4 (4) of Law 21 of 2017, ensuring that trustees engaging in the trust business are only those to whom a trust license has been granted and other individuals authorized by Law, is among the duties of the Superintendency of Banks;

Pursuant to Article 5 (2) of Law 21 of 2017, determining the documents required for verification of compliance with the requirements established in the Law to be granted a trust license, is among the duties of the Board of Directors of the Superintendency of Banks;

Chapter I of Title II of Law 21 of 2017, called “Trust License” covers the general aspects related to the trust license, such as the entities requiring a license, the requirements to be granted with a license, the procedure to obtain such a license and the grounds for the cancelation of a trust license, among others;

Articles 13 and 14 of Law 21 of 2017 provide that to be granted a trust license, the applicant must submit a trust license application to the Superintendency of Banks, along with the requirements that will certify that [the applicant] has the appropriate levels of professionalism, specialization, and technical, financial, legal, administrative, and operating capacity to conduct the trust business, as determined by the Superintendency of Banks through a Rule;

During the Board of Directors’ working sessions it was determined that it was necessary and advisable to establish the necessary requirements to grant trust licenses to the natural persons, legal persons and banks who intend to engage in the trust business in and from Panama.

RESOLVES:

ARTICLE 1. PURPOSE AND SCOPE. This Rule establishes the criteria for considering trust license applications, the minimum requirements natural persons, legal persons and banks who

intend to engage in the trust business must comply with, and the documents that must be attached to the trust license application.

ARTICLE 2. SCOPE OF APPLICATION. The provisions herein are applicable to the following persons who may apply for a trust license to engage in the trust business:

1. Banks
2. Natural persons
3. Legal persons whose purpose will be authorized by the Superintendent

ARTICLE 3. MORAL SOLVENCY AND FINANCIAL CAPACITY. The natural persons and main shareholders of the legal person or bank that applies for a trust license with the Superintendency of Banks to engage in the trust business must have a recognized moral solvency and proven financial capacity. Therefore, the trust license will not be granted to the applicant if any of the previously mentioned persons are involved in any of the following situations:

1. He/she been convicted of money laundering, terrorism financing, or any predicate offenses, or for any crime against the economic order, economic assets or public trust;
2. He/she been disqualified for engaging in commercial activities in the Republic of Panama or in another country;
3. He/she has been declared in liquidation within the insolvency process;
4. He/she has been identified by the Superintendency of Banks as responsible for the actions that led to the seizure of administrative and operating control, reorganization, or compulsory liquidation of a bank or trust company.

PROVISO: The provisions herein will be applied to promoters of legal persons under incorporation that apply for a trust license with the Superintendency of Banks. Likewise, when the applicant is a legal person, the moral solvency requirements provided in this Rule will be applicable to its officers and directors.

ARTICLE 4. KNOWLEDGE AND EXPERIENCE. The persons applying for a trust license must prove to the Superintendency of Banks that they have the appropriate levels of professionalism, specialization, technical, financial, legal, administrative, and operating capacity to engage in the trust business.

The Superintendent will obtain the necessary information about the natural person and the directors, officers, and executives of the legal person or bank, who have been proposed for managing the trust company object of the process, to individually and collectively consider their experience in trust businesses, their professional competence, moral integrity and relevant background.

ARTICLE 5. OPERATING CAPACITY. The applicants for a trust license must demonstrate that they have the personnel, the infrastructure, the technological resources, and the procedures necessary for an adequate management for engaging in the trust business which, according to the nature, structure, and complexity of their respective operations will include, among other aspects:

1. Adequate technical capacity and human, administrative, and technological structure that allows the trust company to diligently watch over the rights of settlors and/or beneficiaries designated by the settlors and other clients of the trust company. For such purposes, the applicant will describe the technical resources, in addition to the technical and administrative trained staff available to render the services related to the trust business.
2. As for banks, that the specialized fiduciary areas or departments through which the trust activities will be carried out have appropriate internal control systems and procedures that provide reasonable assurance about compliance with the entity's objectives and policies, the effectiveness of trust operations and businesses, the reliability of financial reports and separate accounting of each asset in trust, trust business risk management, and overall compliance with the legal and administrative provisions that regulate the trust activity.

ARTICLE 6. CORPORATE GOVERNANCE. The trust license applicant must prove that it has an administrative structure that clearly establishes the assignment and separation of responsibilities, an independent internal audit, personnel responsible for ensuring the performance of duties related to abiding by the laws, regulations and internal policies, and a Board of Directors capable of an independent oversight of the trusteeship.

The applicant may prove the elements stated above by submitting the documents that clearly describe the assignment of responsibilities related to the authorities involved in decision-making, corporate governance hierarchical lines of approval, communication, execution, and monitoring of decisions and policies, and also the communication and cooperation mechanisms between the board of directors, the top management and the internal and external auditors.

PROVISO: In case that the trust license applicant is a natural person, he/she must have an administrative structure appropriate to the volume, nature, and complexity of his/her operations.

ARTICLE 7. EXCLUSION OF BEARER SHARES. Any legal person applying for a trust license must be incorporated according to national or foreign laws and its capital must be fully represented by registered shares. No license will be granted to legal persons whose capital is wholly or partly represented by bearer shares. Nor will a license be issued when the capital of the legal person that will have control over the trust company is represented wholly or partly by bearer shares.

For the purposes of this article, it will be understood that a legal person has control over another, when the legal person individually has the necessary votes to choose by itself most of the directors of that corporation or to appoint the legal representative or the highly ranked executive.

ARTICLE 8. PRIOR MEETING. Prior to the formal submittal of the trust license application, the Superintendent of Banks, and the employees of the institution he/she appoints, will hold a meeting with representatives of the applicant, the promoter or the proxies appointed by the applicant for these purposes. For the formalization of this meeting, the Superintendency will communicate by written or electronic means the documentation that must be submitted within ten (10) days preceding to the prior meeting.

Regarding the analysis of the submitted documentation, the meeting that will be held with the applicants and the technical assessments for such purposes, the Superintendent will issue a preliminary express opinion in regard to discouraging or encouraging the applicant to continue with the corresponding procedures, regardless of the final decision. This opinion will be issued within ten (10) days following the date of the meeting with the Superintendent.

In the cases he/she deems convenient, the Superintendent will subdue the granting of the trust license to the fulfillment of the specific quantitative or qualitative conditions, upon express acceptance by the applicant.

It will be up to the Superintendent's discretion to approve or deny the trust license.

ARTICLE 9. DOCUMENTS REQUIRED FROM BANKS TO ENGAGE IN THE TRUST BUSINESS. Banks that intend to be granted with a trust license must submit a formal application through a suitable lawyer or law firm in the Republic of Panama, by attaching the following documents to the application:

1. **Power of attorney and Application.**
2. **Amendment to the Articles of Incorporation.** Corporate act by means of which the amendment to the articles of incorporation is approved to include, as part of the corporation's purpose, the engagement in the trust business and other activities authorized by Law, as well as the inclusion of the stock capital required by law to trust companies to apply for and maintain a license.
3. **Authorization of the Board of Directors.** Minutes, extract of the minutes or secretarial certificate of the Board of Directors Meeting containing the authorization to engage in the trust business in the Republic of Panama.
4. **General information of the shareholders, directors, and officers of the applicant.** Updated, detailed and accurate information reliably confirming the identity, domicile, address, nationality, personal identity card or passport [number], occupation, and shareholder percentage in the capital of the applicant's shareholders. The same

information will be required from directors and officers, as well as their shareholding, when applicable.

5. **Escrow or escrow commitment.** Evidence of the escrow for the sum of two hundred and fifty thousand balboas (B/.250,000.00) for the due fulfillment of its fiduciary obligations or to compensate for damages caused by weakness in its management. The escrow may be constituted through the instruments and conditions established in Article 27 of Law 21 dated 10 May 2017.
6. **Research expenses.** Certified check or banker's draft for two thousand balboas (B/.2,000.00) to defray research expenses.
7. **Business plan.** A description of the business plans the applicant intends to conduct once the trust license is granted (short-, medium-, and long-term goals) and the trust company viability and its contribution to the Panamanian economy. As for trust funds, the financial outlook for the first five (5) years, including the number and type of trust funds, the amount of assets in trust and the income from trust administration.
8. **Trust Activity Policies and Procedures Manual.** Updated procedures, policies, manuals, and other documents containing administrative, accounting, claims management, internal control and risk management matters related to the trust business, including a description of services or businesses to be developed under the trusteeship, as applicable.

Adaptation of the anti-money laundering and terrorism financing, corporate governance manuals and any other manual related to the guidelines of its business plan.
9. **Technological capacity.** A description of the technological resources available to the bank to manage the trust business processes, including but not limited to, the details of programs, applications, servers, backup copies and backups that guarantee the trust service confidentiality and continuity.
10. **Trust company organization chart.** Organizational structure of the employees responsible for managing the trust business, including the positions and names of those who hold them. Additionally, the résumés of the head of the department or special area of the trust company and of those who make up the organizational structure must be submitted, attaching the certifications that demonstrate the appropriate levels of professionalism, specialization, and technical capacity.
11. Any other document, information, or requirement the Superintendency requires.

ARTICLE 10. DOCUMENTS REQUIRED FROM NATURAL PERSONS TO ENGAGE IN THE TRUST BUSINESS. Natural persons who intend to be granted with a trust license must submit a formal application through a suitable lawyer or law firm in the Republic of Panama, by attaching the following documents to the application:

1. **Power of attorney and Application.**
2. **General information of the applicant.** Applicant's résumé and detailed and accurate information reliably confirming the identity, domicile, address, nationality, personal identity card and/or passport [number], occupation or profession, including bank, commercial, personal references indicating the source to confirm them.
3. **Professional experience.** The applicant must hold a professional degree and a minimum professional experience of three (3) years in financial and trust business, with substantive responsibilities in a public entity or national or international financial institution.
4. **Affidavit rendered before a Notary Public in which it is recorded that he/she has not been disqualified from doing business.** Affidavit of the trustee rendered before a Notary Public, stating this circumstance and others established in Article 3 herein.
5. **Personal financial statements.** Personal financial statements of the last fiscal year describing the applicant's financial capacity, duly signed by a certified public accountant.

6. **Escrow or escrow commitment.** Evidence of the escrow for the sum of two hundred and fifty thousand balboas (B/.250,000.00) for the due fulfillment of his/her obligations. The escrow may be constituted through the instruments and conditions established in Article 27 of Law 21 dated 10 May 2017.
7. **Minimum capital.** Evidence that he/she has a minimum paid-in capital of one hundred and fifty thousand balboas (B/.150,000.00) to apply for and maintain a trust license.
8. **Business plan.** A description of the business plans the applicant intends to conduct once the trust license is granted (short-, medium-, and long-term goals), indicating the trust company viability and its contribution to the Panamanian economy.

As for trust funds, the financial outlook for the first five (5) years, including the number and type of trust funds, the amount of assets in trust and the income from trust administration.
9. **Research expenses.** Certified check or banker's draft for two thousand balboas (B/.2,000.00) to defray research expenses.
10. **Trust Activity Policies and Procedures Manual.** Procedures, policies, manuals, and other documents covering administrative, accounting, claims management, anti-money laundering and terrorism financing manuals, including a description of services or businesses to be developed under the trust fund, as appropriate.
11. Any other document, information, or requirement the Superintendency requires.

ARTICLE 11. DOCUMENTS REQUIRED FROM LEGAL PERSONS TO ENGAGE IN THE TRUST BUSINESS. Legal persons who intend to be granted with a trust license must submit a formal application through a suitable lawyer or law firm in the Republic of Panama, by attaching the following documents to the application:

1. **Power of attorney and Application.**
2. **Articles of Incorporation.** A draft of the Articles of Incorporation containing that the purpose of the corporation will be to engage in the trust business and/or activities authorized by law, and the amount of the stock capital required by law to trust companies to apply for and maintain a license.

As for incorporated legal entities, the draft amendment to the articles of incorporation.

3. **Shareholder composition and final beneficiary.** Detail of the shareholding composition containing the information of the shareholders and their shareholding percentage, as well as the detail of the final beneficiary(s), that is, the natural person(s) who exercise final control over a legal person or other legal arrangement.

In the case of legal persons, the information will be certified through a secretarial certification stating the shareholding composition.

In the case of legal persons or other legal arrangements, whose final beneficiary(s) cannot be identified through shareholding percentage, the information will be certified through: (i) an affidavit duly signed by the representatives or authorized persons; (ii) a certificate issued by the Foundation Council, in the case of foundations, or (iii) a certificate by the corresponding instance depending on the legal arrangement, where the beneficiary(s) - (natural person(s)) is described, without prejudice to any additional information the Superintendency of Banks may require.

4. **General information of the shareholders, directors, and officers of the applicant and its promoter.** The résumé and detailed and accurate information confirming the name, domicile, address, nationality, personal identity card and/or passport [number], occupation or profession of the shareholders of the applicant and its promoters and directors and officers, including bank, commercial, personal references indicating the source to confirm them.
5. **Authorization of the Board of Directors.** Minutes, extract of the minutes or secretarial certificate of the Board of Directors Meeting of the applicant or the economic promoter

stating the financial support, the authorization to engage in the trust business in the Republic of Panama.

6. **Affidavit rendered before a Notary Public in which it is recorded that the legal person has not been disqualified from doing business.** Affidavit rendered before a Notary Public by the legal representative, shareholders, officers and directors of the applicant, as well as the legal representative of the promoter, stating that they have not been disqualified from doing business and other circumstances established in Article 3 herein.
7. **Financial statements.** Comparative audited financial statements describing the legal person's financial capacity corresponding to the last two (2) fiscal years. Likewise, the financial statements describing the financial capacity of the shareholders of the legal person.

In the case of legal persons under incorporation, the financial statements describing the economic capacity of its shareholders and/or economic promoter.

8. **Escrow or escrow commitment.** Evidence of the escrow for the sum of two hundred and fifty thousand balboas (B/.250,000.00) for the due fulfillment of its fiduciary obligations or to compensate for damages caused by weakness in its management. The escrow may be constituted through the instruments and conditions established in Article 27 of Law 21 dated 10 May 2017.
9. **Minimum capital.** Evidence that it has a minimum paid-in capital (or assigned capital in the case of branch offices) of one hundred and fifty thousand balboas (B/.150,000.00) to apply for and maintain a trust license.
10. **Research expenses.** Certified check or banker's draft for two thousand balboas (B/.2,000.00) to defray research expenses.
11. **Publications and annual reports.** The latest annual report or similar publication containing information on the applicant and/or its promoting group.
12. **Business plan.** A description of the business plans the applicant intends to conduct once the trust license is granted (short-, medium-, and long-term goals) and the trust company viability and its contribution to the Panamanian economy. As for trust funds, the financial outlook for the first five (5) years, including the number and type of trust funds, the amount of assets in trust and the income from trust administration.
13. **Auditors Suitability Certificate issued by the Accounting Technical Board of the Ministry of Commerce and Industry.**
14. **A certificate from the Monetary, Supervisory or Regulatory Authority from the applicant's country of origin.** A certificate from the applicant's or promoter's country of origin, proving it is duly authorized to engage in the trust business.
15. **Trust Activity Policies and Procedures Manual.** Procedures, policies, manuals, and other documents covering administrative, accounting, corporate governance, anti-money laundering and terrorism financing, claims management matters, including a description of the services or businesses to be developed under the trust fund, as applicable.
16. **Trust company organization chart.** Organizational structure of the employees responsible for managing the trust business, including the positions and names of those who hold them. Additionally, the résumés of those who make up the organizational structure must be submitted, attaching the certificates that demonstrate the appropriate levels of professionalism, specialization, and technical capacity.
17. **Technological capacity.** A description of the technological resources available to manage the trust business processes, including, but not limited to, the details of programs, applications, servers, backup copies and backups that guarantee the trust service confidentiality and continuity.
18. Any other document the Superintendency deems necessary.

PROVISO: In case of applying the exception included in Article 12 of Law 21 of 2017, the legal persons engaging in commercial activities other than those authorized by Article 20 of said law, must submit an application according to the requirements to be granted with a license contained herein.

ARTICLE 12. SUBMITTAL OF LICENSE APPLICATION. Once the formal trust application is submitted and the attached documentation is verified, the Superintendent may order the research he/she deems appropriate and request any additional information he/she deems convenient, to verify the applicants' background and other requirements established in this Rule.

In the case of requiring any additional information, the Superintendency will request such an information.

ARTICLE 13. PUBLICATION OF THE LICENSE APPLICATION. Once the formal trust application is duly submitted, the Superintendency of Banks will prepare a notice to the public, that will be made available to the applicant's proxy, so that it may be published for three (3) consecutive business days in a newspaper with nationwide circulation. A copy of the notice will be fixed for three (3) consecutive business days at the offices and posted on the website of the Superintendency of Banks.

The notice to the public must contain the following information, as a minimum:

1. Name and general information of the applicant and/or promoter of the license, as the case may be
2. Operational background of the applicant.
3. Names and ID card or passport [numbers] of the directors, officers, and executive employees of the applicant, indicating their respective positions, when applicable.

People who have well-founded reasons for opposing the requested license may submit them in writing to the Superintendency of Banks and along with the documentation that supports their opposition, if available, within fifteen (15) calendar days following the date of the last publication of the announcement mentioned herein.

The Superintendency will consider well-founded those reasons that deal with the economic capacity and moral solvency of the applicant who aspires to obtain a trust license, of the directors, the officers, and executives mentioned in the notice to the public and, in general, those verifiable circumstances that make the establishment of the new trust entity in Panama inappropriate.

Once the opposing allegations are submitted, the Superintendency of Banks will inform them to the applicant, who may refute the objections within fifteen (15) calendar days of being notified of them by the Superintendency. The Superintendency of Banks shall be under no obligation to issue a decision based on the objection.

ARTICLE 14. APPROVAL OR DENIAL OF A TRUST LICENSE. The Superintendent will have ninety (90) days from the time of the submittal of the complete documentation required by the Superintendency, the analysis of the documentation submitted by the applicant along with the trust license application, the meetings held with the applicant prior to the submittal of the license application, and the research conducted to that end, to approve or deny the trust license application.

Once the trust license application is approved, the Superintendency of Banks will send the Resolution to the Official Gazette for its corresponding publication.

Should the trust license application be denied, the applicant will have five (5) business days, following the date of notification, to file a motion of reconsideration addressed to the Superintendent or an appeal addressed to the Board of Directors of the Superintendency of Banks.

ARTICLE 15. PRE-OPERATIVE INSPECTION. Once the trust license is granted, the trust company must start running operations within one (1) year following the granting of the license, unless the Superintendent authorizes an extension of this term, based on verified grounds.

To verify the trust company's capacity to offer its service, the trust company will be subjected to an inspection by the Superintendency of Banks staff before the start of operations. In view of the foregoing, the trust company will inform to the Superintendency, in writing, the start of operations and the place where their main offices will be located at least sixty (60) days in advance.

Within this communication, the trust companies will submit the list of their main executives, and from now on, they must inform the Superintendency of Banks any change to that list.

ARTICLE 16. REGISTRY OF TRUST COMPANIES. The Superintendency of Banks will have an updated registry of trust license holders, which will be made available to the public. This registry will contain the corporate and trade names or trust company name, the general manager's name, the legal representative's full name, the address, the telephone numbers, and the e-mail address.

ARTICLE 17. EFFECTIVE DATE. This Rule shall become effective upon its promulgation.

Given in Panama City on the fifth (5th) day of October, two thousand twenty-one (2021).

FOR COMMUNICATION, PUBLICATION AND ENFORCEMENT.

THE CHAIRMAN,

THE SECRETARY,

Luis Alberto La Rocca

Rafael Guardia Pérez

