

EVERegulatory ManagerConsultationLaw 795/03

# Law 795 of 2003

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## Dates

## Topics (2)

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### LAW 795 OF 2003

(January 14)

*“By which some rules of the Organic Statute of the Financial System are adjusted and other provisions are dictated.”*

THE CONGRESS OF COLOMBIA,

[See National Decree 777 of 2003](#)

DECREE"

CHAPTER I

PROVISIONS THAT MODIFY THE ORGANIC STATUTE OF THE  
FINANCIAL SYSTEM

**ARTICLE 1°** . [Regulated by National Decree 1787 of 2004](#) Add numeral 1 of article 7 of the Organic Statute of the Financial System with the following literal:

n ) Carry out housing leasing operations which must have as their object real estate intended for housing. These operations will be considered

operating leasing for accounting and tax purposes.

For the development of this operation, the Banking Establishments must give priority to the debtors of housing loans who have delivered the respective real estate as payment. The foregoing as long as such natural persons meet the minimum legal requirements related to the respective credit risk analysis.

In the regulations issued by the National Government in development of this article, it will adopt measures that guarantee the protection of users or tenants.

**ARTICLE 2°** . Add numeral 1 of article 7 of the Organic Statute of the Financial System with the following literal:

**ñ** ) Enter into non-fiduciary administration contracts of the portfolio and debts of the financial entities that have been taken over for liquidation.

**ARTICLE 3** . Add article 24 of the Organic Statute of the System

Financial with the following literal:

**k** ) Receive credits from other credit establishments to carry out microcredit operations, subject to the terms and conditions established by the National Government.

**ARTICLE 4°** . Add numeral 1 of article 29 of the Organic Statute of the Financial System with the following literal:

**i** ) Enter into fiduciary administration contracts for the portfolio and debts of the financial entities that have been taken over for liquidation.

**ARTICLE 5°** . Modify literal e) of article 48 of the Organic Statute of the Financial System, which will read as follows:

**e** ) Determine the technical assets, the adequate assets, the investment regime, the assets required for the operation of the different insurance lines and the limits on the indebtedness of insurance entities and capitalization companies. Through this power, the National Government will not be able to establish forced investments.

**ARTICLE 6** . Add paragraphs j), k) and l) to article 48 of the Organic Statute of the Financial System, which will read as follows:

**j**) Regulate payment systems and activities related to this service that are not the responsibility of the Bank of the Republic. This power will be exercised upon prior approval from the Board of Directors of the Banco de la República, so that this body can rule on the impact of the regulation on the policies under its charge. Likewise, it is up to the National Government to establish the conditions for the entities subject to intervention to develop electronic commerce activities and use the data messages referred to in Law 527 of 1999;

**k**) Establish rules aimed at preventing money laundering in the entities subject to intervention, without prejudice to the instructional powers of the Banking Superintendence;

l) Determine the different types of credit whose rates must be certified by the Banking Superintendency.

**ARTICLE 7** . Add the Organic Statute of the Financial System with the following article, which is incorporated under number [52](#) :

**ARTICLE 52** . Intervention for the development of the asset and liability exclusion measure.

1. The National Government will intervene to establish the rules in accordance with which the measures of exclusion of assets and liabilities and progressive dismantling of operations will be executed, in accordance with the general rules provided for in paragraphs 11 and 12 of article 113 of the Organic Statute. of the Financial System. In development of the power of intervention regulated in this article, the National Government will dictate the applicable regulations in the event that the existence of overvalued assets or undervalued liabilities is established.

**ARTICLE 8** . The third and fourth paragraphs of paragraph 5 of article [53](#) of the Organic Statute of the Financial System are modified and a paragraph is added to the same paragraph as follows:

In any case, the following people will refrain from authorizing the participation:

a) Those who have committed crimes against economic assets, money laundering, illicit enrichment and those established in the Second Chapters of Title X and Second of Title XIII of the Second Book of the Penal Code and the regulations that modify, replace or add them;

b) Those whose ownership has been declared extinguished in accordance with Law 333 of 1996, when they have participated in the conduct referred to in Article 2 of said law;

c) Those sanctioned for violation of the rules that regulate individual credit quotas, and

d) Those who are or have been responsible for the mismanagement of the business of the institution in whose direction or administration they have intervened.

The Banking Superintendent, within five (5) years following the date on which the takeover of a financial entity for liquidation purposes has been decreed, may refrain from authorizing the participation of administrators and tax auditors who have been found performing such positions on the date on which the measure was decreed.

Whenever the existence of an ongoing process due to the facts mentioned in sections 3 and 4 of this article is established when the application is submitted or during its processing, the Banking Superintendent may suspend the process until a decision is made. in the respective process.

**ARTICLE 9** . Numeral [3](#) of article 68 of the Organic Statute of the Financial System will read as follows:

3. Procedure. Contractors in legal transactions concluded *intuito personae* must express their rejection or acceptance no later than ten (10) days following the sending by certified mail of the notice of assignment, to the address that appears as their address in the records of the entity. If no response is received within the established term, the assignment will be deemed accepted. The rejection of the assignment will entitle the entity to terminate the contract without any compensation, proceeding with the corresponding liquidation and any mutual restitutions that may arise. In any case, the acceptance of the assigned contracting party will not be required when the assignment is the result of the exercise of the precautionary measure indicated in article 113 of this Statute.

No acceptance will be required from the holders of debts that are part of the other contracts included in the assignment. In any case, they must be notified of the transfer notice within ten (10) days following the conclusion of the operation. The assignment will in no case produce novation effects.

**ARTICLE 10°** . Numeral 5 of article 71 of the Organic Statute of the Financial System is modified, which will read as follows:

5. Conditions of authorization. In the development of the acquisition, merger, conversion, spin-off, and transfer of assets, liabilities and contracts referred to in article 68 of this Statute, the entities will be exclusively empowered to carry out the activities of the type of financial institution resulting from the operation. . Consequently, the approval, if required, must be conditioned on the fact that within a maximum period of three (3) months, counted from the date of approval, a program to adapt the operations to the regime is agreed upon with the Banking Superintendence. of the corresponding institution, which will have a maximum duration of two (2) years.

**ARTICLE 11** . Add the following paragraph to article 71 of the Organic Statute of the Financial System:

8. The rules provided for in this Part are applicable to the processes of merger, spin-off, conversion, acquisition and organization of financial institutions and insurance entities in which the State participates in any proportion. In this sense, said entities are understood to be authorized to carry out these processes and will not require additional authorizations to those provided for in the Organic Statute of the Financial System to carry them out.

**ARTICLE 12** . Article 72 of the Organic Statute of the Financial System will read as follows:

**ARTICLE 72** . Rules of conduct and legal obligations of the supervised entities, their administrators, directors, legal representatives, tax auditors and officials. The supervised entities, their administrators, directors, legal representatives, tax auditors and officials, must act not only within the framework of the law but within the principle of good faith and service to the public interest in accordance with article 335 of the

Constitution. Policy, for which they have the legal obligation to refrain from carrying out the following behaviors:

- a) Concentrate the risk of assets above legal limits;
- b) Celebrate or execute, at any time, in violation of legal provisions, operations with shareholders, or with people related or linked to them, above the legal limits;
- c) Use or facilitate resources raised from the public to carry out operations aimed at acquiring control of other companies or associations without legal authorization;
- d) Invest in other companies or associations in amounts or percentages not authorized by law;
- e) Facilitate, promote or execute any practice that has tax evasion as its purpose or effect;
- f) Failure to provide reasonable or adequate information that in the opinion of the Banking Superintendency should be provided to the public, users or clients of the supervised entities so that they can make duly informed decisions and can fully understand the scope of their rights and obligations. in the contractual relationships that link them or may become linked to them;
- g) Exercise activities or hold positions without having taken office before the Banking Superintendency when the law so requires;
- h) Not keeping the accounts of the supervised entity according to the applicable standards, or keeping them in such a way that prevents timely knowledge of the financial situation or the operations it carries out, or sending false, misleading or inaccurate accounting information to the Banking Superintendency;
- i) Obstruct the inspection, surveillance and control actions of the Banking Superintendency, or do not collaborate with them;
- j) Improperly use or disclose confidential information;
- k) Failure to comply or delay compliance with the instructions, requirements or orders indicated by the Banking Superintendency on matters that, according to the law, are within its jurisdiction, and
- l) In general, fail to comply with the obligations and functions that the law imposes on them, or incur prohibitions, impediments or disabilities related to the exercise of their activities.

**ARTICLE 13** . Add numeral **8** to article 73 of the Organic Statute of the Financial System, which will read as follows:

8. Independence of the boards of directors, governing or administrative councils. The boards of directors, management councils or administration of the institutions subject to the control and supervision of the Banking Superintendency, as appropriate, may not be made up of a number of main members and substitutes linked to the respective

institution who can themselves form the board. majority necessary to adopt any decision.

The entities supervised by the Banking Superintendency must adjust the composition of their boards of directors, governing councils or administration to the provisions of this section within the year following the entry into force of this law.

**ARTICLE 14** . Add article 74 of the Organic Statute of the Financial System with the following paragraph:

4. Possession. Those who have the legal representation of the supervised institutions, except the branch managers, once appointed or elected and before performing said function, must take office and take an oath by which they are obliged, while in the exercise of their functions, to manage diligently the entity's businesses, to comply with the legal obligations that correspond to them in their development, and to comply with the standards, orders and instructions issued by the Banking Superintendence in the exercise of its powers.

**ARTICLE 15** . Numeral 2 of article 75 of the Organic Statute of the Financial System will read as follows:

2. Exceptions relating to banking establishments. The directors and legal representatives of banking establishments may be part of the boards of directors of the financial corporations and commercial financing companies of which they are shareholders. Likewise, the directors and legal representatives of insurance companies that participate in the capital of financial corporations, within the limits that they must observe in accordance with their investment regime, may be part of the boards of directors of such corporations.

**ARTICLE 16** . Numerals 1 and 4 of article 80 of the Organic Statute of the Financial System are modified as follows:

1. Minimum capital of financial institutions. The minimum amounts of capital that must be accredited to request the incorporation of entities subject to the control and supervision of the Banking Superintendency, with the exception of insurance intermediaries, will be forty-five thousand eighty-five million pesos (\$45,085,000,000) for banking establishments; sixteen thousand three hundred ninety-five million pesos (\$16,395,000,000.) for financial corporations; eleven thousand six hundred and thirteen million pesos (\$11,613,000,000) for commercial financing companies; of three thousand four hundred and seventeen million pesos (\$3,417,000,000) for trust companies; of six thousand eight hundred thirty-one million pesos (\$6,831,000,000) for the Pension Fund management companies; of three thousand four hundred and seventeen million pesos (\$3,417,000,000) for the companies that manage severance funds, which will be accumulated to that required for the companies that manage pension funds, when the company manages pension and severance funds, and two thousand seven hundred thirty-three million pesos (\$2,733,000,000) for other financial entities. These amounts will be adjusted annually automatically in the same direction and percentage in which the consumer price index

provided by DANE varies. The resulting value will be approximated to the next higher multiple in millions of pesos. The first adjustment will be made in January 2003, based on the variation of the consumer price index during 2002.

For insurance entities, with the exception of those whose exclusive purpose is to offer the branch of export credit insurance and those that carry out activities of reinsurance companies, the minimum capital will be five thousand five hundred million pesos (\$5,500,000,000.00), adjusted annually in the manner established in the previous section, plus the assets required to operate the different insurance lines, the amount of which will be determined by the National Government. Reinsurance entities and those insurance entities that carry out activities of reinsurance entities must accredit twenty-two billion pesos (\$22,000,000,000.00) as minimum capital, adjusted annually in the manner provided for in the previous section. This last amount includes the assets required to operate the different insurance lines.

It will be up to the National Government, through general regulations, to set the minimum capital that must be accredited by financial institutions regulated by special regulations that are subject to the control and supervision of the Banking Superintendency and insurance entities whose exclusive purpose is to offer the branch of insurance. Export credit insurance.

The minimum capital amounts of insurance and reinsurance entities that are modified by this law take effect as of January 1, 2003.

4. The minimum amount of capital provided for in the first paragraph of this article must be met permanently by the entities in operation, except for credit establishments. For this purpose, the minimum operating capital will result from the sum of the following equity accounts: subscribed and paid capital, guarantee capital, reserves, surplus from premium on placement of shares, undistributed profits from previous years and revaluation of equity, and accumulated losses will be deducted. Likewise, bonds that are compulsorily convertible into shares will be taken into account under the terms of paragraph 1 of section 5 of this article. Likewise, in the case of the entities that are subject to the measures referred to in articles 48, literal i) and 113 of this Statute, subordinated loans, convertible into shares or redeemable with resources obtained by the placement of shares that are granted to the financial entity, under the conditions established by the National Government. These loans may be granted by financial entities in the cases and with the conditions established by the Government.

**ARTICLE 17** . Numerals 2 and 3 of article 82 of the Organic Statute of the Financial System are modified, which will read as follows:

2. Technical assets, adequate assets and guarantee fund of insurance entities.

a) Technical heritage. The technical assets of the insurance entities will be made up of the items and weights determined by the National Government;

b) Adequate assets. The adequate assets of the insurance entities will correspond to the minimum technical assets that they must maintain and accredit to comply with the solvency margin, in the manner established by the National Government.

The solvency margin will be determined based on the amount of the premiums or the average claims burden, whichever is higher. The National Government will establish the periodicity, form, risks and technical elements of the factors that determine the solvency margin;

c) Guarantee fund. It corresponds to forty percent (40%) of the solvency margin or adequate equity, credited in technical equity.

3. Assets required to operate the different insurance lines. The National Government will establish the assets required to operate the different insurance lines that are authorized to insurance entities. For the purposes of calculating the minimum capital, the required assets will be added to the absolute value indicated in paragraph 1 of article 80 of this Statute.

**ARTICLE 18** . Add a numeral 4 to article 83 of the Organic Statute of the Financial System, as follows:

4. For monthly defects incurred by insurance entities in the solvency margin referred to in paragraph 2 of article 82 of the Organic Statute of the Financial System, the Banking Superintendency will impose a fine in favor of the National Treasury for the equivalent of three point five percent (3.5%) on the value of the equity defect that they present monthly, without exceeding, with respect to each breach, the one point five percent (1.5%) of equity required to comply with said relationships.

When monthly defects originate as a consequence of catastrophic events, insurance companies will agree on an adjustment plan with the Banking Superintendence whose term may not exceed ninety (90) days. Failure to comply with the adjustment plan will be sanctioned with the fine provided for in the previous paragraph. The Banking Superintendence will define catastrophic events.

The provisions of this article will be understood without prejudice to other sanctions or administrative measures that the Banking Superintendency may impose in accordance with its legal powers.

**ARTICLE 19** . The second paragraph of paragraph 1 of article 88 of the Organic Statute of the Financial System is modified, which will read as follows:

For the purposes of issuing his authorization, the Banking Superintendent must verify that the person interested in acquiring the shares is not in any of the situations mentioned in sections 3, 4 and 5 of section 5 of article 53 of this Statute and, additionally, that the investment you wish to make complies with the relationships provided for in section 6 of the aforementioned section 5, except, in the latter case, in the case of share transactions carried out with loans granted by the Financial Institutions Guarantee Fund (Fogafín) with the purpose of restoring the patrimonial soundness of supervised entities.



**ARTICLE 20** . Add the following paragraph to paragraph 3 of article 88 of the Organic Statute of the Financial System:

The previous exception will not apply when a transaction is carried out that increases the investor's participation to more than fifty percent (50%) of the subscribed shares of the supervised entity.

**ARTICLE 21** . Article 94 of the Organic Statute of the Financial System will read as follows:

**ARTICLE 94** . Representative offices of foreign financial and reinsurance institutions.

1. Opening authorization. It is the responsibility of the Banking Superintendency to authorize the establishment in the country of representative offices of foreign financial and reinsurance organizations, as well as to exercise inspection, surveillance and control over them with the same powers that it has to supervise entities in the financial sector and insurer.

The National Government will indicate through general regulations the restrictions and prohibitions of the offices, the exceptions to the opening regime, as well as the qualities and requirements to be their representative.

2. Representative offices of foreign financial institutions. The representative offices of foreign financial entities may only provide the services that the National Government, through general regulations, establishes.

3. Representative offices of foreign reinsurers. These offices may exclusively operate in the acceptance or transfer of responsibilities in reinsurance; Therefore, they will not act, directly or indirectly, in the contracting of insurance.

4. Registry of reinsurers and reinsurance brokers abroad. The Banking Superintendency will organize a registry of foreign reinsurers and reinsurance brokers that operate or intend to operate in the Colombian market. The purpose of this registration is to allow your solvency, experience and professionalism to be evaluated, among other factors. For this purpose, it will indicate the conditions of registration and the cases in which it constitutes an unsafe practice to contract with reinsurers or with the mediation of reinsurance brokers not registered or excluded from the registry.

Registration in the registry may be denied, suspended or canceled by the Banking Superintendency, when the foreign reinsurer or reinsurance broker does not comply or fails to satisfy the general requirements established by said body.

5. Representation. The representation of the offices referred to in this article will be in charge of the natural person designated by the foreign institution, who must be duly represented for this purpose before the Banking Superintendence.

6. Penalty Regime. Failure to comply with the provisions that govern the activity of the representative offices will be sanctioned by the Banking Superintendence in the manner provided for in articles 209 and 211 of this Statute. Furthermore, applying numeral 2 of article 208 of this Statute, the Banking Superintendence may order the closure of the representative office and the removal of the representative."

**ARTICLE 22 . EXEQUITABLE .** Article [96](#) of the Organic Statute of the Financial System will read as follows:

"Article 96. Conservation of files and documents. The books and papers of the institutions supervised by the Banking Superintendency must be kept for a period of no less than five (5) years, from the date of the respective entry, without prejudice to the established terms. in special regulations. Once this period has expired, they may be destroyed as long as, by any appropriate technical means, their exact reproduction is guaranteed. [Declared exequitable by the Constitutional Court Ruling 1042 of 2003 .](#)

**PARAGRAPH.** The administration and conservation of the files of public financial entities in liquidation will be subject to the provisions for financial entities in liquidation by the Organic Statute of the Financial System and other regulations that modify or add to it. Once five years have passed, the corresponding reproduction must be made, through any appropriate technical means, and transferred to the General Archive of the Nation.

The work histories of former officials of public financial entities in liquidation must be transferred to the entity to which they were linked or assigned once the corresponding liquidation process is completed."

**ARTICLE 23 .** Numeral [1](#) of article 97 of the Organic Statute of the Financial System is modified, which will read as follows:

"1. Information to users. The supervised entities must provide the users of the services they provide with the necessary information to achieve the greatest transparency in the operations they carry out, in a way that allows them, through clear and objective elements of judgment , choose the best options on the market and be able to make informed decisions.

In this sense, the information corresponding to the assets and assets of the monitored entities is not subject to confidentiality, without prejudice to the duty of secrecy that they have regarding the information received from their clients and users."

**ARTICLE 24 .** [Partially regulated by National Decree 690 of 2003.](#) Numeral [4](#) of article 98 of the Organic Statute of the Financial System is amended, which will read as follows:

"4. Due service provision and consumer protection.

4.1 General duty. Institutions subject to the control of the Banking Superintendency, as soon as they carry out activities of public interest, must use due diligence in the provision of services to their clients so that they receive due attention in the development of the contractual

relationships that are established. establish with them and, in general, in the normal development of their operations.

Likewise, when carrying out the operations of their purpose, said institutions must refrain from agreeing to clauses that, due to their exorbitant nature, may affect the balance of the contract or give rise to an abuse of a dominant position.

4.2 Customer ombudsman. The entities supervised by the Banking Superintendency must have a customer ombudsman, whose function will be to be a spokesperson for the clients or users before the respective institution, as well as to know and resolve their complaints related to the provision of services.

The client ombudsman of the institutions supervised by the Banking Superintendency must be independent of the administrative bodies of the same entities and may not perform a function in them other than that provided for here.

Within the parameters established in this section, the National Government, through general regulations, will indicate the rules to which the activity of the client ombudsman of the entities supervised by the Banking Superintendence must be subject.

The general assembly of partners or associates of the supervised institutions will be responsible for appointing the client ombudsman. In the same session in which he is appointed, information regarding the appropriations planned for the supply of human and technical resources intended for the performance of the functions assigned to him must be included.

4.3 Procedure for hearing complaints. Prior to submitting to the Banking Superintendency individual complaints related to the provision of services by the supervised institutions that may be known by virtue of their powers, the client or user must present their claim to the ombudsman, who must rule on it in a term that in no case may exceed fifteen (15) business days, counted from the moment you have all the documents necessary to resolve the complaint.

The provisions of the previous section are understood to be without prejudice to the judicial actions that may be filed by both clients and users as well as the supervised institutions themselves for the purposes of resolving their contractual disputes and those complaints that in the collective general interest are presented to the Banking Superintendence.

4.4 Sanctions. Failure to comply with the obligations of the client ombudsman will be sanctioned by the Banking Superintendence in the manner provided for in Part Seven of this Statute. Under the terms of said provisions, the supervised institutions may be sanctioned for not appointing the client's ombudsman, for not making the necessary appropriations for the provision of the human and technical resources required for their adequate performance or for not providing the information needed in exercise. of its functions. The client's ombudsman may be sanctioned for failure to comply with his or her obligations.

**PARAGRAPH** . The client's ombudsman may perform his or her function simultaneously in several supervised institutions. Rediscount banks are excluded from the obligation to have a customer ombudsman."

**ARTICLE 25** . Add the following paragraph to article 98 of the Organic Statute of the Financial System:

" **5.** In order to guarantee the rights of consumers, financial institutions must provide sufficient and timely information to all users of their services, allowing adequate comparison of the financial conditions offered in the market. In any case, the financial information presented to the public must be done at effective rates. The National Government, through general regulations, will determine the frequency and manner in which this obligation must be fulfilled."

**ARTICLE 26** . Add article 98 of the Organic Statute of the Financial System with the following paragraph:

" **6.** Conflicts of interest. Within the line of business of the entities supervised by the Banking Superintendency, directors, legal representatives, tax auditors and in general any official with access to privileged information has the legal duty to refrain from carrying out any operation. that gives rise to conflicts of interest.

The Banking Superintendence will impose the sanctions that may apply when operations that give rise to a conflict of interest are carried out, in accordance with the general sanctioning regime of its jurisdiction. Likewise, it may establish mechanisms through which the situation of conflict of interest is corrected, if applicable.

Additionally, the Banking Superintendency may generally and previously qualify the existence of such conflicts with respect to any supervised institution."

**ARTICLE 27.** Article [104](#) of the Organic Statute of the Financial System, modified by article 25 of Law 365 of 1997, will read as follows:

**ARTICLE 104** . Periodic information. Every financial institution must report to the Financial Information and Analysis Unit (UIAF) all of the cash transactions referred to in the previous article, in accordance with the instructions given for this purpose by the Banking Superintendence, in application of article 10 of the Law 526 of 1999.

**ARTICLE 28.** Add article 113 of the Organic Statute of the Financial System with the following paragraph:

" **11.** Exclusion of assets and liabilities. With the purpose of protecting public confidence in the financial system, the Banking Superintendency may order, as a precautionary measure, the exclusion of assets and liabilities of a credit establishment and as a consequence thereof, the transfer of ownership of the assets and the assignment of the liabilities of said establishment that are determined when issuing the corresponding order, when the measure is appropriate in the opinion of the Banking Superintendent, to prevent an entity from incurring grounds

for taking possession or to correct it, or as a complementary measure to the takeover.

The measure of exclusion of assets and liabilities will be subject to the regulations that the National Government dictates in the development of the powers of intervention and to the following general rules:

a) Only liabilities arising from the collection of demand or term deposits from the public, credits in favor of the Guarantee Fund of Financial Institutions, the Guarantee Fund of Cooperative Entities and the Bank of the Republic, different of those originated in rediscount operations carried out with the latter, when it mediates lines of external credit, and in the liquidity operations referred to in literal b) of article 16 of Law 31 of 1992. The transfer of liabilities resulting from the exclusion will occur by operation of law, without prejudice to the notice that will be given to the holders of the liabilities subject to exclusion;

b) The liabilities to the public will be transferred in their entirety to the credit establishments under the conditions and under the procedures determined by the National Government, for which the auction mechanism may be used;

c) With the excluded assets, an asset will be formed that will be separated for all legal purposes from the assets of the entity from which it was excluded, as well as from the assets of the entity that, by virtue of the precautionary measure provided for in this section, manages it. Said assets will be exclusively assigned to the purposes established in this Statute and may be administered by a credit establishment under a non-fiduciary administration contract or by a trust company under a commercial trust contract. The liabilities in favor of the Guarantee Fund of Financial Institutions, the Guarantee Fund of Cooperative Entities and the Bank of the Republic will be transferred to this patrimony;

d) The exclusion will include assets for the positive difference, if any, resulting from subtracting from the assets recorded in the last available balance sheet of the institution subject to the measure, before the adoption of the measure, the external liabilities borne by it, taking into account the adjustments that in relation to said balance are necessary in the opinion of the Banking Superintendence. In any case, efforts will be made to ensure that there is equivalence between the value attributed to the assets transferred to the assets formed by virtue of the provisions of literal c) of this section and the excluded liabilities;

e) The excluded assets will include those that have been transferred to the Guarantee Fund of Financial Institutions, the Guarantee Fund of Cooperative Entities and the Banco de la República through discount or rediscount operations, different from those indicated in the literal a) of this article. In such case, the aforementioned entities must transfer to the assets constituted in accordance with numeral 11, literal c) of article 113 of this Statute, the assets that have been transferred to them in the development of the active credit operation, or its equivalent in money, to no later than within eight (8) business days following the date on which the measure was adopted, once the assets in question have been established;

f) In order to make the exclusion measure viable, in the event that there is no equivalence between the assets and liabilities subject to it referred to in the preceding paragraph, the Financial Institutions Guarantee Fund, within the framework of its legal powers and, especially, numeral 6 of article 320 of the Organic Statute of the Financial System, may subscribe debt securities of subordinated payment in charge of the estate to which the assets are transferred, in order that the existing assets have a value corresponding at least to that of the excluded liabilities. The excluded assets may include written-off assets;

g) Charged to the assets that conform to the excluded assets, titles representing rights over said assets will be issued for an amount equivalent to that of the excluded liabilities, whose types and conditions will be established by the Board of Directors of the Financial Institutions Guarantee Fund. taking into account the regulations issued by the National Government;

h) In order to provide liquidity to the excluded assets, the Financial Institutions Guarantee Fund may transfer the assets constituted in accordance with literal c) of this paragraph, in exchange for debt securities that are issued in development of the provisions of the literal g) of this section, up to a sum equivalent to the deposit insurance that would be recognized in the event of forced liquidation with respect to the excluded liabilities;

i) The Financial Institutions Guarantee Fund may exchange debt securities that are issued in accordance with the provisions of paragraph g) of this section, for securities issued by said Fund, with the purpose of delivering them as payment to credit establishments. recipients of liabilities with the public;

j) Transfers of excluded assets and liabilities will be carried out by the entity's administrators, in the form and terms determined by the Financial Institutions Guarantee Fund, an entity that will also determine the recipients of the transfers, as well as the guidelines. under which the temporary administration of the excluded assets may be carried out by the entity subject to the measure, for which there will be inter-institutional cooperation of the Banking Superintendency, all subject to the rules established by the National Government;

k) For tax purposes and determination of notarial and registration rights, transfers made in development of the exclusion measure will be considered as acts without value;

l) The transfer of assets and liabilities will be understood to be perfected with the protocolization of the private document or documents that contain it and in the case of rights whose tradition or constitution is subject to registration, the registration of a copy of the corresponding protocolization deed will be sufficient, case in point. which will apply the provisions of paragraph 4 of article 60 of the Organic Statute of the Financial System;

m) The administrators will be responsible up to slight fault under the terms of article 63 of the Civil Code, for the immediate compliance of the

transfer obligation resulting from the exclusion;

n) In the case provided for in this article and in the event that the liquidation of the entity is ordered, with respect to the excluded assets and liabilities, the rules of article 300 of the Organic Statute of the Financial System will not apply;

ñ) If it comes to exist, the remainder that remains in the assets constituted in accordance with literal c) of this paragraph after paying the liabilities that affect it will be transferred to the credit establishment that sold the excluded assets.

**PARAGRAPH.** The mentions to the Guarantee Fund of Financial Institutions that are made in this section will also be understood to be made to the Guarantee Fund of Cooperative Entities, when dealing with operations carried out with cooperative entities registered in said fund."

**ARTICLE 29.** Add article 113 of the Organic Statute of the Financial System with the following paragraph:

" **12.** Progressive dismantling program. The progressive dismantling program is a precautionary measure that proceeds for the protection of savers and investors and that seeks to prevent entities subject to the control and surveillance of the Banking Superintendency from incurring in grounds for taking possession or to prevent it. This measure will proceed when the supervised institution foresees that in the medium term it will not be able to continue complying with the legal requirements to function in adequate conditions, as long as adequate attention to the public's savings is guaranteed. "The entity must adopt and submit to the approval of the Banking Superintendency a program for the progressive dismantling of its financial or insurance operations. The Banking Superintendency may exempt the dismantling entities from the legal requirements of an ongoing entity."

**ARTICLE 30.** Add numeral **13** of article 113 of the Organic Statute of the Financial System, which will read as follows:

"13. Provision for the payment of labor liabilities. Of the total assets held by the financial institution at the time of the application of the preventive measure of exclusion or progressive dismantling, the corresponding provision will be constituted for the payment of labor debts, social benefits and/or existing legal or conventional compensation, in order to guarantee their cancellation."

**ARTICLE 31.** Add article 113 of the Organic Statute of the Financial System with the following paragraph:

" **PARAGRAPH** . The measures contemplated in paragraphs 11 and 12 of this article may be applicable in situations of reorganization or total or partial dismantling of financial institutions in whose capital the Nation, the Guarantee Fund of Financial Institutions or other entities of public Law.

The National Government may provide through general regulations that the transfer that occurs as a consequence of the application of the

exclusion measure includes other liabilities borne by the public financial institution in respect of which the measure applies, in case in which one or some of such liabilities may be the responsibility of the assets constituted in accordance with the provisions of literal c) numeral 11 of this article. The management contract for the excluded assets will be entered into with the entity designated by the Financial Institutions Guarantee Fund, under the terms and conditions determined by it and will be subject to the rules of private law. The administration of the excluded assets may be entrusted to the Central de Inversiones SA CISA, as long as the Financial Institutions Guarantee Fund maintains the majority capital participation in it."

**ARTICLE 32.** Numeral 1 of article 114 of the Organic Statute of the Financial System will read as follows:

"Article 114. Grounds. 1. It is the responsibility of the Banking Superintendency to take immediate possession of the assets, assets and businesses of a supervised entity when any of the following events occur that, in its opinion, make the measure necessary and prior opinion of the council adviser."

**ARTICLE 33.** Add numeral 1 of article 114 of the Organic Statute of the Financial System with the following literals:

" k ) When you fail to comply with the order of exclusion of assets and liabilities issued by the Banking Superintendence, and

l ) When the progressive dismantling program agreed with the Banking Superintendence is not complied with."

**ARTICLE 34.** Add to literal a), numeral 2 of article 114 of the Statute Organic Financial System, the following paragraph :

"In the case of insurance entities, this cause will be understood to be configured by default of the guarantee fund."

**ARTICLE 35.** Literal c ) of numeral 3 of article 119 of the Organic Statute of the Financial System will read as follows:

"c) No operations may be carried out that imply conflicts of interest. The Banking Superintendency will determine and classify in the manner provided for in paragraphs 2 and 3 of numeral 6 of article 98 of this Statute, the existence of such conflicts. Likewise, may establish mechanisms through which the situation of conflict of interest is remedied, if applicable."

**ARTICLE 36.** Numeral 1 of article 122 of the Organic Statute of the Financial System will remain as follows:

"1. Operations with partners or administrators and their relatives. Authorized operations determined by the National Government and carried out by entities supervised by the Banking Superintendency, with their shareholders holding five percent (5%) or more of the subscribed capital, with its administrators, as well as those held with the spouses and relatives of its partners and administrators within the second degree



of consanguinity or affinity, or only civil, will require the unanimous vote of the members of the board of directors attending the respective meeting for approval. .

The minutes of the corresponding meeting of the board of directors will also record whether compliance with the rules on limits on granting credit or maximum debt limits or risk concentration in force on the date of approval of the operation has been verified. .

In these operations, conditions different from those generally used by the entity with the public may not be agreed upon, depending on the type of operation, except those concluded with the administrators to meet their health, education, housing and transportation needs in accordance with the regulations that for this purpose are previously determined by the board of directors in a general manner."

**ARTICLE 37.** Numeral 5 of article 146 of the Organic Statute of the Financial System will read as follows:

"5. General prohibitions. No trust company may manage more than one ordinary common investment fund.

The Banking Superintendence may establish limits on the resources of the businesses managed by the trust companies, which said entities may maintain in demand deposits in their parent company or in its affiliates or subsidiaries. The limits established by the Banking Superintendency will not apply when the trustor, expressly and in writing, authorizes his resources to be deposited in the aforementioned entities."

**ARTICLE 38.** Add article 146 of the Organic Statute of the Financial System with the following paragraph:

" 9. Conflicts of interest. Directors, legal representatives, tax auditors and in general any official of fiduciary entities with access to privileged information must refrain from carrying out any operation that gives rise to conflicts of interest between the fiduciary and the trustor or beneficiaries. designated by this. The Banking Superintendence will determine and qualify in the manner provided for in paragraphs 2 and 3 of paragraph 6 of article 98 of this Statute. Likewise, it may establish mechanisms through which such conflicts are resolved. "remedy the situation of conflict of interest, if applicable."

**ARTICLE 39.** Numeral 3 of article 152 of the Organic Statute of the Financial System is modified, which will read as follows:

"3. Investments of ordinary common funds. It will be the responsibility of the trust companies to adopt the necessary methodologies and procedures for the safe and efficient analysis and management of the risk of the investments they make with the resources of the ordinary common funds.

The Banking Superintendency will indicate the general principles and criteria that trust companies must adopt to adequately evaluate the risks implicit in such operations.

Trust companies that do not observe the aforementioned principles and criteria must submit to the investment regime established by the Banking Superintendency through general regulations.

In any case, entities may not invest in securities of which the parent or subordinate companies of the respective fiduciary institution are issuers, acceptors or guarantors."

**ARTICLE 40.** Numeral **1** of article 158 of the Organic Statute of the Financial System will read as follows:

"1. Conflicts of interest. The administrators and their directors, legal representatives or any official with access to privileged information must refrain from carrying out any operation that gives rise to conflicts of interest between them or their shareholders and capital contributors and the funds or assets. that they administer. The Banking Superintendence will determine and qualify in the manner provided for in paragraphs 2 and 3 of paragraph 6 of article 98 of this Statute. Likewise, it may establish mechanisms through which they are corrected. the situation of conflict of interest, if applicable.

When its parent company is one of the entities referred to in paragraph 1 of article 119 of this statute, the administrators may not carry out the operations referred to in paragraphs 2 and 3 of the same article."

**ARTICLE 41.** Add numeral **5** to article 182 of the Organic Statute of the Financial System, as follows:

"5. For defects in the investment of reserves incurred by insurance entities and capitalization companies, the Banking Superintendence will impose fines in favor of the National Treasury for the equivalent of 3.5% of the defect presented in each calendar month."

**ARTICLE 42.** Numeral **1** of article 184 of the Organic Statute of the Financial System is modified, which will read as follows:

"1. Policy and rate models. The prior authorization of the Banking Superintendency of the policy and rate models will be necessary when it comes to the initial authorization of an insurance entity or for the exploitation of a new branch.

In accordance with the provisions of Article 2 of Law 389 of 1997, the policy models and their annexes must be sent to the Banking Superintendence for their corresponding deposit, under the conditions determined by said body."

**ARTICLE 43.** Article **186** of the Organic Statute of the Financial System will read as follows:

"Article 186. Regime of technical reserves and investments. Insurance entities and those that administer the General System of Professional Risks, whatever their nature, must constitute, among others, the following technical reserves, in accordance with the general rules that for this purpose the National Government issues:

a) Current risk reserve;

- b) Mathematical reserve;
- c) Reserve for pending claims, and
- d) Loss deviation reserve.

The National Government will indicate the technical reserves additional to those indicated that are required for the exploitation of the branches. Likewise, it will dictate the rules that determine the pertinent technical aspects, to guarantee that the different types of insurance issued within the Social Security System comply with the principles that govern them."

**ARTICLE 44.** Numeral **5** of article 193 of the Organic Statute of the Financial System is modified, as follows:

"5. Powers of the National Government in relation to the terms of the policy **and contribution to Fosyga** . As it is a compulsory insurance contract, the National Government, through the Ministry of Finance and Public Credit, will uniformly indicate the conditions general conditions of the policies, **the maximum rates that may be charged for it, as well as the value of the contribution to the Solidarity and Guarantee Fund** . The value of this contribution must be calculated as the sum between a percentage of the annual insurance premium and a. percentage of the commercial value of the vehicle. **In any case, this value may not exceed 100% of the value of the annual premium** . **Underlined text declared INEXEQUABLE by the Constitutional Court through [Ruling C-312 of 2004](#).**

The Banking Superintendence will periodically review the technical and financial conditions of the operation of this insurance, for which purpose it will request the information it deems appropriate from the insurance entities.

In any case, in determining rates the principles of equity, sufficiency and moderation will be observed and differential ranges may be established according to the nature of the risks.

**PARAGRAPH 1° . INEXEQUABLE** . SOAT premiums on motorcycles up to 200 cc displacement will be free of contribution to any institution or fund. Consequently, the SOAT premium for these vehicles will exclusively cover the cost of the risk that is actuarially determined for them, considering them with a criterion of favorability compared to others with greater passenger capacity and displacement. [Ruling of the Constitutional Court C-312 of 2004](#)

**PARAGRAPH 2° . INEXEQUABLE** . For the purposes of setting premiums, the National Government will establish the policies for attributing road accidents, taking into account the responsibility for causing the accident. [Ruling of the Constitutional Court C-312 of 2004](#)

[See art. 1, National Decree 2078 of 2003](#)

**ARTICLE 45.** Replace **Part Seven** of the Organic Statute of the Financial System, which will read as follows:

**PART SEVEN**

## **SANCTIONARY REGIME**

### **CHAPTER**

#### **GENERAL RULES**

**ARTICLE 208** . General rules. This part of the Statute establishes the administrative sanctioning regime applicable to the entities supervised by the Banking Superintendency, as well as their directors, administrators, legal representatives, tax auditors or other officials or employees.

The administrative sanctioning power of the Banking Superintendency is guided and exercised in accordance with the following principles, criteria and procedures:

1. Principles. In the application of administrative sanctions, the Banking Superintendence will guide its activity following the following principles:

a) Principle of contradiction: The Banking Superintendency will take into account the defenses made by the people to whom the statement of objections was formulated and the contradiction of the evidence regularly and opportunely submitted to the administrative sanctioning process;

b) Principle of proportionality, according to which the sanction must be proportional to the infraction;

c) Exemplary principle of the sanction, according to which the sanction imposed persuades the other directors, administrators, legal representatives, tax auditors or officials or employees of the same supervised entity in which the infraction occurred and other entities supervised by the Banking Superintendence, to refrain from violating the rule that gave rise to the sanction;

d) Principle of directed disclosure, according to which the Banking Superintendency may determine the moment in which the information will be disclosed in cases in which the disclosure of the sanction may put at risk the solvency or security of the supervised entities considered individually or as a whole.

Additionally, the Banking Superintendence will apply the guiding principles of administrative actions established in article 3 of the Administrative Litigation Code.

2. Criteria for grading administrative sanctions.

The sanctions for administrative infractions mentioned in this article will be graduated according to the following criteria, as soon as they are applicable:

a) The dimension of the damage or danger to the legal interests protected by the Banking Superintendency, in accordance with the powers assigned to it by this Statute;

- b) The economic benefit that may have been obtained for the offender or for third parties from the commission of the infraction, or the damage that such infraction may have caused;
- c) Recurrence in the commission of the infraction;
- d) Resistance, refusal or obstruction to the investigative or supervisory action of the Banking Superintendency;
- e) The use of fraudulent means in the commission of the infraction, or when an intermediary is used to hide it or cover up its effects;
- f) The degree of prudence and diligence with which the duties have been met or the relevant legal standards have been applied;
- g) Reluctance or disobedience to comply with the orders issued by the Banking Superintendency;
- h) The exercise of activities or the performance of positions without having taken office before the Banking Superintendency when the law so requires;
- i) The express recognition or acceptance made by the investigated party of the commission of the infraction before the imposition of the applicable sanction.

These graduation criteria will not be applied in the imposition of those pecuniary sanctions regulated by special rules, the amount of which is calculated using the methodology indicated by such provisions, such as those relating to reserve requirements, adequate levels of assets, solvency margins, own position, mandatory investments, investment maximums and minimums and other legal controls applicable to entities supervised by the Banking Superintendency.

3. Sanctions. The following are the administrative sanctions that the Banking Superintendency may impose:

- a) Warning or warning;
- b) Monetary fine in favor of the National Treasury. When dealing with the sanctions provided for in article 209 of this Statute, the fine may be up to one hundred and ten million pesos (\$110,000,000.00) of the year 2002. When dealing with the sanctions provided for in article 211 of this Statute and there is no special rule that establishes the respective sanction, the fine may be up to five hundred and fifty million pesos (\$550,000,000.00) of the year 2002;
- c) Suspension or disqualification for up to five (5) years for the exercise of those positions in entities supervised by the Banking Superintendency that require possession before said body for their performance;
- d) Removal of the administrators, directors, legal representatives or tax auditors of the people supervised by the Banking Superintendency. This sanction is applied without prejudice to those that establish special rules;

e) Closure of the representative offices of foreign financial and reinsurance institutions.

The amounts indicated in this section will be adjusted annually, in the same sense and percentage in which the Consumer Price Index provided by DANE varies.

The monetary fines provided for in this article may be successive as long as the non-compliance that gave rise to them persists.

#### 4. Administrative sanctioning procedure.

a) Start of the action. The administrative action to determine the commission of infractions may be initiated ex officio, by reports received from third parties, through the practice of administrative inspection, surveillance and control visits, by transfer from other authorities, by complaints or reports from natural or legal persons and, in general, by any other means that offers credibility;

b) Administrative action. To determine administrative infractions, the competent officials, in the stage prior to the formulation of charges, will carry out tests in accordance with the provisions that regulate them, always respecting fundamental rights. The subsequent procedure will be subject to the special provisions of this article and in general of the Organic Statute of the Financial System and, in matters not regulated in a special manner, to the provisions of the Administrative Litigation Code.

No reservation may be made against the actions of the Banking Superintendency in this matter; However, the documents obtained will continue to be protected by the confidentiality that the Constitution and the law establishes with respect to them and those who have access to the respective file are obliged to maintain the confidentiality applicable to the documents stored there;

c) Divisibility. The administrative sanctioning procedure is divisible. Consequently, personal and institutional charges may be formulated and notified separately and the corresponding sanctions may be imposed independently. However, when the same facts or related facts are involved, efforts will be made to transfer those investigated simultaneously, in order to be able to confront their defenses, specifying in each case which charges are proposed in a personal capacity and which in an institutional capacity. ;

d) Address for notifications. The notification of the actions carried out must be carried out at the address of the supervised institution that appears in the Registry Office of the Banking Superintendency or where the investigated party has indicated in the resume presented for possession in the same Superintendency, taking into account takes into account the updates that have been made for the purpose of notifications in said Office or on the resume.

In the case of supervised institutions that have a mailbox in the Banking Superintendency, in accordance with the regulations issued for this purpose, the notifications through communication provided for in literal f) of this section, of an institutional nature or personal ones to the

administrators indicated in article 22 of Law 222 of 1995, who provide their services to an entity monitored at the time of notification, may be done through the mailbox.

When, according to the records of the Banking Superintendency, the person investigated in his or her personal capacity has stopped providing his or her services to the supervised institution in which the events occurred, the corresponding administrative action may be notified to the address established by the Banking Superintendency through direct verification or through the use of telephone books or directories.

When it has not been possible to establish the address of the person under investigation by any of the means indicated above, the actions of the Banking Superintendency will be notified by means of publication of a notice in a newspaper of wide national circulation.

If during the development of the administrative sanctioning procedure the investigated person or his representative expressly indicates an address to be notified of the corresponding actions, the Banking Superintendency must do so to that address from that moment and while the investigated person or his representative, by written communication addressed to the official under whose jurisdiction the procedure is carried out, do not show the change of specific address noted;

e) Forms of notification. Notifications within the administrative sanctioning action will be personal, by edict, by notice or by communication.

The resolutions that put an end to the administrative action and those that resolve the appeal filed against them will be notified personally, or by edict if the interested party does not appear within the term of five (5) days following the sending by certified mail of the respective summons. .

The other acts that are issued will be notified by communication. However, in the case of actions of a personal nature with respect to those who at the time of notification do not hold the status of administrator of a supervised entity under the terms of article 22 of Law 222 of 1995, the notification of the statement of objections will be made in a personal way.

In cases in which, due to the lack of a known address, the respective notification cannot be made, the notification will proceed by means of a notice in a newspaper of wide national circulation;

f) Notification by communication. This type of notification will be made by sending by certified mail a copy of the corresponding act to the address determined in accordance with literal d) of this section, and will be deemed delivered on the date of receipt.

In events in which there is a mailbox in accordance with the provisions of paragraph d) of this section, notification by communication may be made by depositing a copy of the act in the corresponding box and will be deemed to have been issued on the date of his withdrawal from it;

g) Formulation of charges. If the competent official considers that the facts investigated constitute a possible infraction, he will file the corresponding charges against the alleged offenders through a motivated act, against which there is no appeal.

The act of formulating charges must contain a summary of the facts constituting the possible violations, the evidence collected up to that moment and the rules that are considered violated.

In the case of charges based on visit reports, as a summary of the evidence, the report will be transferred, attaching a copy of it, and making the working papers that support it available to the investigated person at the Superintendency offices, without prejudice to reviewing the means of proof other than the visit report and its supports that exist;

h) Term of transfer of the act of formulation of charges. The term of transfer of the act of formulation of charges to the alleged offenders will be thirty (30) days counted from the day following its notification. During this period, the respective file will be available to the alleged offenders in the offices of the official who filed the charges.

The transfer is the only opportunity in which the alleged offenders can present the defenses they consider appropriate. During this term they may request the taking of evidence, provide it or object to that obtained before the formulation of charges;

i) Probationary period. The requested evidence will be ordered when it is conducive, relevant and effective for clarifying the facts under investigation. Contributed contributions will be accepted if they meet the above requirements. Those that do not comply with them will be denied and those that are considered relevant will be ordered ex officio, through a reasoned act that will indicate the term for their practice, which may not exceed two (2) months if they are tests to be carried out in the national territory. , or four (4) months, if they must be practiced abroad. The practice of the tests will begin to be carried out after five (5) days from the date of notification by communication of the respective act;

j) Appeals against the act of evidence. Only the appeal for reconsideration may be filed against the act that totally or partially denies the requested evidence, before the official who issued it, within five (5) days following the date of its notification. There will be no appeal against anyone who decrees all the requested evidence; Nor will there be any appeal in relation to the tests ordered ex officio;

k) Evidential assessment. The evidence will be evaluated as a whole in accordance with the rules of sound criticism, taking into account the administrative nature of the infraction, the objective nature of the corresponding responsibility and the purposes pursued by the sanctioning regime;

l) Government appeals against the sanctioning resolution. Only the appeal will proceed against the resolution that imposes any sanction, before the immediate superior of the official who issued the act, which must be filed within five (5) days following its notification. Against the sanction provided for in literal ñ) of this section, only the appeal for



reconsideration will proceed. Regarding the sanctions imposed by the Banking Superintendent and the decisions referred to in article 335 of this Statute, only the appeal for reconsideration will proceed.

In matters not provided for in this article and in general in the Organic Statute of the Financial System, the filing and processing of appeals will be subject to the provisions of Title II of Book 1 of the Administrative Litigation Code;

m) Suspension of terms. The term provided for issuing and notifying the resolution that ends the action will be suspended in the following cases:

1. When any of the grounds for challenge or impediment established in the Contentious Administrative Code and the Code of Civil Procedure arise with respect to any of the officials who must carry out investigative procedures, take evidence or pronounce final decisions within the administrative procedure.

The suspension term in this event will be the same as that required to exhaust the recusal or impediment process, in accordance with the procedure established in the Administrative Litigation Code.

2. For the evidentiary period referred to in literal i) of this section, in which case the suspension will be counted from the execution of the act that resolves on the evidence in the action, and for the term indicated for the practice thereof;

n) Reluctance to provide information. Natural or legal persons who refuse to present the reports or documents required in the course of administrative investigations, hide them, prevent or do not authorize access to their files to the competent officials, or send the requested information with significant errors or in incomplete form, will be sanctioned by the competent official in the respective action with a fine in favor of the National Treasury of up to ten (10) monthly legal minimum wages in force at the time of occurrence of the events that give rise to the sanction, without prejudice to the sanctions that may arise due to violation of the provisions that govern the activity of the institutions supervised by the Banking Superintendence;

ñ) Sanctioning procedure for reluctance to provide information. The sanction established in the previous paragraph will be imposed by means of a reasoned resolution, after transferring the charges to the person to be sanctioned, who will have a period of five (5) days to present their defenses.

The act of formulating charges must be notified, in the manner provided for in literal d) of this section, within the month following the date on which the events constituting the sanction occurred.

The resolution that ends the action due to reluctance must be issued and notified within two (2) months following the expiration of the term to respond to the statement of objections. The appeal for reconsideration proceeds against this resolution, which must be filed within five (5) days following the date of its notification and resolved within two (2) months following the date of its filing.

**PARAGRAPH.** This action does not suspend or interrupt the development of the administrative procedure carried out to establish the commission of violations of the provisions that govern the activity of the entities supervised by the Banking Superintendency;

o) Prescription of the collection action. The collection action by coercive jurisdiction of the fines imposed by the Banking Superintendence expires within a period of five (5) years, counted from the execution of the orders that impose them. Prescription may be declared ex officio or at the request of the debtor.

The period of prescription of the collection action is interrupted with the notification of the payment order, in which case it will begin to run again from the day following the notification of the same order;

p) Refund of fines. In the event that the administrative act by which the Banking Superintendency has imposed a fine in favor of the National Treasury is declared void by the administrative litigation jurisdiction, and the fine has already been consigned in favor of the National Treasury, the The Ministry of Finance will proceed to return the respective sum to the person in whose favor the ruling was issued, which will be done in the manner and terms provided for in the ruling and in articles 176 et seq. of the Contentious Administrative Code;

q) Remission of obligations. Regarding the coercive collection of fines imposed by the Banking Superintendency in favor of the National Treasury, as well as the collection of the contributions required by the same, the remission of obligations will proceed in the events, terms and conditions and with the effects provided for the obligations. taxes in current legislation.

The decision will be made through a reasoned resolution issued by the official vested with coercive jurisdiction in the Banking Superintendency, in which the termination and archiving of the process will be ordered.

## 5. Self-assessments.

When the supervised entities present financial and accounting information to the Banking Superintendency, duly certified by the Legal Representative and the Statutory Auditor, in relation to reports on reserve requirements, adequate levels of equity, solvency margins, own position, mandatory investments, maximums and investment minimums and other legal controls, such information constitutes a declaration regarding compliance or non-compliance.

If within sixty (60) days following the presentation of the aforementioned information no objections are presented by the Banking Superintendence, said declaration will become firm. The supervised entity may, once only, within fifteen (15) days following the presentation of the declaration, add or clarify the information presented.

In the latter case, the Banking Superintendence will have a period of thirty (30) days, counted from the date of presentation of the addition or clarification, to make a definitive ruling. Once the statement is issued by

the Superintendency within said period, or the term expires without a statement, the statement will become final.

In the event that the Banking Superintendency formulates objections within the sixty (60) days provided for in this section, the supervised entity will have a one-time term of fifteen (15) days counted from the date of the communication that objects to the liquidation, to dispute it. If the supervised entity, within this period, does not speak out or gives in to the objections of the Banking Superintendence, the liquidation will become final. If it is disputed, for well-founded reasons, the ruling issued by the Control Body on them will be final and will make the respective liquidation final.

Once the declaration presented or the liquidation carried out by the Banking Superintendency is final, as appropriate, the supervised entity must proceed to deposit in favor of the National Treasury within the following ten (10) days the value of the self-liquidating penalty contemplated in the norm that predetermines it.

Once the aforementioned period has elapsed without the aforementioned consignment having been made, late payment interest will be generated in the terms indicated in paragraph 1 of article 212 of this Statute. In this event, the Banking Superintendence may collect the obligation through coercive jurisdiction, for which the declaration together with the certification of having become final issued by the official determined by the Banking Superintendent through a general act constitutes an enforceable title.

## 6. Expiration.

The power of the Banking Superintendency to impose sanctions will expire in three (3) years counted as follows:

- a) In acts of instantaneous execution, from the day of their consummation;
- b) In conduct of permanent or successive execution, from the performance of the last act, and
- c) In omissive conduct, from when the duty to act has ceased.

When several behaviors are investigated in the same administrative action, the expiration of the sanctioning power of the Banking Superintendence will be counted independently for each of them.

The notification of the corresponding administrative sanctioning act will interrupt the expiration period of the sanctioning power.

## 7. Reserve

The actions carried out within the administrative sanctioning processes carried out by the Banking Superintendency will be reserved in relation to third parties. Sanctions will not be subject to reservation once notified, without prejudice to the provisions of literal d) of numeral 1 of article 208 of this Statute in relation to the principle of directed disclosure.

## CHAPTER II

### PERSONAL REGIME

**ARTICLE 209** . Personal administrative sanctions. The Banking Superintendence may impose the sanctions provided for in this Statute to the directors, administrators, legal representatives, tax auditors or other officials or employees of an institution subject to its supervision when they incur any of the following events:

a) Fail to comply with the duties or legal obligations that correspond to them in the development of their functions;

b) Carry out acts that violate the law, the regulations issued by the National Government in accordance with the Constitution and the law in the development of its powers of intervention, **the social statutes** or any legal norm to which they are exercising. of their functions or the supervised institution must be subject; **Underlined text declared EXEQUIBLE by the Constitutional Court through Sentence C-860 of 2006.**

c) Failure to comply with the rules, orders, requirements or instructions issued by the Banking Superintendence in the exercise of its powers, when such failure constitutes a violation of the law;

d) Authorize or do not avoid, and must do so, acts that violate the law, the regulations issued by the National Government in accordance with the Constitution and the law in the development of its powers of intervention, **the social statutes, or norms or instructions issued by the Banking Superintendence in the exercise of its powers** . **Underlined text declared EXEQUIBLE by the Constitutional Court through Sentence C-860 of 2006.**

The above without prejudice to the other actions or sanctions that may apply.

**ARTICLE 210** . Civil liability. Any director, administrator, legal representative, official of an institution supervised by the Banking Superintendence who knowingly violates or allows the legal provisions to be violated will be personally responsible for the losses that any natural or legal person suffers as a result of such violations, without prejudice of the other civil or criminal sanctions established by law and of the measures that the Banking Superintendence may impose in accordance with its powers.

## CHAPTER III

### INSTITUTIONAL REGIME

**ARTICLE 211** . Institutional administrative sanctions.

1. General regime. Institutions subject to the supervision of the Banking Superintendence are subject to the sanctions provided for in this Statute when:

a) Failure to comply with the duties or obligations that the law imposes on them;

b) Execute or authorize acts that violate the law, the regulations issued by the National Government in accordance with the Constitution and the law in development of its powers of intervention, **the social statutes, or norms or instructions issued by the Banking Superintendence in the exercise of its powers** ; Underlined text declared EXEQUIBLE by the Constitutional Court through Sentence C-860 of 2006.

c) Failure to comply with the rules, orders, requirements or instructions issued by the Banking Superintendency in the exercise of its powers, when such failure constitutes a violation of the law;

The foregoing without prejudice to any other actions or sanctions that may apply.

2. Provisions relating to the management companies of the Pension and Unemployment Funds. The provisions of articles 83 paragraph 2 and 162 paragraph 5 of this Statute will be understood without prejudice to the sanctions that the Banking Superintendency may impose in development of the provisions of article 209 thereof.

3. Provisions relating to the prevention of criminal conduct. When the violation referred to in the first paragraph of this article falls on the provisions contained in Chapter XVI of Part Three of the Organic Statute of the Financial System, the fine that may be imposed will be up to one thousand seven hundred and forty-two million pesos ( \$1,742,000,000.00) of 2002.

Additionally, the Banking Superintendent may order the fined establishment to allocate a sum of up to one thousand seven hundred and forty-two million pesos (\$1,742,000,000.00) of 2002 to the implementation of internal corrective mechanisms that must be agreed upon with the same regulatory body. control.

These sums will be readjusted in the manner provided for in paragraph 3 of article 208 of this Statute.

## **CHAPTER IV**

### **INTEREST ON SANCTIONS**

**ARTICLE 212 . INTERESTS.** 1. General regime. From the execution of any resolution through which the Banking Superintendency imposes a sanction and until the day of its cancellation, the people and entities subject to its control and supervision must recognize in favor of the National Treasury a monthly interest equivalent to one and a half times (1.5 times) the current bank interest certified by the Banking Superintendency for the respective period, on the unpaid value of the sanction.

2. Provisions relating to Pension and Unemployment Fund management companies. From the execution of the resolution by means of which any of the sanctions referred to in article 83 paragraph 2 and 162 paragraph

5 of this Statute are imposed and until the day on which the value of the fine imposed is cancelled, the Pension and unemployment fund management companies will recognize in favor of the National Treasury a monthly interest equivalent to one and a half times (1.5 times) the current bank interest certified by the Banking Superintendency for the respective period, on the unpaid value of the sanction.

**PARAGRAPH** . Once the Banking Superintendence certifies the different current bank interest rates in accordance with the provisions of this Statute, the interest rate that must be recognized on the unpaid value of the sanction in the events described in the previous paragraphs will be equivalent to and a half times (1.5 times) the current bank interest certified by the Banking Superintendency for consumer loans for the respective period.

**ARTICLE 46.** Article [213](#) of the Organic Statute of the Financial System is modified, as follows:

**ARTICLE 213** . Rules applicable to credit establishments, financial services companies, insurance entities, capitalization companies and other financial institutions, insurance brokers and reinsurance brokers. The rules that regulate banking establishments will be applicable to financial corporations, commercial financing companies, financial cooperatives, financial services companies and capitalization companies, in everything that is not contrary to their special provisions.

In addition to the special rules that regulate their activity, the following rules will be applicable to insurance entities, insurance brokers and reinsurance brokers: article 10 literals b), c), g); article 73 numerals 1, 2, 4, 5 and 6; article 74; article 81 numerals 1, 2, 3 and 4; article 84 numerals 1 and 2; and article 85 of the Organic Statute of the Financial System.

Likewise, in addition to the special rules and those mentioned in the previous paragraph, the provisions of articles 55 to 65 will be applicable to insurance brokers and reinsurance brokers; article 67, article 68 and article 71 of this Statute.

**ARTICLE 47.** Articles [233](#) , [234](#) and [235](#) of the Organic Statute of the Organic Statute of the Financial System are modified, which will read as follows:

**ARTICLE 233** . Legal nature. Banco Agrario de Colombia SA (Banagrario) is a mixed economy company of the national order, subject to the regime of industrial and commercial company of the State, organized as a bank credit establishment and linked to the Ministry of Agriculture and Rural Development.

**ARTICLE 234** . Social object. The Bank's purpose is to finance, primarily but not exclusively, activities related to rural, agricultural, livestock, fishing, forestry and agro-industrial activities.

In carrying out its corporate purpose, Banco Agrario de Colombia SA (Banagrario) may carry out all operations authorized to bank credit establishments.

**ARTICLE 235** . When by legal or regulatory provision, or by request of the National Government, the Bank must carry out operations under profitability conditions lower than those of the market, or that do not guarantee financial balance for the entity, or intended to subsidize a specific sector, this It will be carried out only when it has the respective budget allocations.

**PARAGRAPH.** This provision will come into force as of January 1, 2004.

**ARTICLE 48.** Replace [Chapter Three](#) of Part Ten of the Organic Statute of the Financial System, which will read as follows:

### **CHAPTER III**

#### **NATIONAL FUND OF GUARANTEES SA**

**ARTICLE 240** . Organization.

1. Legal Nature. The National Guarantee Fund SA, whose corporate name may operate under the acronym "FNG SA", is a public limited company of a commercial nature and a mixed economy of the national order, whose creation was authorized by Decree 3788 of December 29, 1981 and linked to the Ministry of Economic Development. The National Guarantee Fund SA will be subject to the supervision of the Banking Superintendency and to the prudential rules on solvency margin, technical assets, constitution of technical reserves and other regulations determined by the National Government as of January 1, 2004.

**PARAGRAPH.** For reasons of the reorganization of the State, the National Government may order the linking of the National Guarantee Fund SA to another Ministry.

2. Legal Regime: The National Guarantee Fund SA will be governed by the rules enshrined in this statute, as well as by the provisions relating to mixed economy companies that result from its shareholding composition, by the Commercial Code, by other regulations. complementary and concordant and by their statutes.

3. Corporate Purpose. The corporate purpose of the National Guarantee Fund SA is to act primarily but not exclusively as guarantor or under any other form of guarantor of all types of active operations of financial institutions with the users of their services, whether natural or legal persons. as well as acting in such capacities with respect to said type of operations against other types of credit establishments legally authorized to develop activities, whether national or foreign, autonomous assets constituted before entities that legally contemplate within their activities the development of these businesses, the cooperative entities and other associative forms of the solidarity sector, foundations, corporations, family compensation funds and other types of private or public associations that promote social development programs.

The National Guarantee Fund SA, within the ordinary course of its business, will be empowered to grant guarantees on credits and other active operations of this nature that are contracted in favor of entities

that do not have the status of financial intermediaries, by natural persons. or legal entities that act as marketers or distributors of their products and goods in the market.

All disposals under any title that FNG SA makes of movable or immovable property whose properties have been transferred to it or that appear in its name as a result of negotiations or as a result of the exercise of the judicial or extrajudicial actions taken to obtain the recovery of the sums that have been paid to the beneficiaries of the guarantees.

4. Address. The National Guarantee Fund SA will have its main address in the city of Bogotá, DC and may establish branches or agencies in other places in the country, as determined by its Board of Directors and subject to the applicable regulations on the matter.

**ARTICLE 241** . Authorized operations. In carrying out its corporate purpose, the National Guarantee Fund SA may carry out the following operations:

a) Serve, among others, the trade, services, industrial, agro-industrial and export sectors, or other sectors or programs, in accordance with the priorities identified for the development of the policies of the National Government or those indicated by its Board of Directors;

b) Grant guarantees in its different modalities on operations agreed in legal or foreign currency, subject to the legal provisions that govern the matter and the guidelines and authorizations expressly indicated by its Board of Directors;

c) Carry out retroguarantee operations with entities legally authorized for this purpose, whether national or foreign, understood as the acceptance or transfer of risks derived from guarantees issued by entities that act as direct or first-tier guarantors. Retroguarantees do not generate any relationship between the retroguarantor and the creditor nor between the retroguarantor and the debtor, but the retroguarantor shares a similar fate with the direct guarantor, unless bad faith on the part of the latter is proven, in which case the retroguarantee will have no effect. some;

d) Enter into co-financing contracts with other national or foreign entities that carry out activities of the same or similar nature to those of the National Guarantee Fund SA;

e) Manage, for consideration, resources from other entities destined for specific programs for the promotion and development of groups or sectors belonging to those indicated in literal a) of this section and issue the necessary guarantees charged to said resources, prior authorization from the Board of Directors;

f) Manage for consideration special accounts or autonomous funds, with or without legal status, whose resources are allocated to the development of programs that are related or complementary to its corporate purpose;



g) Advance the judicial and extrajudicial collection processes arising from the payment of guarantees and in all types of processes if it is considered necessary for the adequate protection of the interests of the National Guarantee Fund SA, for which the rules that govern such will be observed. processes;

h) Carry out all kinds of acts and celebrate those contracts, agreements, operations and, in general, any other action that requires the exercise of its rights or the fulfillment of the obligations that legally and contractually derive from its existence and operation;

i) Use agents, commission agents or, in general, any other type of intermediaries for the exploitation and promotion of their businesses, in accordance with the authorizations issued by the Board of Directors of the Fund;

j) Subscribe or acquire, under any title, shares, social shares or interest quotas of for-profit companies, through contributions in money, goods or services. Likewise, you may make all types of investments in legal or foreign currency and direct your resources to the acquisition of non-monetary assets, whether movable or immovable, tangible or intangible, negotiate securities or other documents for the proper development of your activity or as development investment or profitable uses, permanent or temporary, of funds or availability, subject to the provisions determined by the National Government;

k) Grant total or partial guarantees on securities, in accordance with the rules established by the National Government for this purpose.

**ARTICLE 242** . Direction and Administration of the National Guarantee Fund (FNG) SA The direction and administration of the National Guarantee Fund SA will be in charge of the General Assembly of Shareholders, the Board of Directors, the President who will be its legal representative and other bodies that provide for its functions. statutes.

The Board of Directors of the National Guarantee Fund SA will be constituted by:

a) The Minister of Economic Development or the Minister of the Ministry to which the National Guarantee Fund SA is linked or his delegate, who will preside over its sessions;

b) The Minister of Finance and Public Credit or his delegate;

c) Three (3) representatives of the shareholders and their respective personal substitutes.

**ARTICLE 243** . Final provisions.

1. Call to General Shareholders' Meeting. Within three (3) months following the date of entry into force of these regulations, the legal representative of the National Guarantee Fund SA must convene a General Assembly of Shareholders to consider the adaptation of its statutes to the provisions contemplated under this title and make other decisions within its jurisdiction, subject to the relevant regulations.

2. Regime of Acts and Contracts. Contracts that correspond to the ordinary course of activities inherent to the corporate purpose of the National Guarantee Fund SA, as well as the disposal of assets whose ownership rights have been transferred to it by award or by way of dation in payment or, in general, any type of Negotiations as a result of the exercise of actions to recover paid guarantees will be governed by the rules of private law.

**ARTICLE 49.** Article 244 of the Organic Statute of the Financial System is modified, which will read as follows:

**ARTICLE 244 .** Legal nature. The Central Mortgage Bank is a mixed economy company, linked to the Ministry of Finance and Public Credit, in liquidation.

In accordance with the provisions of article 52 of Law 489 of 1998, the regime of the Central Mortgage Bank will be that provided for in the Decree that ordered its liquidation, or in the regulations that modify or add to it.

**ARTICLE 50.** Article 250 of the Organic Statute of the Financial System will read as follows:

**ARTICLE 250 .** Organization. The main objective of the Instituto de Fomento Industrial SA (IFI), created by Decree 1157 of 1940, is to prospect and promote the founding of new companies, collaborate in the establishment of private and public initiatives, and contribute to the development and reorganization of companies. already existing, through rediscount operations. These companies must be dedicated mainly to the exploitation of basic industries and the transformation of national raw materials, which private initiative and capital do not develop satisfactorily, as well as other economic development activities that the country requires and which are not being sufficiently attended to. and directly through the financial system.

**ARTICLE 51.** Article 251 of the Organic Statute of the Financial System will read as follows:

**ARTICLE 251 .** Direction and Administration.

1. Board of Directors. The Board of Directors of the Instituto de Fomento Industrial SA (IFI) will be made up as follows:

- a) The Minister of Economic Development or the Ministry to which the IFI is linked, or his delegate;
- b) The Minister of Finance and Public Credit or his delegate;
- c) Three members appointed by the President of the Republic

To be a member of the Institute's Board of Directors, you must be a Colombian citizen. The alternates of the board will be appointed by the President of the Republic.

2. President. The Instituto de Fomento Industrial SA (IFI) will have a President freely appointed and removed by the President of the

Republic.

3. Incompatibilities. Directors, legal representatives or employees with access to privileged information of financial corporations, commercial banks and private insurance companies may not be members of the Board of Directors of the Instituto de Fomento Industrial SA (IFI).

**ARTICLE 52.** Modify numeral 2 and add a numeral to article 252 of the Organic Statute of the Financial System, as follows:

2. Contributions from the National Government. Of the annual amounts that the National Government allocates for the Instituto de Fomento Industrial SA (IFI), only the balances that result after canceling the losses that occurred in previous years are considered as capital contributions and therefore convertible into shares. The capital contributions made by the Financial Institutions Guarantee Fund will not be used to offset losses from previous years.

4 . Capital investments. The IFI may only maintain capital investments in commercial financing companies and trust companies that it owns at the time of the issuance of this Law, which it will use due to its functional specialization, as a complement and/or instrument for the development of the development operations that are its own.

**ARTICLE 53.** Article 253 of the Organic Statute of the Financial System will read as follows:

**ARTICLE 253 .** Operations.

1. Authorized operations. The Instituto de Fomento Industrial SA (IFI) in developing its corporate purpose may:

a) Carry out rediscount bank operations to promote the founding, expansion or merger of companies, which are mainly dedicated to the exploitation of basic industries and the transformation of national raw materials, which private initiative and capital do not develop satisfactorily. Likewise, it may grant credits to commercial financing companies for the acquisition of assets subject to leasing operations, whose guarantees will be determined in the terms and conditions established by the National Government;

b) Carry out, through rediscount operations, operations to promote activities of national interest determined by the National Government and that are not being sufficiently developed by the financial system;

c) Carry out rediscount operations with credit establishments, with non-governmental organizations, with savings and credit cooperatives subject to State surveillance and control, and with other entities specialized in granting credit to micro, small and medium-sized entrepreneurs.

For the purposes of this literal, the Board of Directors of the Instituto de Fomento Industrial SA (IFI) will generally define the requirements that said entities must meet to access the resources of the Institute. The Board, among other aspects, will take into account adequate levels of

assets, ethical and professional suitability of the administrators, operational capacity, as well as internal controls, tax auditing and external auditing;

d) Take loans from multilateral credit organizations, from the foreign capital market, and in general channel resources and subsidies from foreign governments, multilateral credit entities and non-governmental organizations for development purposes;

e) Enter into internal credit contracts for which it will be subject to the provisions of the current legal regulations on the matter;

f) Carry out asset securitization in accordance with current legal regulations;

g) Implement the mechanisms and establish the requirements that allow third parties to directly finance the acquisition of goods received as dation in payment by the IFI;

h) Capture internal savings through the issuance of securities and subscription of other documents;

i) Carry out exchange operations in accordance with current legal regulations;

j) Enter into contracts for the administration of projects or resources, and for the provision of investment banking services that are related to the purposes established in its corporate purpose;

k) Enter into inter-administrative agreements and contracts with individuals for the conceptualization, development, coordination and execution of investment banking projects;

l) Structure projects and manage private participation processes for the implementation of development projects.

**PARAGRAPH 1°** . The Instituto de Fomento Industrial SA (IFI) will not be subject to the forced investment regime.

**PARAGRAPH 2°**. In no case may the IFI assume direct risk in the operations it carries out, except for credit operations to finance the sale of goods received in payment, nor make capital investments. Therefore, the IFI must incorporate risk coverage, counterguarantees or similar instruments in its operations that transfer the direct risk of the operations it carries out.

2. Related operations. In development of the main corporate purpose, the Instituto de Fomento Industrial SA (IFI) may celebrate all types of legal acts or businesses directly related to the corporate purpose and its functions, and whose purpose is to exercise rights or fulfill obligations directly or indirectly. associated with the existence and activities of the institution.

3. Interest rate differential. The National Government will annually include in the national budget the items intended to finance the differential between the placement rates of the development credit lines

and the rates for attracting resources from the Industrial Development Institute SA (IFI).

When the National Government requests the Institute to implement rediscount operations to promote specific sectors of the economy, it will carry them out only when it has the budget allocations that guarantee the financing of the differential between the placement rates of the loans of promotion and the costs of raising the Institute's resources. The foregoing in the event that the margin is not sufficient to fully cover the costs involved in the respective development operation. Compliance with this condition will be an essential requirement for the Board of Directors to authorize the development operation.

**ARTICLE 54.** Article 254 of the Organic Statute of the Financial System will read as follows:

**ARTICLE 254 .** Legal regime of acts and contracts. The operations, whatever their nature and modality, carried out by the Instituto de Fomento Industrial SA (IFI), including the acts and contracts that implement them, will be governed exclusively by the rules of private law.

**ARTICLE 55.** Article 255 of the Organic Statute of the Financial System will read as follows:

**ARTICLE 255 .** Transitory Activities. The Instituto de Fomento Industrial SA (IFI) will continue to develop, on a temporary basis and until its completion, those activities other than those provided for in this law, which it has been carrying out by legal determination, such as the maintenance and execution of operations that involve risks. direct for their assets, as long as they imply acquired or consolidated rights in the hands of third parties that may be made payable to the Institute.

**ARTICLE 56.** Add literal g) to numeral 1 and modify literal b ) of numeral 3 of article 270 of the Organic Statute of the Financial System, as follows:

g ) Rediscount credits to public entities of the national order, to private law entities and autonomous assets, as long as said resources are used in the activities defined in numeral 2 of article 268 of the Organic Statute of the Financial System and in projects related to the environment;

b) It is up to the National Government to determine, in accordance with current legal regulations, the financial conditions of the rediscount operations corresponding to the credits destined for the works and activities indicated in numeral 2 of article 268 of this Statute. It will be the function of Findeter's board of directors, within the rediscount policy, to ensure that interest rates reflect the cost of resources received from third parties, as well as the cost of equity.

**ARTICLE 57.** Article 271 of the Organic Statute of the Financial System will read as follows:

**ARTICLE 271 .** Financiera de Desarrollo Territorial SA will not be subject to forced investments and will not distribute profits among its partners. Public Regional Development Entities will not be subject to the

reserve requirement regime or forced investments and will not distribute profits among their partners.

**ARTICLE 58.** Numeral **1** of article 279 of the Organic Statute of the Financial System will read as follows:

1. Legal nature. The Foreign Trade Bank, created by article 21 of Law 7 of 1991, is a national mixed economy company, organized as a bank credit establishment, linked to the Ministry of Foreign Trade. The Banco de Comercio Exterior de Colombia SA, (Bancoldex), will continue to be subject exclusively to the regime of mixed economy companies not assimilated to that of industrial and commercial companies of the State, regardless of the participation of public capital in its assets.

The Foreign Trade Bank will be exempt from making forced investments.

**ARTICLE 59.** Add the following paragraph to article 295 of the Organic Statute of the Financial System:

**eleven** . Substitute legal representative. The Financial Institutions Guarantee Fund will designate the administrative forced liquidation official who will have legal representation alternatively to the liquidator. In the case of liquidation processes of public entities ordered in exercise of the powers provided for in article 52 of Law 489 of 1998, in the administrative act that provides for the measure, the liquidation official who will have the legal representation of the same may be established. alternatively to the liquidator.

**ARTICLE 60.** Literal **b** ) of numeral 1 of article 296 of the Organic Statute of the Financial System will read as follows:

b) Carry out monitoring of the activity of liquidators both in financial institutions subject to forced administrative liquidation ordered by the Banking Superintendency, and in the liquidation of financial institutions that are carried out under any of the modalities provided for in the legislation. To carry out the function indicated here, the Fund will observe the rules that regulate such processes.

**ARTICLE 61.** Modify literal **h** ) of numeral 2 of article 299 of the Organic Statute of the Financial System, which will read as follows:

h) The assets given for lease, which will be transferred to the lessee when he exercises the option and pays the respective value. If the deadline for execution of the contract is pending and the tenant does not agree to pay the corresponding present value, the contract and the asset will be transferred to another entity legally authorized to develop leasing operations or, where appropriate, to the rediscount entity that has provided resources to carry out the operation.

**ARTICLE 62.** Literal **e** ) of numeral 2 of article 316 of the Organic Statute of the Financial System will read as follows:

e) Carry out monitoring of the activity of liquidators both in financial institutions subject to forced administrative liquidation ordered by the

Banking Superintendency, and in the liquidation of financial institutions that are carried out under any of the modalities provided for in the legislation. To carry out the function indicated here, the Fund will observe the rules that regulate such processes.

The function of monitoring the activity of the liquidators must be subject to the rules established by the National Government through general regulations.

**ARTICLE 63.** The last paragraph of numeral 1 of article 318 of the Organic Statute of the Financial System is modified, which will read as follows:

The Banking Superintendent will attend the meetings of the Board of Directors as a guest.

**ARTICLE 64.** Add numeral 1 of article 320 of the Organic Statute of the Financial System with the following literal:

m ) The Financial Institutions Guarantee Fund (Fogafin) will issue and manage the National Government guarantees granted for mortgage bonds to finance the subsidizable VIS portfolio and for securities issued in securitization processes of the subsidizable VIS portfolio, which are issued based on the portfolio. originated in credit establishments.

**ARTICLE 65.** Add numeral 1 of article 320 of the Organic Statute of the Financial System with the following literal:

n ) Authorize the execution of fiduciary and non-fiduciary administration contracts of the portfolio and debts of financial entities that have been taken over for liquidation.

**ARTICLE 66.** Add article 320 of the Organic Statute of the Financial System with the following paragraphs:

8 . Action of the Fund in the implementation of asset and liability exclusion measures. The Financial Institutions Guarantee Fund will issue the general guidelines referred to in literal i), numeral 11 of article 113 of the Organic Statute of the Financial System, subject to the regulations issued on the matter by the National Government. The Financial Institutions Guarantee Fund will approve, prior to its execution by the parties, the text of the contract or contracts that are concluded for the transfer and administration of assets and for the transfer of excluded liabilities; The Fund may make any adjustments that may be necessary to better achieve the objective pursued with the exclusion.

9 . Subscription of debt securities in the context of asset and liability exclusion measures. When the Financial Institutions Guarantee Fund subscribes debt titles in development of numeral 11, literals f) and h) of article 113 of this Statute, the payment of the same will be subordinated to the cancellation of the titles that are issued in favor of the credit establishments that take charge of the liabilities with the public and the cancellation of the titles in favor of the Bank of the Republic.

10 . Rescheduling of deadlines for cancellation of excluded liabilities and redefinition of rates. In keeping with the public interest and in order to facilitate the cancellation of liabilities arising from public deposits and other liabilities excluded in accordance with paragraph 11 of article 113 of this Statute, the Financial Institutions Guarantee Fund may provide:

"a) At the time of the transfer and for a single time, the rescheduling of the maturity dates of said liabilities or some of them, totally or partially, or the determination of a term for the cancellation of demand deposits or of part of these. For this purpose, the deposits will be grouped based on homogeneous criteria, such as type or nature of the obligation or maturity period. The aforementioned rescheduling will be mandatory for the parties and in no case may it involve the determination of deadlines. maturity dates lower than those originally agreed;

b) A mandatory reduction in the interest rate applicable to excluded liabilities, when the interest rate that must be recognized with respect to one or some of these, in the opinion of the Financial Institutions Guarantee Fund, exceeds the rate in an unreasonable proportion. of market in force for the cut-off date determined by the Fund, a reduction that will become effective from the date on which the measure is adopted.

"The Banking Superintendency will provide the Financial Institutions Guarantee Fund with the information it requires for the exercise of the function referred to in this provision."

eleven . In the event regulated in the paragraph of article 113 of this Statute, the Guarantee Fund of Financial Institutions may also grant, charged to resources from the General Budget of the Nation, a guarantee to support the transferred assets, when they are going to be serve as a source of payment for securities issued in favor of credit establishments that by virtue of the exclusion have assumed liabilities with the public, or when said assets are going to serve as a source of payment for liabilities transferred to the assets constituted in development of the measure of exclusion, a guarantee that for its granting will be subject to the criteria established in section 6 of this article.

**ARTICLE 67.** Add a paragraph to article 320 which will read as follows:

" 12. For better performance of its functions, the Financial Institutions Guarantee Fund may participate in the constitution or participate as an associate or affiliate of the International Association of Deposit Insurers, the body that makes its sometimes or to international associations that bring together entities that perform functions similar to those of the Fund."

**ARTICLE 68.** Add article 322 of the Organic Statute of the Financial System with the following paragraph:

"5. Intervention of the Fund in the management of entities with special regimes. When the Financial Institutions Guarantee Fund develops any of the operations provided for in article 320 in relation to entities with special regimes referred to in Part Ten of the of this Statute, may



become part of the Board of Directors of the corresponding entity, through a number of additional representatives indicated by the corresponding special legal regime, who will participate with voice and vote on a temporary basis and until they have been redeemed. the obligations arising from the operation that has been carried out. In such case and during the term in which said measure remains in force, the deliberative and decision-making quorum of the respective Board of Directors will be adjusted to maintain the necessary majorities in the adoption of decisions. When defining the number of members, the proportion that represents the value of the support in the capital of the entity will be taken into account. Participation in the Board of Directors may be replaced by the adoption of a performance plan agreed upon with the Fund, which provides for the specific goals that must be achieved by the institution."

**ARTICLE 69.** Literal a) of article 323 of the Organic Statute of the Financial System will read as follows:

"a) Offer an adequate guarantee to savers and depositors in good faith within the limits established by the board of directors."

**ARTICLE 70.** Article 324 of the Organic Statute of the Financial System will read as follows:

"Article 324. Surveillance. The inspection, control and surveillance of the Financial Institutions Guarantee Fund will be the responsibility of the Banking Superintendence, which will exercise the aforementioned function in accordance with the powers granted to it by law in relation to financial institutions. , taking into account the special nature of the Fund and the purpose that it fulfills in accordance with the law."

**ARTICLE 71.** Add a paragraph to numeral 1 of article 325 of the Organic Statute of the Financial System, as follows:

" **PARAGRAPH** . As of January 1, 2003, the promotion of savings and benefits determined by the National Government, which has been canceling the Social Security Fund of the Banking Superintendency, Capresub, for public employees belonging to the Banking Superintendency, will be paid by this Superintendency."

**ARTICLE 72.** Numeral 2 of article 325 of the Organic Statute of the Financial System will read as follows:

"2. Supervised entities. The Banking Superintendency is responsible for the surveillance and inspection of the following institutions:

a) Banking establishments, financial corporations, commercial financing companies, trust companies, general deposit warehouses, higher-level cooperative organizations of a financial nature, pension and unemployment fund management companies, pension fund management companies, savings banks, funds or social security entities administering the solidarity regime of medium premium with defined benefit, decentralized entities of the territorial entities whose purpose is the financing of the activities provided for in numeral 2 of article 268 of the organic statute of the financial system specifically authorized by the

Financiera de Desarrollo Territorial SA, Findeter, insurance companies, insurance cooperatives, reinsurance companies, capitalization companies, non-profit companies that can assume the risks derived from occupational diseases and work accidents, insurance and reinsurance brokers and insurance placement agencies;

b) Representative offices of foreign financial organizations and reinsurers;

c) The Bank of the Republic;

d) The Financial Institutions Guarantee Fund;

e) The National Guarantee Fund SA;

f) The Fonade Development Projects Financial Fund;

g) Exchange houses, and

h) Other natural and legal persons with respect to whom the law attributes permanent inspection and surveillance functions.

**PARAGRAPH 1.** Entities that manage credit or debit card systems, as well as those that manage payment and payment systems, may be subject to the inspection, surveillance and control of the Banking Superintendency, as established by the National Government through general regulations. compensation, to whom the rules relating to commercial finance companies will apply where applicable.

**PARAGRAPH 2°.** "The insurance agents referred to in paragraph 2 of article 5 of this statute are subject to inspection, surveillance and control of the Banking Superintendency."

**ARTICLE 73.** Numeral **3** of article 325 of the Organic Statute of the Financial System is modified, which will read as follows:

"3. Legal representation. The legal representation of the Banking Superintendence corresponds to the Banking Superintendent, who may delegate it in the terms established by law."

**ARTICLE 74.** Add the following paragraph to article 325 of the Organic Statute of the Financial System, which will read as follows:

"**4.** The references to the Banking Superintendency made in this Statute will be understood to be made to the Banking Superintendence of Colombia."

**ARTICLE 75.** Modify literal **g** ) of numeral 2 of article 326, of the Organic Statute of the Financial System, and add the same numeral with a transitional paragraph as follows:

"g) Possess and take the oath of directors, administrators, legal representatives, tax auditors, the officials referred to in the first paragraph of paragraph 3 of article 102 of this Statute, and in general, those who have the legal representation of supervised institutions, except branch managers.

The objective requirements and subjective qualities assessed by the Banking Superintendency to authorize the possession of the administrators and tax auditors of the supervised entities, must be accredited and maintained by them, throughout the time in which they hold positions that require possession.

The Banking Superintendency is empowered to revoke the possession of administrators and tax auditors who do not maintain the objective and subjective qualities evaluated at the time of authorizing their possession.

A Possessions Committee will be formed, made up of the Banking Superintendent or his representative and the Delegate Superintendents, which will decide on the requests for possession and revocation of possession of the directors, administrators, fiscal auditors and the legal representatives of the supervised institutions, except branch managers.

Likewise, it will decide on the possessions and revocations of possession of the representatives of the representative offices of foreign financial and reinsurance institutions.

The Banking Superintendent will indicate the regulations to which the Possessions Committee must comply in order to carry out its functions.

**TRANSITIONAL PARAGRAPH** . The officials referred to in the first paragraph of paragraph 3 of article 102 of this Statute who, on the date of entry into force of this law, are not in office before the Banking Superintendence, must do so no later than within six (6) months following said date."

**ARTICLE 76.** Literal i ) of numeral 2 of article 326 of the Organic Statute of the Financial System is modified, which will read as follows:

"i) To rule on the financial statements presented by the institutions under its supervision. The Banking Superintendency will issue authorization for the approval of the financial statements by the respective assemblies of partners or associates and for their subsequent publication in relation to those supervised entities that are "are included in the events or conditions indicated by the National Government through general regulations."

**ARTICLE 77.** Literal j) of numeral 2 of article 326 of the Organic Statute of the Financial System will read as follows:

"j) Approve the voluntary liquidation of entities subject to its inspection and surveillance."

**ARTICLE 78.** Add literals k ) and l ) of numeral 2 of article 326 of the Organic Statute of the Financial System, which will read as follows:

"k) Dictate the general rules to which supervised entities must be subject for the publication of their financial statements;

l) Order the supervised institutions, when deemed necessary or prudent, to establish provisions or reserves to cover possible losses in the value of their assets. Only the appeal for reconsideration will proceed against said orders, which will not suspend immediate compliance with them."

**ARTICLE 79.** Literal e ) of numeral 3 of article 326 of the Organic Statute of the Financial System will read as follows:

"e) Respond to queries made regarding the institutions under its supervision and decide on requests submitted by individuals in exercise of the right to request information.

The information related to the supervisory tasks carried out by the Banking Superintendency in compliance with the functions assigned to it by law will be confidential as long as this is necessary to guarantee the stability of the financial and insurance system, the public's confidence in it, and ensure that the institutions that comprise it are not affected in their economic solidity and solvency and liquidity coefficients required to meet their obligations."

**ARTICLE 80.** Literal i ) of numeral 3 of article 326 of the Organic Statute of the Financial System is modified, which will read as follows:

"i) Evaluate the situation of the capital investments of the supervised entities, for which it may request from them the information required on said investments, without the bank reserve being enforceable."

**ARTICLE 81.** Add literal l ) to numeral 3 of article 326 of the Organic Statute of the Financial System, as follows:

"l) In order to carry out comprehensive and consolidated supervision, establish in which cases the entities subject to its control and surveillance must consolidate their operations with other institutions subject or not to its supervision."

**ARTICLE 82.** Add literal f ) to numeral 4 of article 326, of the Organic Statute of the Financial System, as follows:

"f) In order to carry out comprehensive and consolidated supervision, carry out inspection visits to entities not subject to its control and surveillance, examine their files and request the information required to determine if the budgets are met for them to consolidate their operations. with financial or insurance entities, or if there are links or operations that may represent a risk for the latter."

**ARTICLE 83.** Add paragraph 5 with literal j ) and two paragraphs and modify literals c) and d) of paragraph 6 of article 326 of the Organic Statute of the Financial System, as follows:

"j) Order, in coordination with the Financial Institutions Guarantee Fund, the exclusion of assets and liabilities of a credit establishment, when the measure is necessary, in the opinion of the Banking Superintendent, prior to the opinion of the Advisory Council.

**PARAGRAPH 1° .** The adoption of the measure of exclusion of assets and liabilities referred to in literal j) of this section will be kept confidential until the date on which the transfer of liabilities to the public that is the object of the same is completed and you will be notified. to the institution in respect of which the order is issued at the time that the Banking Superintendency and the Guarantee Fund of Financial

Institutions consider it appropriate and in any case before the execution of the measure. The foregoing is in order to facilitate the actions aimed at the full development of the measure with the financial institutions that are potential recipients of the transfer of liabilities, which will also be obliged to keep confidentiality regarding the measure that is going to be implemented and regarding of any information they come to know. Failure to comply with the obligations imposed on financial institutions will give rise to the application of the measures contemplated in articles 209 to 211 of the Organic Statute of the Financial System, without prejudice to the criminal sanctions that may apply.

**PARAGRAPH 2°** . "The provisions of paragraph 4 of article 291 of the Organic Statute of the Financial System will be applicable to the decision to exclude assets and liabilities."

"c) Certify the current bank interest rates corresponding to the different types of credit determined by the National Government, through general regulations.

This function will be fulfilled based on the financial and accounting information provided by the credit establishments, analyzing the rate of active operations using appropriate weighting techniques, and will be fulfilled with the periodicity recommended by the Board of Directors of the Bank of the Republic

The rates certified by the Banking Superintendency will be expressed in effective annual terms and will govern from the date of publication of the corresponding act;

d) Certify, in accordance with article 305 of the Penal Code, the current bank interest rate that the banks are charging for the corresponding period."

**ARTICLE 84.** Modify literal e) of numeral 6 of article 326 of the Organic Statute of the Financial System, which will read as follows:

"e) Publish or order the publication of the financial statements of the entities subject to its control and surveillance, as well as the adjustments or rectifications to such financial statements ordered by the Banking Superintendency. It may also publish or order the publication of the financial indicators. the supervised institutions."

**ARTICLE 85.** Numeral 1 of article 327 of the Organic Statute of the Financial System is modified, which will read as follows:

"1. Structure. The Banking Superintendence will have the following structure:

a) Office of the Banking Superintendent

Supervision Directorate

Regulation Directorate

Office of Internal Management Control

Office of Internal Disciplinary Control;

b) Offices of the Delegate Superintendents of the Supervision Areas

Superintendency Addresses

Legal Control Directorates;

c) Legal Directorate

Complaints Subdirectorate

Consultations Subdirectorate

Subdirectorate of Judicial Representation and Legal Editions;

d) Technical Management

Risk Analysis Subdirectorate

Actuary Subdirectorate

Subdirectorate of Financial Analysis and Statistics;

e) IT and Planning Department

Systems Division

Operations Division

Organization and Methods Division;

f) General Secretariat

Administrative and Financial Subdirectorate

Administrative division

Financial division

Human Resources Subdirectorate;

g) Advisory and Coordination Bodies

Advisory Council of the Banking Superintendent

Coordination Committee

Internal Control Committee

Conciliation Committee

Personnel Commission

Procurement and Bidding Board

The National Government, in exercise of the power provided for in paragraph 16 of article 189 of the Political Constitution and subject to the general principles and rules contemplated in article 54 of Law 489 of 1998, will indicate the functional structure, organization and assignment

internal functions of the Banking Superintendency. In exercise of the same power, the National Government may create agencies or management bodies other than those mentioned in this section."

**ARTICLE 86.** Add numeral 2 of article 330 of the Organic Statute of the Financial System, replaced by Decree 2489 of 1999, with the following literal:

"j) The Subdirectorate of Judicial Representation and Legal Editions of the Banking Superintendency or the agency that performs its functions may represent the officials of the management level of said entity who request it, when in relation to the exercise of their functions they have to appear before jurisdictional or control authorities of any kind. The representation will be carried out only during the time in which said officials provide their services to the Banking Superintendence."

**ARTICLE 87.** Article 335 of the Organic Statute of the Financial System will read as follows:

"Article 335. Only the appeal for reconsideration filed in the manner established in the Administrative Litigation Code will proceed against the administrative acts of a particular nature issued by the Banking Superintendence.

The precautionary and takeover measures adopted by the Banking Superintendency in the exercise of its functions will be immediately applicable. Consequently, the appeal for reconsideration that may be filed against them will not suspend the enforceability of the administrative act."

**ARTICLE 88.** Section 1 of numeral 5 of article 337 of the Organic Statute of the Financial System is modified, which will read as follows:

"5. Contributions. The Banking Superintendency will require contributions from the supervised entities, which will consist of rates that will be applied by categories of supervised entities on the amount of assets they register as of June 30 and December 31 of the previous year. The Superintendency Banking will define the categories of entities supervised by means of a general act."

**ARTICLE 89.** Literal a ) of numeral 5 of article 337 of the Organic Statute of the Financial System is modified, which will read as follows:

"a) Causation. The contribution imposed on the supervised entities referred to in this article will be caused on the first calendar day of the months of January and July of each year. If an entity does not remain under surveillance throughout the respective semester, it will pay the contribution proportionally for the time it has been under surveillance. If, due to the fact that any entity does not remain under surveillance throughout the respective semester, a budgetary defect is generated that requires correction, the Superintendency may liquidate and demand the respective amount from the supervised entities. at any time during the corresponding semester."

**ARTICLE 90.** Add article 337 of the Organic Statute of the Financial System with the following paragraph:

"12. Of the regime of disqualifications and incompatibilities of the Banking Superintendent. The following may not be a Banking Superintendent:

- a) The person who has one or more of the incompatibilities or inability to hold public positions indicated in the Constitution or in the law;
- b) Whoever serves as director, administrator, legal representative or fiscal auditor of any supervised institution;
- c) Who, by themselves or through an intermediary, has a participation of more than one percent (1%) of the subscribed shares of any entity subject to the control and supervision of the Banking Superintendence;
- d) Who, by himself or through an intermediary, is in a litigated situation before the Banking Superintendency pending a judicial decision or is an attorney in said case;
- e) Persons who, in accordance with the provisions of the third paragraph of paragraph 5 of article 53 of this Statute, cannot participate as shareholders of a supervised entity."

## **CHAPTER II**

### **OTHER PROVISIONS RELATED TO THE FINANCIAL SECTOR**

**ARTICLE 91.** Regime of the acts and contracts of the Central de Inversiones SA The Central de Inversiones SA CISA will maintain its character as an indirect mixed economy company of the national order, will have a single nature and will be subject in the execution of all its acts and contracts to the private law regime that for carrying out the operations of the Financial Institutions Guarantee Fund is contemplated in article 316, paragraph 1 of the Organic Statute of the Financial System.

The legal regime applicable to the employees of Central de Inversiones SA will be the same as that of the workers of the Financial Institutions Guarantee Fund.

**PARAGRAPH 1.** In development of the provisions of the paragraph of article 113 of the Organic Statute of the Financial System, the Central de Inversiones SA CISA may assume the non-fiduciary administration of the assets excluded from the credit establishments referred to in the aforementioned provision, with which a heritage will be formed.

**PARAGRAPH 2°** . The rights and obligations arising under employment contracts or under legal and regulatory relationships that have been concluded or executed before the validity of this law will retain their validity and the acquired rights will be respected, without prejudice to the fact that the current employment relationship with the staff at the service of the Central de Inversiones SA CISA is governed in the future by the provisions of this article, for which purpose the Board of Directors of CISA will adopt the necessary measures.



**PARAGRAPH 3°.** The budget regime of the Central de Inversiones SA, CISA will be the one applicable to mixed economy companies that carry out financial activity.

**ARTICLE 92.** Coordination committee for monitoring the financial system. The Ministry of Finance and Public Credit, the Bank of the Republic, the Banking Superintendence, the Securities Superintendence and the Guarantee Fund of Financial Institutions will meet in a coordination committee to monitor the financial system with the following objectives:

"a) Share relevant information for the exercise of the functions of the entities that comprise it;

b) Promote the homogenization and technical improvement of the means and procedures used by each entity in relation to monitoring the financial system, and

c) Promote in a coordinated manner and in a timely manner the adoption of the actions that correspond to each entity. The National Government will regulate its activities, the way in which the entities will be represented, the frequency of their meetings and other aspects necessary to fulfill its purpose. Likewise, the regulations may establish the possibility of inviting other entities to the committee meetings if in the opinion of its members it is necessary for the fulfillment of its objectives.

**PARAGRAPH.** With the purpose that the Bank of the Republic and the Financial Institutions Guarantee Fund (Fogafín), in the exercise of their functions and for the exclusive fulfillment of their objectives, prepare studies or analyzes on supervised entities or their sectors together. , the Banking and Securities Superintendencies must provide them with the information they deem relevant."

**ARTICLE 93.** [Partially Regulated by National Decree 2066 of 2003](#) , [Partially Regulated by National Decree 2721 of 2003](#) . The obligations owed by public financial institutions in liquidation for taxes and fines in favor of the National Treasury may be extinguished prior to compliance with the procedure and conditions established by the National Government for this purpose.

**ARTICLE 94.** [Regulated by National Decree 1145 of 2003](#) Rediscount of leasing contracts. Authorize the Fund for the Financing of the Agricultural Sector (Finagro), the Institute of Industrial Development SA (IFI), the Financiera de Desarrollo Territorial SA (Findeter), the Financiera Energética Nacional (FEN) and the Foreign Trade Bank (Bancoldex). ), the rediscount of leasing contracts under the terms and conditions established by the National Government.

**ARTICLE 95.** Real estate microcredit. [Repealed by art. 142, Law 1151 of 2007](#) . Real estate microcredit is understood as any financing granted for the acquisition, construction or improvement of real estate, the amount of which does not exceed twenty-five (25) current legal monthly minimum wages (smlmv), with a term of less than five (5) years and an interest rate equivalent to that provided for financing Social Interest Housing (VIS). The value of the property on which this type of financing

falls may not exceed one hundred and thirty-five (135) current legal monthly minimum wages (smlmv).

With the purpose of stimulating real estate microcredit activities, a commission may be charged in accordance with the regulations issued by the National Government, with which the study of the credit operation, the verification of the references of the co-debtors and the collection will be remunerated. specialized obligation. The aforementioned commission will not be considered as interest for the purposes of the provisions of article 68 of Law 45 of 1990.

This operation may be carried out by credit establishments, financial cooperatives, savings and credit cooperatives and multi-active cooperatives with a savings and credit section.

The provisions of this article will not be applicable to credits assumed prior to the validity of this law.

**ARTICLE 96.** [Regulated by National Decree 66 of 2003](#) (section 3) see [Article 69 of Decree 4365 of 2004](#) - (section 3) see [Article 65 of Law 921 of 2004](#) . Coverage of individual long-term housing loans against the increase in the UVR with respect to a specific rate. In order to promote stable conditions in loans intended for housing financing, the National Government, through the Financial Institutions Guarantee Fund (Fogafín), may carry out operations with derivatives with credit establishments, in their capacity as originators. , owners or administrators of portfolio originated by credit establishments or with debtors of long-term individual housing loans, event in which the creditor credit establishment will act as agent for the administration and execution of the operations, in order to provide coverage against the risk of variation of the UVR with respect to a certain rate, to debtors of long-term individual housing loans.

The National Government will regulate the general aspects of coverage, the rate agreed in the contracts, the way in which debtors will be able to access the mechanism, aspects related to its operation and other aspects inherent to the figure.

Said coverage will be offered with respect to individual long-term housing loans that have been granted as of September 1, 2002, which do not exceed one hundred thirty (130) current legal monthly minimum wages and with respect to homes whose value does not exceed three hundred twenty-three (323) current legal monthly minimum wages. Coverage will be offered during the two years following the validity of this rule for the first 40,000 credits granted. The coverage will be in force for the life of the housing loan and in no case may it exceed fifteen (15) years.

The resources required to provide coverage, including the costs incurred by the Financial Institutions Guarantee Fund (Fogafín), must be budgeted by the National Government and will be managed in a special account that will be managed by the Financial Institutions Guarantee Fund. Financial Institutions (Fogafín).

**PARAGRAPH.** Regulated by National Decree 1269 of 2003 Maintain in the Reserve Fund for the Stabilization of the Mortgage Portfolio (FRECH) created by article 48 of Law 546 of 1999 a subaccount worth fifty billion pesos (\$50,000,000,000) for the purposes of this article.

**ARTICLE 97.** Article 98 of Law 510 of 1999 will read as follows:

**ARTICLE 98.** The Banking Superintendency may affiliate with the following organizations: Association of Banking Supervisors of the Americas, "ASBA"; Center for Monetary Studies of Latin America "CEMLA"; Association of Insurance Superintendents of Latin America, "ASSAL"; International Association of Insurance Supervisors, "IAIS"; International Association of Pension Fund Supervision Organizations, "AIOS", or those that act in its place, for which it may pay the membership and support fees.

**ARTICLE 98.** Article 34 of Law 454 of 1998 will read as follows:

**ARTICLE 34.** Entities subject to its action. The President of the Republic will exercise, through the Superintendency of the Solidarity Economy, the inspection, surveillance and control of the cooperatives and organizations of the Solidarity Economy that he determines through a general act, which are not subject to the specialized supervision of the State. In the case of multi-active or comprehensive savings and credit cooperatives with a savings and credit section, the functions will be assumed by this Superintendency, through the establishment of a delegation specialized in financial supervision, which will receive technological assistance, technical advice and training of the human resources of the Banking Superintendence.

For the effective exercise of his functions, as well as the objectives of supervision, control and surveillance assigned by the Political Constitution and the laws, the Superintendent of the Solidarity Economy will have the powers provided for the Banking Superintendent, in what is applicable to the entities subject to its surveillance. Consequently, the takeover regime provided for in the Organic Statute of the Financial System applies to entities subject to the inspection, control and surveillance of the Superintendency of Solidarity Economy in what is pertinent in accordance with the regulations that for this purpose. issued by the National Government.

**ARTICLE 99.** Article 37 of Law 454 of 1998 will read as follows:

**ARTICLE 37.** Income. The resources necessary to cover the operating and investment expenses required by the Superintendency of the Solidarity Economy will come from the following concepts:

1. Contribution rate. It corresponds to the contributions paid by the supervised entities and will be required by the Superintendent of the Solidarity Economy.

For these purposes, the Superintendent of the Solidarity Economy must, on February 1 and August 1 of each year, or before, require the aforementioned entities to pay the contribution. The management and

administration of these resources will be the responsibility of the Superintendency of the Solidarity Economy.

The amount of the contribution imposed on the supervised entities must be equitably proportional to their respective assets.

2. Other income.

- a) The resources transferred from the General Budget of the Nation;
- b) The resources obtained from the sale of its publications, bidding documents or merit contests, as well as photocopies, certifications or certificates;
- c) The contributions, subsidies or donations received for the fulfillment of its purposes;
- d) The fees received for leasing its assets;
- e) The resources coming from the services provided by the entity;
- f) Resources originated from the sale or lease of information systems and computer programs designed and developed by the entity;
- g) The interests, returns and other benefits received from the management of its own resources;
- h) Other income that is recognized by law."

**ARTICLE 100.** The [first](#) paragraph of article 39 of Law 454 will read as follows:

**PARAGRAPH 1.** In accordance with the provisions of article 335 of the Political Constitution, the Superintendency in charge of monitoring the offending entity will advance the precautionary measures established in numeral 1 of article 108 of the Organic Statute of the Financial System with respect to entities that carry out financial activity. without having received the pertinent authorization, without prejudice to the provisions of article 314 of Law 599 of 2000, or the rule that modifies or adds it.

**ARTICLE 101 .** Add article [39](#) of Law 454 of 1998 with the following paragraph:

**PARAGRAPH 2°.** Savings and credit cooperatives and multi-active cooperatives with a savings and credit section must establish and maintain a liquidity fund whose amount, characteristics and other elements necessary for its operation will be determined by the National Government.

**ARTICLE 102 .** Article [40](#) of Law 454 of 1998 is modified, which will read as follows:

**ARTICLE 40.** Financial cooperatives. Financial cooperatives are specialized cooperative organizations whose main function is to carry out financial activity, their legal nature is governed by the provisions of Law 79 of 1988; The operations they carry out will be governed by the

provisions of this law, the Organic Statute of the Financial System and other regulations that apply to them.

Financial cooperatives are subject to the control, inspection and surveillance of the Banking Superintendency and for all purposes are credit establishments.

To carry out the operations of financial cooperatives, prior and express authorization in this regard is required from the Banking Superintendence, an entity that will issue it only after compliance with the following requirements:

- a) Demonstrate to the Banking Superintendency experience of no less than three (3) years in the exercise of financial activity with associates such as a savings and credit cooperative or multi-active or comprehensive with a savings and credit section, in a manner adjusted to legal provisions. and statutory;
- b) Prove the amount of minimum social contributions required for this type of entity.

In any case, prior to authorization, the Banking Superintendence will verify, through any investigation it deems pertinent, the financial solvency of the entity, its suitability and that of its administrators.

**PARAGRAPH 1.** The Banking Superintendence may establish adjustment plans for the conversion into financial cooperatives of the cooperatives that are currently subject to its supervision. Within these plans, this surveillance and control body may order the suspension of new deposits with third parties, and establish commitments so that the entities adopt the parameters aimed at achieving the requirements indicated in the previous article.

**PARAGRAPH 2°.** In the event that any of the cooperatives that are under the supervision and control of that Superintendency desist from their conversion into a financial cooperative or fail to comply with the adjustment plan referred to in the previous paragraph, they must proceed to adopt mechanisms aimed at return of money to third parties within a period of no more than one year, extendable by the Banking Superintendency, under penalty of any applicable sanctions. Once these mechanisms are adopted, they will be subject to the surveillance and control of the Superintendency of the Solidarity Economy."

**ARTICLE 103 .** Article [43](#) of Law 454 of 1998, modified by article 113 of Law 510 of 1999, will read as follows:

**ARTICLE 43.** In accordance with the provisions of paragraph 5 of article 108 of the Organic Statute of the Financial System, the word savings may only be used by cooperatives that have been authorized to carry out financial activity and other entities authorized by the law to capture savings, and may not refer in any case to the contributions of the members.

Cooperatives that carry out financial activity must duly inform those interested in joining the entity about the rights and duties inherent to

membership, as well as the characteristics of the contributions, distinguishing them from savings deposits.

The Superintendency of the Solidarity Economy and the Banking Superintendency will issue the necessary instructions for compliance with this standard.

**PARAGRAPH.** The provisions of this article are understood without prejudice to the rules that regulate the housing subsidy."

**ARTICLE 104 .** [Partially regulated by National Decree 867 of 2003](#) Add the following text as [a paragraph](#) of article 45 of Law 454 of 1998.

**PARAGRAPH.** The split referred to in paragraph 1 of this article may be used for the creation of a savings and credit cooperative or financial cooperative, which will not be subject to the provisions of articles 33 first paragraph, 50 and 92 second paragraph of the Law 79 of 1988 in the terms established by the National Government. The members of the cooperative that gave rise to the cooperative thus constituted may use the services of the savings and credit or financial cooperative, as well as the members of other cooperatives that participate in its formation. In the latter case, the decisions will be adopted as provided in article 96 of Law 79 of 1988.

**ARTICLE 105 .** Article [46](#) of Law 454 of 1998 will read as follows:

**ARTICLE 46.** Multi-active and comprehensive cooperatives with a savings and credit section that are made up only of members who are or have been labor-related to the same public or private entity will not be required to specialize.

**ARTICLE 106 .** Paragraph [1](#) of article 48 of Law 454 of 1998 will read as follows:

**PARAGRAPH 1.** The total capital investments of financial cooperatives may not exceed one hundred percent (100%) of their social contributions and equity reserves, excluding fixed assets without valuations and discounting accumulated losses. In any case, with these investments, cooperatives must not distort their service purpose or the non-profit nature of their activity. If that purpose does not exist, the entity must dispose of the respective investment.

**ARTICLE 107 .** Paragraph [1](#) of article 50 of Law 454 of 1998 will read as follows:

**PARAGRAPH 1.** All capital investments of savings and credit cooperatives and savings and credit sections of multi-active or comprehensive cooperatives may not exceed one hundred percent (100%) of their social contributions and equity reserves, excluding fixed assets without valuations and accumulated losses discounted. In any case, with these investments, cooperatives must not distort their service purpose or the non-profit nature of their activity. If that purpose does not exist, the entity must dispose of the respective investment.

**ARTICLE 108** . Numeral **1** of article 51 of Law 454 of 1998 will read as follows:

1. Tax Prerogatives. For the convenient and effective achievement of its objectives, the Guarantee Fund of Cooperative Entities will enjoy the following prerogatives:

- a) For all tax purposes, the Fund will be considered a non-profit entity;
- b) Exemption from stamp duty, registration and annotation and national taxes, other than sales tax, as established in article 482 of Decree 624 of 1989 (Tax Statute), not transferred to territorial entities, and
- c) Exemption from forced investments.

**ARTICLE 109** . Article **61** of Law 454 of 1998 will read as follows:

**ARTICLE 61.** Operations with associates, administrators, members of the supervisory boards and their relatives. Credit operations carried out with the following persons or entities will require a number of favorable votes, which in no case will be less than four fifths (4/5) of the composition of the respective Board of Directors of the cooperatives with financial activity:

- 1. Associates holding five percent (5%) or more of the social contributions.
- 2. Members of the boards of directors.
- 3. Members of the supervisory board.
- 4. Legal Representatives.
- 5. Legal entities of which the above are administrators or members of the supervisory board.
- 6. Spouses and relatives up to the second degree of consanguinity, second degree of affinity and first degree of civil relationship of the persons indicated in the previous paragraphs.

The minutes of the corresponding meeting will also record compliance with the rules on limits on granting credit or maximum debt limits or risk concentration in force on the date of approval of the operation, in those entities. obliged to comply with these requirements.

In these operations, conditions different from those generally used by the entity with its associates may not be agreed upon, depending on the type of operation, except for those concluded to meet health, education, housing and transportation needs in accordance with the regulations established for such purposes. effect previously determined by the board of directors.

The members of the Board of Directors who approve operations under conditions contrary to the legal and statutory provisions on the matter will be personally and administratively responsible.

**ARTICLE 110** . The entities that, in development of the final part of the second paragraph of article 72 of Law 79 of 1988, directly provide welfare, assistance and solidarity services, may create a cooperative that manages the products related to such purposes, which will not be subject to the provisions provided for in articles 33 first paragraph, 50 and 92 second paragraph of Law 79 of 1988 in the terms established by the National Government. The members of the cooperative that gave rise to the cooperative thus formed may use the services of the new cooperative, as well as the members of other cooperatives that participate in its formation. In the latter case, the decisions will be adopted as provided in article 96 of Law 79 of 1988.

**ARTICLE 111** . [Added by art. 86, Law 1328 of 2009.](#) Funeral services, regardless of their contracting and payment method, do not constitute an insurance activity, through which a person, or a specific group of people, acquires the right to receive funeral-type services in kind, paying in a timely manner the installments set in advance.

**PARAGRAPH 1.** For the purposes of the provisions of this article, funeral services are understood to be the set of activities organized to carry out funeral services; They may consist of basic services (preparation of the body, obtaining burial or cremation licenses, transfer of the body, provision of a hearse for the service, funeral casket, viewing room and civil and ecclesiastical procedures), complementary services (floral arrangements, notices murals and press, transportation of companions, musical accompaniment) and final destination (burial or cremation of the body).

**PARAGRAPH 2°.** Companies that currently offer contracts for the provision of funeral services, in their different modalities, will have a maximum period of two (2) years, counted from the entry into force of this law, to adapt to the provisions of this law. article.

**PARAGRAPH 3°.** [Added by art. 86, Law 1328 of 2009.](#)

**ARTICLE 112** . Affiliation with international regulatory organizations or associations to supervise the securities market. Following a favorable opinion from the Ministry of Finance and Public Credit and the incorporation of the corresponding budget item, the Securities Superintendency may join international associations of regulatory or supervisory organizations, except when this implies the assumption of commitments inherent to public treaties.

Once the requirements established in the previous section have been met, the Securities Superintendency may, for the best performance of its functions, affiliate with the International Organization of Securities Commissions (IOSCO), and those other organizations that correspond to what is established in the previous section. The Superintendency may pay the membership and support fees to the organizations to which it decides to affiliate.

**ARTICLE 113** . Add the following paragraph to numeral [3](#) of article 279 of the Organic Statute of the financial system.



"However, if as a result of a merger process, transfer of assets, liabilities and contracts, acquisition or organization becomes necessary, the Bank's purpose will be extended to the operations of the entity that, in addition to this, participates in the respective process, if there is room for it. Consequently, it may carry out rediscount operations to finance the national industry."

**ARTICLE 114** . Repeals and validity. This law repeals the expression "with the exception of insurance intermediaries" provided for in the first paragraph of article 67 and in numeral 1 of article 68 , numeral 6 of article 151, article 190 , paragraph of numeral 2 of the article 317, the fourth paragraph of numeral 2 of article 303, literal h) of numeral 5 and literal b) of numeral 6 of article 326 of the Organic Statute of the Financial System. Likewise, articles 4 and 5 of Law 358 of 1997 and the first paragraph of article 41 of Law 454 of 1998 are repealed. This law takes effect from the date of its promulgation.

**THE PRESIDENT OF THE HONORABLE SENATE OF THE  
REPUBLIC,**

**LUIS ALFREDO RAMOS BOTERO.**

**THE SECRETARY GENERAL OF THE HONORABLE SENATE OF  
THE REPUBLIC,**

**EMILIO RAMÓN OTERO DAJUD.**

**THE PRESIDENT OF THE HONORABLE HOUSE OF  
REPRESENTATIVES,**

**WILLIAM VÉLEZ MESA.**

**THE SECRETARY GENERAL OF THE HONORABLE HOUSE OF  
REPRESENTATIVES,**

**ANGELINO LIZCANO RIVERA.**

**REPUBLIC OF COLOMBIA - NATIONAL GOVERNMENT**

**PUBLISH AND RUN.**

**Given in Bogotá, DC, on the 14th day of January 2003.**

**ÁLVARO URIBE VÉLEZ**

**THE MINISTER OF FINANCE AND PUBLIC CREDIT,**

**ROBERTO JUNGUITO BONNET.**

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