

Law for Banking Sector Institutions



The Decree with Range, Value and Force of Law of the Partial Legal Reform of the Law for Banking Sector Institutions, published on March 2nd, 2011 in Official Gazette No 39627 was derogated in Official Gazette of the Bolivarian Republic of Venezuela No 40557 (hereinafter referred to as 'Executive decree') on December 8th, 2014. This decree includes the following most relevant changes, among others:

General Provisions, Definitions and Principles

I. Private and Public Banking Sector

This Executive decree states that Municipal Credit Institutes shall not only comply with the provisions of the hereby Executive decree, but also with the legislation enacted by the Superintendency of Banking Institutions (hereinafter SUDEBAN) and the ones established by the Central Bank of Venezuela (referring to Legal reserve and interest rates). Nevertheless, in terms of administration, the aforementioned institutions will comply with the corresponding municipal legislation (Article 3).

Official Gazette No
40557, dated
December 8th, 2014

II. Activities requiring authorization

It is stated that natural and legal individuals that generally grant credit or deduce cash or invest with their own funds, instead of using third parties' do not need authorization to perform this activity. Nevertheless, they shall not be able to collect interest on interest. (Article 7)

Incorporation of Banking Institutions

III. Form of Incorporation

Banking Sector Institutions shall be incorporated as a public limited company, having 10 shareholders minimum including sponsors, with one type registered shares which shall not be convertible to the bearer. (Article 9)

IV. Specialized Banking Institutions

The development banks are included within this law aiming at fostering, financing and promoting social and industrial projects of the country as well as economy and social activities for productive sectors. The minimum capital will be BS 150 million, being subscribed by the Bolivarian Republic of Venezuela through National Public Organizations and its Decentralized Entities. Furthermore, private sector shall be able to participate in this capital, even though it cannot have a majority. Before this amendment, only universal and micro finance banks were considered in this law. (Article 12)

V. Other non- banking institutions

'The transportation of currency and monetary instruments', as well as collection services, automatic teller machine, accounting and computer services and finance leases are omitted in companies defined as 'non-banking institutions', ruled by the SUDEBAN, remaining the issuing companies that issue or manage card, general warehouses, reciprocal guarantee societies and national funds of reciprocal guarantee. (Article 15)

Board Committee

VI. Responsibilities and duties

The Board committee or its equivalent entity shall not be comprised by less than seven main directors together with their corresponding alternate members. From this number, a third (1/3) of the main directors and alternate members shall not be able to be direct or indirect banking institution shareholders. (Article 30)

Regarding responsibilities and duties of the board committee, without prejudice of the legal and statutory obligation compliance, the approval of lending and borrowing operations was modified. Before this amendment, the Board Committee had to approve lending and borrowing transactions exceeding 2% of the equity. Currently, the Executive decree only requires the 'lending' operation approval exceeding 5% of the institution equity. (Article 30)

Capital, Reserves and Profits

VII. SHARES

SUDEBAN shall be able to authorize the existence of several share types such as reduced vote shares, a share special type and preferred shares, as well as obligations debentures. (Article 35)

All natural or legal person directly or indirectly acquiring shares in a banking institution for a ten percent (10%) amount of the capital stock in twelve (12) months, or reaching a ten percent (10%) participation or more with those purchases is obliged to provide SUDEBAN with the information it requires to identify his/her main economic activities and the detailed information of his/her assets. Before the amendment, this information was only required if stocks from a banking institution exceeding 1% out of the capital were acquired or whether it had 3% of the capital interest. (Article 35)

VIII. Prohibition of participation on banking institution capital stock

A natural or legal person with a direct or indirect share exceeding 20% of the capital stock in other institution of the National Financial System or with voting power in the shareholder committee shall not be able to be a banking institution shareholder. In the previous amendment, they were not able to be shareholders when having an interest exceeding 5%.

Operations

IX. Credits and due dates

For the purpose of this Executive Decree, it is considered as a consumer credit short- term revolving funds conducted by banking entities and granted by any other means to the people. This credit intends to carry out direct purchase operations in companies or paying service within the national territory and abroad until 15,000 T.U. This amount can be recovered through consecutive fee payments, obtaining both interest and principal payment. In the previous amendment, the maximum amount established was 7.500 TU (Article 58).

X. Involvement criteria

SUDEBAN shall be able to establish that there is a decision maker or management unit if a banking sector entity in relation to other societies or companies or whether natural or legal people exert:

1. Direct or Indirect participation equivalent or exceeding fifty percent (50%) of their capital or equity.
2. Control equivalent or exceeding a third part (1/3) of their head or management organism votes.

3. Control on their management decision organizations through contractual or statutory terms or any other type.

Furthermore, there is a significant influence when a banking entity can highly affect operating or financing policies of other companies and vice versa. Likewise, there is a significant influence when a banking entity, regarding other societies or companies, or when natural or legal individuals in relation to some of them has between twenty (20%) and fifty percent (50%) direct or indirect participation on the capital stock. (Article 64)

Trusts, Orders, Fees and other responsibilities

XI. Authorized Institution

Development and Micro Finance Banks shall be authorized by the SUDEBAN to work as trustees, conducting orders, fees and some other responsibilities when necessary to comply with their operations. (Article 71)

Accounting, Information and Advertising

XII. Biannual Report

The biannual report, demanded in Article 79 of the Executive Decree, must incorporate any other required information including those Business, Development, Strategic and any other type Plans, provision and event requirements in the equity in the reported halfyear period. (Article 79)

Audit

XIII. External Audit

The external audit firm period is modified, increasing up until 5 year maximum continuous period and it can be rehired after three (3) years of finishing the aforementioned period.

Moreover, the external audit firm selection conducted by at least 20% of the active banking institution user is eliminated. Currently, external audit firm shall be designated from a shortlist of three candidates that shall be presented by the Board Committee to the General Shareholders' Meeting.

SUDEBAN shall be able to order banking institutions to hire special audits. Additionally, it shall be able to hire those audits when necessary directly, being responsible for them the banking sector institutions.

The external auditor shall not be able to render any other service to the institution within the three years subsequent to the end of the working period.

The change of an independent auditing firm auditor shall not be mandatory for branches of foreign banking entities established in the country. (Article 81)

XIV. Monitoring the Superintendency of Banking Institutions

The Superintendency of Banking Institutions shall be able to call external auditors to hold confidential meetings with its personnel, without the supervised entity employee or director participation.

The external auditors shall provide the Superintendency of Banking Institutions all required information, including allowing their work paper review. (Article 82)

XV. External Auditor Responsibilities

The external auditor shall have the responsibilities determined in this Executive Decree, as well as provisions enacted by the SUDEBAN for this purpose. Article 84 of the Executive Decree replaced aspects included in the previous Executive Decree regarding the obligation of providing an opinion and informing mainly about: a) the financial statement accuracy and truthfulness, accounting systems and their supporting documents , b) sufficiency and effectivity of internal control systems, the structure and management procedures of the audited entity, c) assessment of the internal control of infrastructure, technology platform and information systems, among other aspects. (Article 84)

Asset Quality, Restrictions and Prohibitions

XVI. Operation Limits

Banking Institutions shall conduct lending and contingency operations with a natural or legal person for an amount that does not exceed 10% of their equity total and, if only represents an individual, it cannot exceed 20%. The aforementioned operations are allowed by the current Executive Decree and the SUDEBAN Legislations. These limits shall be increased up until 10% whether the exceeded amount corresponds to guaranteed obligations from national or international banks with renowned solvency or proper guaranteed admitted as such by the regulation issued by SUDEBAN.

According to the aforementioned information, prior limits established for liabilities operations are eliminated. (Article 94)

XVII. Operating, Financial, Preventive and Management General Prohibitions

Deactivating saving accounts, current accounts and other similar data-collection instruments due to the lack of deposit or money withdrawals in a less than twelve (12) month period by the banking institutions is forbidden, with the exception of accounts opened as the result of a State order for retired people payment and similar payments. Before the amendment, the Executive Decree did not establish a deadline for saving account, current account and some other similar data-collection instrument deactivation. (Article 97)

Furthermore, number 14 of Article 99 of the former Executive Decree forbidding banking institutions from retaining assets exceeding 15% of the National Bank Sector asset total is omitted.

Financial Economic Regime

XVIII. Supervised institution contributions

Contributions that institutions must deposit under SUDEBAN supervision shall be determined by this entity through confidential regulation, with the prior approval of the Finance Minister as follows:

I. The banking Institution contribution shall comprise between zero point four per each thousand as a minimum amount and a zero point eight per each thousand as the maximum amount of the asset average of the last biannual end period of each institution.

Before the amendment, the Executive Decree established a zero point six per a thousand from the asset average of the last biannual end of each institution.

2. Non-financial institutions or individuals within its control shall biannually contribute with up until 2000 TU maximum. (Article 168)

Responsibilities of the Superintendency of the Banking sector Institutions

XIX. Inspections and Reports

SUDEBAN shall conduct at least an annual general inspection in each banking institutions. In the previous amendments, the Executive Decree established a biannual general inspection. (Article 177)

Infraction and Sanction

XX. Exercising illegal activities

Natural or legal individuals working as financial, credit or exchange mediators and generally collecting client resources or carrying out activities only intended for the institutions ruled by SUDEBAN without the required authorization shall be sanctioned with eight to twelve years in prison. Before this amendment, the Executive Decree established that natural or legal individuals who were financial mediators without the required authorization would be sanctioned with 1% or 3% of their capital. (Article 198)

Public Banking Institutions

The main aspects included within the Executive decree related to public banking institutions are summarized as follows:

I. Disqualifications

Prohibitions stated in number 3 and 10 of Article 30 shall not be applicable to the public banking institutions.

II. Reporting application Obligation

The disqualification established in number 1 of article 33 shall not be applicable to the public banking institutions.

III. Prohibition of participation on banking institution capital stock

Article 37 Provisions shall not be applicable to the public bank institution. This article focuses on who can be able to be a bank institution shareholder, when having direct or indirect participations on other National Financial System Institutions, how a financial group is created and some other aspects.

IV. Social Contribution

Public Banking Institutions shall not be obliged to pay social contribution contemplated in article 46, which is equivalent to 5% of the 'Gross Profit or Loss Before Tax', due to the compliance with the social responsibility.

V. Trustee Prohibitions

Trustee Institutions shall not work as trustee or trustor with natural or legal individuals related to the corresponding banking institution, in conformity with this Executive Decree, with the exception of Banks owned by the Bolivarian Republic of Venezuela through National Public Organizations and its Decentralized Entities. (Article 74)

VI. External Audit

The external audit firm selection procedure, as stated in article 81, shall be applied as a supplementary legislation for public bank institution in conformity with the Organic Law of the Comptroller General and the Fiscal Control system.

VII. Internal Auditor Responsibility

The financial statement entering, as stated in article 83, shall not be applicable to the internal auditors of public banking institutions or those belonging to the Venezuelan State. The reason for this is that internal auditor responsibilities are specified in the Organic Law of the Comptroller General of the Republic, the National Fiscal Control System, and the Organic Law of Public Sector Financial Administration or in those Laws regulating the aforementioned issues. (Article 83)

VIII. Prohibition of involved individual operation

Percentage limitations established in Article 96 regarding prohibition of conducting operations with involved individuals shall not be applicable to those legal entities whose capital belongs to the Bolivarian Republic of Venezuela in more than a fifty percent (50%).

IX. Equity

Public Banking Institutions and those created by the State with responsibilities on the micro finance system shall not be obliged to pay a special contribution to the Fund of Social Protection for the Bank Deposits.

X. Contributions of Supervised Institutions-SUDEBAN

Public Bank Institutions shall be exempted of paying the contribution to SUDEBAN, as stated in article 168 of the herein explained Executive Decree.

Transitory provisions

I. Fifth

The National Financial Unit, currently attached to the SUDEBAN, shall execute its activities in this organization until adjusted to legal nature, in compliance with the Organic Law against Organized Crime and Terrorism Financing, formally starting its operations.

Final Provisions

II. Second

SUDEBAN shall supervise banking institutions regarding the compliance with the percentage amount that shall be used from its loan portfolios to the intended mortgage portfolio stated in the Law on House and Housing Benefits. Additionally, it shall apply sanctions due to the breaching of this obligation through the administrative procedure established in the herein explained Decree.

Validity

The current Decree with Range, Value and Force of Law is effective from its publishing date in Official Gazette of the Bolivarian Republic of Venezuela No 40557 dated December 8th, 2014.

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