

TRUST FORMATION IN PANAMA

ABOGADOS-ATTORNEYS AT LAW



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ESTABLISHED 1920



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I N D E X

	Page
<p>LAW No. 1 (of January 5, 1984) Whereby the Trust in Panama is regulated and other provisions are adopted</p>	3
<p>EXECUTIVE DECREE No. 16 (of October 3, 1984) Whereby Law No.1 of January 5, 1984, governing the Trust Business is implemented as amended by Executive Decree No. 53 of December 30, 1985 (Official Gazette No. 20,165 of October 18, 1984.</p>	13



Law N°1
(of January 5, 1984)

Whereby the Trust in Panama is regulated and other provisions are adopted

THE NATIONAL LEGISLATIVE COUNCIL

Decrees:

- Article 1.** The trust is a juridical act whereby certain property is transferred by a person named the settlor to a person named the trustee, for the purpose of managing or disposing thereof in favor a cestui que trust or beneficiary, who may be the settlor himself.
- Public Law organizations may hold their own property in trust and act as trustees thereof for the development of their purposes, by statement made with the formalities of this Law.
- Article 2.** The Trust may be created upon property of any kind, present or future. The settlor or a third party may add properties to the trust after the creation thereof, with the approval of the trustee.
- Article 3.** The trust may be created upon specific properties or upon all or part of an estate.
- Article 4.** The intention to create a trust must be expressly declared in writing. Consequently, verbal, constructive or implied trusts shall not be valid.
- Article 5.** A trust may be created for any purpose not in conflict with morals, the law or public order.
- Article 6.** The trust may be pure and simple or be subject to a condition or term.
- Article 7.** The trust shall be irrevocable unless otherwise expressly provided in the trust deed.
- Article 8.** Every trust shall be deemed to entail a remuneration, unless it is expressly stated in the trust deed that the trustee shall not receive remuneration for his services.
The remuneration of the trustee shall be as set forth in the trust deed, and in the absence thereof, shall be equal to that usually paid in the domicile where the trust is created.
- Article 9.** The trust deed must contain:

1. The complete and clear designation of the settlor, the trustee and the beneficiary. In the case of future beneficiaries or classes of beneficiaries, sufficient circumstances must be given for their proper identification.
2. The sufficient designation of the substitute trustees or beneficiaries, if any.
3. The description of the property or of the estate or portion thereof on which it is created.
4. The express declaration of the intention to create a trust.
5. The power and duties of the trustee.
6. The prohibitions and limitations imposed upon the trustee in the exercise of the trust.
7. The rules for the accumulation, distribution or disposal of the properties, incomes and proceeds from the properties in trust.
8. The place and date where the trust is created.
9. The designation of a Registered Agent in the Republic of Panama, who shall be an attorney or law firm, who must countersign the trust deed.
10. The domicile of the trust in the Republic of Panama.
11. The express declaration that the trust is created in accordance with the laws of the Republic of Panama.

The trust deed might further contain such clauses as the settlor or the trustee may wish to include which are not contrary to morals, the laws or public order.

When a trust is created by private document, the signatures of the settlor and the trustee, or their attorneys for the creation thereof, must be authenticated by a Panamanian Notary Public.

Article 10. The trust inter vivos may be created by a public or private deed.

A trust intended to have effect after the death of the settlor, must be created by a will. It may also be created by private deed, without the formalities of a will in the event that the trustee is a person authorized to engage in the trust business.

Article 11. The trust on real property situated in the Republic of Panama must be created by public deed.

Article 12. The trust created without the respective formalities established in Articles 9, 10 and 11 of this Law shall be void.

The trust created without a purpose or cause or lacking a lawful purpose or cause, or entered into by an incompetent person shall likewise be void.

The nullity of one or more clauses of the trust deed shall not render the trust ineffective, except if as consequence of such nullity, compliance thereof becomes impossible.

Article 13. The trust created on real property situated in the Republic of Panama shall affect the rights of third parties, only as to said property, as of the date of registration of the Trust deed in the Public Register.

In all other cases, the trust shall be effective against the rights of third parties, only as of the date on which the signatures of the settlor and the trustee, or of their attorney-in-fact, have been authenticated by a Panamanian Notary Public.

Article 14. The transfer in trust, of real property situated in the Republic of Panama, shall be made by recording same at the Public Register in the name of the trustee.

Article 15. The assets of the trust shall constitute a separate estate from the personal assets of the trustee for all legal purposes, and cannot be attached or embargoed, except for obligations incurred into or damages caused by the performance of the trust, or by third parties when the property has been transferred or withheld fraudulently and in detriment of their rights.

Consequently, the trust shall pay separately the taxes, assessments and other liens on the property in trust.

Paragraph: In trusts where the trustee is the Caja de Ahorros and the beneficiaries are minors, the property in trust, as well as the proceeds thereof, in addition to not being subject to attachment or embargo, may not be pursued, except when decreed by a final judgement or a judgement not subject to appeal.

Article 16. The settlor may appoint substitutes to replace the beneficiary, successive or not. In the case of revocable trusts, the beneficiary may be replaced or new beneficiaries

named, at any time, by the settlor or by a person authorized by him to make the replacement or appointment, with the same formalities with which the trust deed was executed.

Article 17. Out of the profits obtained from the funds in trust by Government Banks, a percentage of the profits from the funds held in trust by Government Banks authorized by the Banking Commission shall be allotted to the Electoral Tribunal, to be used by it for the registration of Political Parties during the second semester of 1983.

Article 18. The designation of one or more non-existent beneficiaries, or of a class of beneficiaries, which are ascertainable, shall be effective provided one or more thereof shall come into existence or be ascertained during the life of the trust.

Article 19. Natural or juridical persons may act as trustees. Public Law persons may transfer or hold property in trust, by a declaration made with the formalities of this law.

Article 20. The settlor may appoint one or more trustees. Unless otherwise provided by the Trust Deed, the Trustees shall act jointly, if two are named; and by a majority, if more than two are named.

Article 21. The settlor may appoint in the Trust Deed one or more substitutes to replace the trustee. In the case of revocable trusts the trustee may be replaced and new trustees named at any time by the settlor or by the person authorized by him to make the replacement or appointment, with the same formalities with which the trust was created.

Article 22. In the event of death, incapacity, removal or resignation of a trustee without substitute, the competent Judge may appoint a substitute at the request of the trustee, the settlor or, in the absence the latter at the request of the beneficiary or beneficiaries or the Office of the Public Attorney if the beneficiary or beneficiaries are under age or incompetent, and shall order the transfer to the substitute so appointed of the property in trust.

Said application shall be made not later than three (3) years from the date on which a trustee was lacking.

Upon expiration of such period, the trust shall be extinguished unless such application was timely made.

Article 23. The person appointed as trustee shall be under no obligation to accept the appointment.

The duties of the trustee shall begin upon his acceptance of the appointment in writing.

Article 24. The trustee may resign to his office if it is expressly so authorized by the trust deed.

In the absence of express authorization, he may resign his office for just cause with the approval of the Judge; but such resignation shall only become effective from the time on which a substitute trustee has been appointed and the latter has accepted the appointment.

In this case the provisions of Article 21 will apply.

Article 25. The trustee shall be entitled to all actions and rights appertaining to a fee simple estate, but subject to the purposes of the trust and to the conditions and obligations imposed on him by Law and by the trust deed.

Article 26. The trustee shall dispose of the property in trust in accordance with the provisions of the trust deed.

Article 27. The trustee shall be liable for the loses or deterioration of the property in trust resulting from his failure to exercise the care of a good pater familias in the execution thereof.

The trust deed may establish limitations to the liability of the trustee; but such limitations shall not, under any circumstances, release the trustee from liability for the losses or damages caused by gross negligence or fraud.

When there are several trustees, they shall be severally liable for the execution of the trust, unless otherwise provided in the trust deed.

Article 28. The trustee shall render account of his performance as established in the trust deed; and if nothing is therein provided in this respect, he shall render an account to the settlor or to the existing beneficiaries, at least once a year and upon expiration of the trust.

If no objection is made to the account within the period established in the trust deed and, in the absence thereof, within a period of ninety (90) days from the receipt thereof, the account shall be deemed tacitly approved.

Upon express or tacit approval of the account, the trustee shall be relieved of all liability towards the settlor and the present or future beneficiaries for all the events which occurred during the period of the account and which are clearly evidenced from a comparative examination of the account and the trust deed. However, such approval shall not relieve the trustee from liability for damages caused by his negligence or fraud in the management of the trust.

Article 29. The trustee shall be under no obligation to give special security for good management in favor of settlor or the beneficiary, unless so provided by the trust deed.

This provision is without prejudice of the guarantees required from persons authorized to engage in the trust business.

Anyone who might sustain damages from the execution of the trust may request the Judge to order the trustee to give security as a precautionary measure.

Article 30. The trustee might be removed by the Court through summary proceedings:

- 1) When his interests are incompatible with the interests of the beneficiary or the settlor.
- 2) If he manages the properties in trust without the diligence of a good pater familias.
- 3) If he should be sentenced for an offense against property or the public trust.
- 4) From the moment he is incapacitated or unable to execute the trust.
- 5) Due to his insolvency, bankruptcy or insolvency proceedings, or executive intervention in the case of a person authorized to engage in the trust business.

Article 31. The settlor, the beneficiary or beneficiaries, and the representative of the Office of the Public Attorney in the defense of minors or incompetent persons, or in the interests of morals or the Law, may request the Court to remove the trustee.

Article 32. In the event the trustee should be replaced by a substitute, the properties in trust shall be transferred by the outgoing trustee to the substitute, or by resolution of the Judge, in the absence of such transfer, who shall decide in stante and without the necessity of determining what Judge shall handle the proceedings, and upon the filing of the documents evidencing the corresponding circumstances.

An identical procedure shall be applied in the case of dissolution of a juridical person acting as trustee.

Article 33. A trust shall be extinguished:

1. By the fulfillment of the purposes for which it was created;
2. By the impossibility to fulfill its purposes;
3. By the resignation or death of the beneficiary, who has no substitute;
4. By the total loss or extinction of the properties in trust;
5. By the merger into a single person of the character of sole beneficiary and of sole trustee; and
6. For any cause established in the trust deed or in this law.

Article 34. Upon extinction of the trust without a beneficiary to receive the properties subject to the trust and there being no provision in the trust deed as to the disposition of said properties, the trustee must transfer same to the National Treasury in accordance with what the law provides on the matter and the regulations enacted thereon.

Upon compliance thereof, the trustee shall submit his final account for the approval of the competent Judge.

Article 35. The acts for the creation, modification or extinction of a trust, and also the acts for transferring, conveying or encumbering the properties in trust and the proceeds from said properties or any other act thereon, shall be exempt from all taxes, contribution, assessment or encumbrance, provided the trust involves:

1. property situated abroad;
2. money deposited by natural or juridical persons whose income is not from Panamanian sources or taxable in Panama; or
3. shares of stock or securities of any kind, issued by corporations the income whereof is not from Panamanian sources, although such monies, shares of stock or securities are deposited in the Republic of Panama.

Article 36. Until the corresponding law is enacted, the Executive Organ shall regulate the exercise of the Trust business, through the Ministry of Planning and Economic Policy, as regards the requirements, granting of a license, guarantees, penalties and any other conditions to which trust companies, insurance companies, Banks, attorneys and other natural or juridical persons engaged professionally and habitually in this business shall be subject to.

The National Banking Commission shall supervise and look after the proper conduct of the trust business in accordance with the legal provisions thereon in force.

A special Commission appointed by the Executive Organ on the basis of the nominees proposed by the organizations proposing the same, and to be formed by two representatives of the National Bar Association, two from the National Banking Commission, two from the Panama Insurance Association, one from the Banco Nacional de Panama, and one from the Caja de Ahorros, shall prepare a Draft Law regulating the trust business, within a period of no more than six (6) months from the date of its call. The Commission shall be called by the Executive Organ to be constituted within a ninety (90) day period at the latest after the publication of this law.

Paragraph One. The Official Banks may engage in the trust business without the necessity of procuring a licence or of posting security. The security required from natural or juridical persons who engage professionally and habitually in the trust business must be placed at the disposal of the National Banking Commission and deposited with the Banco Nacional de Panama or the Caja de Ahorros.

Paragraph Two. The natural or juridical persons presently engaged in the trust business shall have a maximum of two (2) years, from the effective date of the regulations adopted by the Ministry of Planning and Economic Policy, to comply therewith.

If the requirements set forth in the respective regulations have not been complied with upon the expiration of said persons, such persons cannot continue to engage in the trust business.

Article 37. The trustee and his representatives or employees, the Government institutions authorized by law to inspect or obtain documents relating to trust transactions and their respective officials, as well as persons taking part in said transactions by reason

of their profession or trade, must keep secrecy in connection therewith and comply with the legal provisions thereon in force in the Republic of Panama.

The violation of this provision shall be penalized with internment or imprisonment of up to six (6) months and a fine of up to fifty thousand balboas (B/.50,000.00).

The provisions of this article are without prejudice to the information that must be disclosed to the official authorities and to the inspections which such authorities must make in the manner established by Law.

Article 38. The trusts created in accordance with the laws of the Republic of Panama shall be governed by Panamanian law. However, they may be subject to a foreign law in the performance thereof, if so provided in the trust deed.

The trust, and also the properties thereof, may be transferred or subjected to the laws or jurisdiction of another country, as provided in the trust deed.

Article 39. Trusts created before this Law came into force shall be governed by the laws in force at the time they were created; but they may choose, at any time, to be governed by this law, by written declaration of the settlor, the trustee and the beneficiary.

Article 40. Trusts created pursuant to foreign law may be governed by Panama law, provided that the settlor and the trustee, or only the latter, shall make a statement to that effect, if so authorized by the trust deed, submitting to the substantive requirements and to the formalities established in this law for the creation of a trust.

Article 41. Every controversy regarding which there is no special procedure established in this law, shall be resolved through summary proceedings.

It may be established in the trust deed that any controversy arising from the trust shall be decided by arbitrators or referees, and also the procedure by which they must abide.

In the event no such procedure is established, the rules in that respect contained in the Judicial Code shall apply.

Article 42. Law 17 of February 20, 1941 on trusts is hereby repealed.

Article 43. This law shall come into force from the publication thereof.

BE IT NOTIFIED AND PUBLISHED

Enacted in the City of Panama, on the 5th day of the month of January, 1984.

(sgd.) L.S. Alfonso G.
H.R. PROFESOR LORENZO S. ALFONSO G.
President of the National Legislative Council
(sgd.) Carlos Calzadilla G.
CARLOS CALZADILLA GONZALEZ
Secretary General of the National Legislative Council
NATIONAL EXECUTIVE ORGAN
PRESIDENCY OF THE REPUBLIC
PANAMA, REPUBLIC OF PANAMA, January 5, 1984
(sgd.) R. de la Espriella T.
RICARDO DE LA ESPRIELLA T.
President of the Republic
(sgd.) C. Ozores T.
CARLOS OZORES TYPALDOS
Minister of Government and Justice

(Published in Official Gazette N°19,971 of January 10, 1984)



**EXECUTIVE DECREE No. 16
of October 3, 1984**

Whereby Law No. 1 of January 4, 1984,
governing the Trust Business, is implemented
(as amended by Executive Decree No. 53 of December 30, 1985)

I N D E X

TITLE I

Page

**Preliminary Provisions
CHAPTER I
Scope of Application and Definitions**

A. To whom it applies (Article I).....	35
B. Definitions (Article II).....	35
C. Jurisdiction of Banking Commission (Article III).....	36

**TITLE II
Trust Rules
CHAPTER I**

A. Necessity of License (Article IV).....	36
B. Requirements to obtain License	
1. By natural persons (Article V).....	36
a) Filing application through attorney -at- law	
b) Documents to be filed with application	
c) Filing of \$ 1,000.00 certified check	
2. By juridical persons (Article VI).....	37
a) Filing application through attorney -at- law	
b) Documents to be filed with application	
c) Filing of \$ 1,000.00 certified check	

C.	Time within which License must be granted (Article VII)	38
D.	Time within which requirements must be complied with (Article VIII)	38
E.	Prohibitions	
	1. To the use of the word "Trust" or its equivalent (Article IX)	39
	2. To the granting or registration of Trust Instruments (Article X)	39
	3. Penalties (Article XI)	39
F.	Registration of Trusts (Article XII)	40
G.	Approval of Amendments to Articles of Incorporation (Article XIII)	40

**CHAPTER II
Guaranties**

A.	Necessity to give guaranty (Article XIV)	40
	1. Amount of guaranty	
	2. Kinds of guaranty	
B.	Obligation to issue registered shares (Article XV)	40

**CHAPTER III
Reports and Inspections**

A.	Obligation to furnish reports (Article XVI)	40
B.	Right of Banking Commission to make inspections (Article XVII)	41
C.	Right of Banking Commission to require that steps be taken to correct violations of the Trust Law, to suspend or cancel License and to intervene the Trust Enterprise (Article XVIII)	41

**CHAPTER IV
The Trust Secrecy**

A.	Obligation to preserve it (Article XIX)	41
B.	Necessity of Court order to furnish information, documents or effect inspections (Article XX)	41
C.	Necessity that Court authorization be granted within actions filed in the national territory (Article XXI)	41
D.	Penalties for violating secrecy (Article XXII)	41

**CHAPTER V
Cancellation of Trust License**

A.	When may be cancelled	
	1. On application of Trustee or by order of the Banking Commission (Article XXIII)	42
	2. Obligation of Trust Enterprise to request cancellation (Article XXIV)	42
	3. Time within which it must be cancelled (Article XXV)	42
B.	Application of Article IX when license cancelled (Article XXVI)	43

**CHAPTER VI
Sundry Provisions**

A.	Obligation to keep separate accounts (Article XXVII)	43
B.	Prohibitions applicable to Trust Enterprises (Article XXVIII)	43
C.	Service of Notice of Resolutions issued by Banking Commission (Article XXIX)	43

D.	Recourse against resolutions issued by Banking Commission (Article XXIX)	43
E.	Fine for violation of implementing provisions (Article XXX)	43
	1 . Authority of Banking Commission to impose fine (Article XXXI and XXXII)	44
	2. Fine is without prejudice to civil or criminal liability (Article XXXIII)	44
	3. Obligation of Public Officials to report to Banking Commission of actions filed against Trust Enterprises (Article XXXIV)	44
	4. Compliance by Banking Commission of provisions of Chapter II, Cabinet Decree No. 238 of July 20, 1970 (Article XXXV)	44



**EXECUTIVE DECREE No. 16
(of October 3, 1984)**

**Whereby Law No.1 of January 5, 1984, governing the Trust Business
is implemented as amended by Executive Decree No. 53 of December 30, 1988**

**THE PRESIDENT OF THE REPUBLIC
In the exercise of his legal powers, particularly those set forth in
Article 36 of Law 1 of January 5, 1984**

WHEREAS:

The Trust in Panama is regulated by Law I of January 5, 1984, and other provisions adopted thereby, and

Article 36 of Law 1 of January 5, 1984, empowers the Executive Branch to implement the Trust business and

The necessity and advisability to amend said regulations to adjust same to the development of the Trust activities and the necessities of the Trust business have become evident:

DECREES:

FIRST: The activities to engage in the trust business are hereby implemented.

SECOND: The following Regulations are approved.

**TITLE I
Preliminary Provisions**

**CHAPTER I
Scope of Application and Definitions**

Article 1: These Regulations shall apply to every natural or juridical person who engages professionally and habitually in the Trust business, in or from the Republic of Panama, with the exception of official banks.

Article 2: In applying these Regulations, the following words are understood to mean:

- a) Trust: A juridical act whereby a person called the settlor transfers properties to a person called the trustee, to be managed or disposed of for the benefit of a cestui que trust or beneficiary, who may be the settlor himself.
- b) Settlor: A natural or juridical person who constitutes the trust.
- c) Trustee: A natural or juridical person to whom the property is transferred in order that it carry out the will of the settlor.
- ch) Cestui que trust or beneficiary: A natural or juridical person for whose benefit the trust is constituted.
- d) Trust Company: Banks, insurance companies, attorneys - at - law, and any natural or juridical person who engages professionally and habitually in the trust business with the prior authorization of the Commission.
- e) Commission: The National Banking Commission.

Article 3: The Commission shall supervise and oversee, as provided by the legal provisions by which it is governed, the proper functioning of the trust business in accordance with the Law and these Regulations.

TITLE II Trust Rules

CHAPTER I Authorizations

Article 4: In order for a trust company to engage in the trust business it must procure the prior authorization of the Commission, which shall grant it by issuing the corresponding trust license upon compliance with the requirements set forth in these Regulations. The provisions in this article are without prejudice to obtaining the corresponding commercial license.

Article 5: Every natural person which intends to act as a trust enterprise in or from Panama must file an application before the Commission, through an attorney - at - law, accompanied with the following documents:

- a) Curriculum vitae and documents supporting the professional qualifications of the persons who are to manage the company.

- b) Personal and business references.
- c) Financial statements, duly audited.
- ch) Criminal and police records.
- d) Affidavit of not having been disqualified to engage in business.
- e) Certificate issued by a Certified Public Accountant evidencing compliance with the requirement established by Article 14 of the Regulations.
- f) Certified or Manager's check for the sum of ONE THOUSAND BALBOAS (B/.1,000.00), to defray the expenses for investigation incurred into by the Commission.
- g) Project of the activities to be developed.
- h) Any other document which might be required by the Commission.

(As amended by Article 1 of Executive Decree No. 53 of December 30, 1985.)

Article 6: Every juridical person who is planning to act as a trust enterprise in or from Panama, must file an application with the Commission, through an attorney-at-law, accompanied by the following documents:

- a) Certified copy of the Certificate of Incorporation and amendments thereto, with the corresponding certificate of good standing issued by the Public Register.
- b) Curriculum vitae and documents supporting the professional qualifications and experience of the directors, officers, managers and other persons who shall manage the enterprise.
- c) Personal and business references of the stockholders, directors and officers, who shall manage the enterprise.
- ch) Affidavit of not having been disqualified to engage in business.
- d) Certificate issued by a Certified Public Accountant stating who the stockholders are and the percentage of their interest therein.
- e) Duly audited financial statements.

- f) Certificate issued by a Certified Public Accountant, evidencing compliance with the requirements established by Article 14 of these Regulations.
- g) Certified of Manager's check for the sum of ONE THOUSAND BALBOAS (B/.1,000.00), to defray the expenses for investigation incurred into by the Commission.
- h) Projections of activities to be developed.
- i) Any other document which might be required by the Commission.

In the case of companies to be organized for the purpose of acting as Trust enterprises in or from Panama, the application for a license through an attorney -at- law shall be accompanied by the draft of the Articles of Incorporation. In these cases the requirements established in paragraphs b), c) ch) and d) of this Article shall be applicable to all future stockholders, directors, officers and managers, and there shall be no prior requirement to accompany the certification required by paragraph f).

(As amended by Article 2 of Executive Decree No. 53 of December 30, 1985.)

Article 7: After the application for a trust license has been filed the Commission shall make, or cause to be made, such investigations as it may deem necessary; and shall request such additional information as it may deem proper in order to verify the authenticity of the documents produced, the financial situation and background of petitioner, the adequacy of its capital, and any other elements upon which to base a decision.

The public shall be informed of every application for a Trust License by notice published three times in a daily newspaper of national circulation at the expense of the applicant. Copy of the notice shall be posted during three consecutive days in a place accessible to the public in the office of the Commission.

Except as provided for in paragraph 2 of this Article, the Commission shall have ninety (90) days to decide on the application for a license.

Paragraph 1: Upon approval of the application of a company to be constituted, the notarial protocolization and registration of the Articles of Incorporation shall be ordered, at the expense of the applicant, and upon compliance thereof the Commission shall issue the corresponding Trust License to the company already constituted.

Paragraph 2: If objections are raised to the application for a Trust License within thirty (30) days after the last publication mentioned in this Article, the time allowed the Commission to decide on the application shall run from the date of such publication. The Commission shall establish the procedure to consider such objections. (As amended by Article 3 of Executive Decree No. 53 of December 30, 1985),

Article 8: Authorization shall be granted to continue operating the trust business to those natural or juridical persons which prove to the Commission, within a period of one hundred and eighty (180) days from the date of the effective date of these Regulations, that they are engaged in the trust business; and they shall have a period of two (2) years from the effective date of these Regulations, to determine whether to be governed hereby. Upon the expiration of said period without compliance with the requirements set forth herein, the Commission shall order that their operations be discontinued; and shall give notice of such ruling to the Ministry of Commerce and Industries. In the case of juridical persons, such notice shall also be given to the Director General of the Public Register in order that he proceed to cancel the registration thereof.

Article 9: After the date this decree comes into force, only the persons authorized by the commission may use the word trust or derivatives thereof, in any language, or any other expression, either in their corporate name, corporate purposes, description, commercial denomination, in letterheads or invoices, stationery paper, notices, advertisements or publications, which would lead to imply that they are engaged in the trust business.

The companies constituted according to the Panamanian Legislation prior to the entry into force of this Decree may keep as part of its name or denomination or among its purposes the world trust or its derivatives. Nevertheless, if such companies act as trust enterprises in or from Panama, they must comply with all the requirements set forth in these regulations.

The corporations which are engaged in activities in Panama may set forth the trust activities among their purposes provided such activities are not engaged into in a professional or habitual manner. The companies which are not acting in or from Panama as trust enterprises may include among their purposes the activities, provided it is set forth in all documents mentioned in the previous paragraph and in the purpose clause that such activities are not protected by a license or any authorization from the Panamanian authorities and that such circumstances are expressly mentioned to the trustors.

(As amended by Article 4 of Executive Decree No. 53 of December 30, 1985).

Article 10: The Notaries are prohibited to execute public deeds or copies thereof, minutes, statements or any other instruments inherent to their office, and authentications of signatures which contravene the preceding article.

A similar prohibition is imposed on the Public Registry in respect to its entries.

(As amended by Article 5 of Executive Decree No. 53 of December 30, 1985).

Article 11: Business concerns which do not show on the effective date of these Regulations that they are engaged in the trust business; and which have a corporate or trade name that does not conform with the provisions of article nine, shall have a period of one hundred and eighty (180) days to dissolve voluntarily, to apply for a trust license or to amend their Certificates of Incorporation in order to change their corporate or trade name. Upon expiration of said period without proceeding as aforesaid, the Commission shall pass a resolution ordering the dissolution or disqualification thereof, depending on whether domestic or foreign companies are involved; and shall give notice to the Public Register in order that it will place a marginal note in their entries. This notice shall also be given to the Ministry of Commerce and Industries in order that it proceed to cancel the corresponding commercial license. The Commission shall publish the resolution referred to in this article for three (3) consecutive days, in a daily newspaper of wide circulation throughout the Republic; and once, only, in the Official Gazette.

Article 12: The trust companies shall keep a numbered register of their trusts.

For the purpose of paying the annual tax referred to in the second paragraph of Article 3 5 of Law I of 1984, an affidavit by the trust company which makes reference to the number corresponding to the respective trust, will suffice.

Article 13: All amendments to the Articles of Incorporation of trust companies shall require the prior approval of the Commission.

CHAPTER II The Guaranties

Article 14: Every trust enterprise engaged in the trust business in or from Panama must maintain, at all times, in the Republic of Panama, at the disposal of the Commission a guaranty of two hundred and fifty thousand balboas (B/.250,000.00) for the due performance of its obligations. This guaranty may be constituted by cash deposits, government bonds, insurance policy from insurance companies, bank guaranty or checks issued or certified by local banks. Not less than ten percent (10%) of the guaranty must consist of deposits

in the Banco Nacional de Panama or the Caja de Ahorros. (As amended by Article 6 of Executive Decree No. 53 of December 30, 1985.)

Article 15: Companies which are authorized to act as trust companies must issue in registered form the shares representing their capital stock. Every transfer of shares shall require the prior approval of the Commission. The Commission may exempt from this obligation those companies which make public offerings of their shares; and certain corporations which prove that they have sufficiently justified reasons therefor.

CHAPTER III Reports and Inspections

Article 16: Trust companies shall file the corresponding Balance Sheet and Profit and Loss Statements within three (3) months following the dosing of each fiscal year, duly audited by Certified Public Accountants who are professionally qualified, in the *opinion* of the Commission.

Article 17: The Commission is authorized to carry out, or cause to be carried out, such inspections as it may deem proper in order to verify the due compliance with the legal provisions which govern the trust business.

Article 18: If the Commission deems that a trust company is engaged in the trust business in a manner which is prejudicial to public interest or to its clients; or is violating the legal provisions or regulations concerning the trust business, it may require such company to take the steps deemed necessary to remedy the violations; or it may suspend or cancel the license, as the gravity of the case may warrant.

The Commission may also order the intervention of a trust company, by taking possession of its assets and assuming the management thereof under the terms provided for in articles 83 and following of Cabinet Decree No. 238 of 1970.

CHAPTER IV The Trust Secrecy

Article 19: The obligation to keep the trust secrecy continues even if the trust, the professional or labor relationship has terminated or the trust license has been cancelled.

Article 20: The information obtained by the Superintendency of Banks and other State entities authorized by Law to execute inspections or collect documents related to fiduciary operations and their respective officials, can only be revealed to the competent

administrative and judicial authorities, exclusively for the practice and fulfillment of their legal and regulatory functions.¹

Article 21: Competent authorities shall maintain strict confidence, concerning the information obtained, when this information is not conducive to the observance of the corresponding legal requirements.²

Article 22: Every person who furnishes information in violation of the trust secrecy, as it is regulated by Article 37 of Law 1 of 1984 and the provisions of these Regulations, shall be punished with confinement or imprisonment of up to six (6) months and a fine of up to FIFTY THOUSAND BALBOAS (B/50,000.00)

¹ As amended by Executive Decree No. 213 of October 3, 2000. Official Gazette No. 24,153.

² Repealed by Article 37 of Law No. 31 of December 30th, 1991. Official Gazette No. 21, 943.



CHAPTER V Cancellation of the Trust License

Article 23: The Commission shall cancel the license at the request of the trustee himself; or whenever it may so determine, for any of the following causes attributable to the trustee:

- a) Failure to engage in the trust business for a year or more.
- b) Failure to commence operations within a year following the granting of the license.
- c) When found guilty by a final judicial judgment for failure to conform with the purpose of the trust, and the conditions or obligations imposed on it by the laws on trusts.
- ch) When it becomes disqualified to engage in business.
- d) In case of bankruptcy or dissolution of the company.
- e) Violation of the prohibitions established in these Regulations, or non-compliance with any of the provisions set forth therein.

Paragraph: If a substitute trustee must be appointed as a result of the cancellation of the trust license, the procedure set forth in Article 32 of Law I of 1984 shall be followed.

(As amended by Article 7 of Executive Decree No. 53 of December 30, 1985.)

Article 24: Every trust company which decides to discontinue the trust business shall file a petition with the Commission, through an attorney, for cancellation of the trust license and accompany same with the following documents:

- a) Affidavit attesting to its compliance with the trust agreements.
- b) A true copy of the court order approving the resignation.
- c) Resignation as trustee, in cases where it is so authorized by the trust deed
- ch) The acceptance in writing by the new trustee, in the case of paragraphs b and c, when there are trusts pending of execution.

Article 25: Upon the proper filing of the petition for cancellation, the Commission shall have a thirty (30) working day period to issue the resolution canceling the license.

Article 26: The provisions of article 9 of these Regulations shall be applied to juridical persons the trust license whereof is cancelled.

CHAPTER VI Sundry Provisions

Article 27: Trust companies not exclusively engaged in the trust business must maintain a separate, over-all functional accounting between the trust department and the other departments.

Article 28: Unless the settlor shall otherwise provide, the trust enterprises are prohibited:

a) To invest the trust assets in:

1). Shares of the trust enterprise and other properties owned by it.

2). Shares of stock or properties of enterprises in which it has participation or in which its directors or officers be partner, directors, officers, advisers or counselor, except in case of shares of corporations registered in the Securities National Commission of Panama or shares offered to the public pursuant to authorization from the equivalent competent foreign authority and the prior authorization of the National Banking Commission.

b) To make loans from trust funds to its officers, directors, stockholders, employees, subsidiary, affiliated or other enterprises related to the trust enterprises.

c) To acquire for itself, or through an intermediary, the properties in trust.

(As amended by Article 8 of Executive Decree No. 53 of December 30, 1985).

Article 29: The resolutions issued by the Commission shall be notified as provided by Law I of August 22, 1916. Only a petition for rehearing is allowed, administratively, which must be filed within a period of five (5) working days, from the date the notice is given.

The Commission shall have sixty (60) days to decide the petition (for rehearing).

Article 30: Violation of the prohibitions set forth in these regulations or non-compliance with any of the provisions thereof, shall be penalized with a fine of up to FIFTY THOUSAND BALBOAS (B/.50,000.00), as the gravity of the case may warrant.

Article 31: Whenever it is known or there are sound reasons to believe that a person is engaged in the trust business in violation of these Regulations, the Commission shall have the power to examine the books, accounts and documents of said person in order to determine if it has violated or is violating any of the provisions of these Regulations. The Commission shall penalize the infringer upon proof of the violation.

Every refusal to produce the documents referred to in the foregoing article shall constitute a presumption that the trust business has been engaged into without authorization.

The recurrence in this type of fault shall empower the Commission to request, through the Office of the District Attorney (Ministerio Público), the disqualification of the infringer to engage in business.

Article 32: Every person who engages in operations declaring, or insinuating, the existence of any kind of ties with a trust company authorized by the Commission there being no such consent by the latter, shall be penalized with a fine to be imposed by the Commission. In the cases of recurrence, the Commission shall proceed in accordance with the provisions of the last paragraph of the foregoing article.

Article 33: The penalties which are imposed by the Commission are independent from the corresponding criminal and civil liability.

Article 34: Judicial officials shall notify the Commission about the proceedings in which trust companies are party defendants. They shall, likewise, send it copy of the judgment rendered in said proceedings.

Article 35: The Commission shall adopt its rulings in accordance with the provisions of Chapter II of Cabinet Decree N°238 of July 2,1970.

Note:

A. Article 9 of Executive Decree No. 53 of December 30, 1985, provides:

Article 9 (Temporary): The time allowed to natural and juridical persons engaged in the trust business, by article 8 of the regulations of the trust business adopted

by Executive Decree No. 16 of October 3, 1984, to apply to the National Banking Commission for authorization to continue engaging in the trust business under the terms set forth in said article, is extended until June 30, 1986.

- B. The provisions of Executive Decree No. 16 of October 3, 1984, shall be effective (as amended by Executive Decree N°53 of December 30, 1985) from December 31, 1985, the date on which said Decree N°53 was published in Official Gazette No. 20.462.

Note:

1. Executive Decree N°16 of October 3, 1984, was published in Official Gazette No. 20.165 of October 18, 1984.
2. Executive Decree No. 53 of December 30, 1985, was published in Official Gazette No. 20.462 of December 31, 1985.

