

“Financial Institutions Commissioner's Office Act”

Act No. 4 of October 11, 1985, as amended

(Contains amendments incorporated by:

Act No. 12 of June 16, 1989
Act No. 39 of December 13, 1990
Act No. 76 of August 28, 1991
Act No. 18 of March 24, 1996
Act No. 123 of August 11, 1996
Act No. 319 of October 23, 1999
Act No. 159 of August 11, 2000
Act No. 333 of September 2, 2000
Act No. 114 of August 17, 2001
Act No. 74 of February 8, 2003
Act No. 236 of August 31, 2004)
Act No. 23 of June 2, 2009
Act No. 95 of September 10, 2009)

To create the Office of the Financial Institutions Commissioner, establish its functions, powers and faculties; to create a Financial Board, establish its functions, powers and faculties; to transfer the functions, powers and duties of the Department of the Treasury related to Act No. 221, approved May 15, 1945, as amended, the Games of Chance Act; Section 2(j) of Act No. 6 of December 15, 1953 as amended, the Puerto Rico Industrial Incentives Act of 1954; section 2(j)(3) of Act No. 57 of June 13, 1963 as amended, the Puerto Rico Industrial Incentives Act of 1963; Section (2)(j) (4), (5) and (6) of Act No. 26 of June 1, 1978, as amended, the Puerto Rico Industrial Incentives Act of 1978, as amended; Act No. 8 approved October 8, 1954, as amended, the Accounts Receivable Conveyance Act; Act No. 3 approved October 13, 1954, as amended, the Uniform Trust Receipt Transactions Act; No. 20 approved April 9, 1976, as amended, an Act to create a Fund for the Investigation and Inspection of Financial Institutions and Gambling Casinos; to transfer the functions, powers and duties of the Department of the Treasury related to the supervision and inspection of banks and financial institutions with respect to Act No. 55, approved May 12, 1933, as amended, the Puerto Rico Banking Law; Act No. 106, approved June 28, 1965, as amended, the Small Personal Loans Act; Act No. 97, approved June 5, 1973, as amended, the Mortgage Institutions Act; Act No. 20, approved May 8, 1973, as amended, the Personal Property Leasing Act; Act No. 93 approved June 26, 1964, as amended, the savings Bank Act; Act No. 17, approved May 3, 1967, as amended, an Act to Regulate the Sale of Drafts; Act No. 40, approved April 23, 1928, as amended, the Trust Companies Act; Act No. 131, approved July 23, 1974, as amended, Act on Transfers of Funds Abroad; Act No. 130, approved June 30, 1975, as

amended, the Loan Pledge Act; Act No. 60, approved June 18, 1963, as amended, the uniform Securities Act of Puerto Rico; Act No. 6, approved October 19, 1954, as amended, the Investment Companies Act of Puerto Rico Act No. 16, approved July 2, 1980, the International Banking Center Regulatory Act; Act No. 17, approved April 18, 1933, as amended; Act No. 10, approved March 7, 1951; to transfer the faculty to supervise the Puerto Rico Credit and Loan Bank, the Puerto Rico Housing Financing Agency and Bank, the Puerto Rico Savings and Loan Labor Bank, the Government Development Bank for Puerto Rico, and the Puerto Rico Development Bank; to transfer all the functions, powers and duties related to Act No. 16, approved July 2, 1980, as amended, the International Banking Center Regulatory Act; Act No. 1, approved October 15, 1973, as amended, the Interest Rate and Financing Fees Regulatory Board; Act No. 86 approved June 24, 1954, as amended, the Industrial and Commercial Financing Contracts Act; Act No. 68, approved June 19, 1964, as amended, the Retail Sales and Finance Companies Act; to appropriate funds to the Office of the Financial Institutions Commissioner, created hereby; to amend clause 5.3 of Section 5 of Act No. 5, approved October 14, 1975, as amended, the Puerto Rico Public Service Personnel Act; Section 2 of Act No. 1, approved October 15, 1973, as amended, and to fix penalties.

STATEMENT OF MOTIVES

The banking, securities and financial institutions in Puerto Rico are dynamic industries in a continuous state of evolution and growth. These industries exert an immense influence on the economy of any country. The rapid development of these industries in Puerto Rico has strengthened and enabled them to give broader and better services to the economy. Puerto Rican banking, for example, has rapidly increased its resources which on June 30, 1985, exceeded \$21 billion. Our people are zealously watchful over the course of these industries and the Government's supervision thereof.

The control and supervision of these industries is vested with extreme complexities for which it is essential to have personnel with highly-specialized knowledge. Recent experiences have shown us that the government's supervisory structure and the manpower available at present are insufficient to ensure that unsullied standards of conduct prevail in these industries. The State cannot set aside its responsibility to ensure that the interests of those who are tied to these industries, be they depositors, creditors, shareholders or other types of associates, are protected.

The supervision given to these industries is dispersed among different government agencies at present. This dispersion of this supervisory responsibility has caused the duplication of resources and work, the increase of the government's operating costs, and has generated confusion in the public, which frequently finds it does not know where to go to solve a problem.

The Secretary of the Treasury supervises at present, among other institutions, commercial banks, mutual savings banks, trust companies, small personal loan companies, mortgage loan financing companies, personal property leasing companies, government banks, money order

sales companies, pawnshops and stock brokerage firms. These institutions have around 900 units which serve Puerto Rico, and their resources exceed \$ 25 billion.

Puerto Rico's economic development has increased the complexity of financial businesses, and the government must necessarily upgrade its capacity to control it. The Financial Institutions Commissioner's Office shall have the function of regulating the laws whose supervision has been turned over to it, to equip it with the needed agility and flexibility to honor its commitments to everyone's satisfaction.

Be it enacted by the Legislature of Puerto Rico :

Section 1. — Short Title. (7 L.P.R.A. § 2001)

This Act shall be known as the "Financial Institutions Commissioner's Office Act".

Section 2. — Creation. (7 L.P.R.A. § 2002)

An Office of the Commissioner of Financial Institutions is hereby created.

Section 3. — Purpose of the Commissioner's Office. (7 L.P.R.A. § 2003)

The Financial Institutions Commissioner's Office shall be charged with the main responsibility of controlling and supervising the financial institutions that operate or do business in the Commonwealth of Puerto Rico, among its other functions provided in this Act.

The Office of the Commissioner of Financial Institutions shall be deemed as an agency of public law and order for the sole purpose that it may compile and verify information that shall be obtained from and that shall be made available by the traditional agencies of public law and order of the Government of Puerto Rico on the criminal record of those persons of whom there is a need to evaluate said record for the discharge of the duties imposed by this Act, and other acts and regulations. In case that said information is in custody of state, federal or foreign agencies of public law and order, the Office of the Commissioner of Financial Institutions shall also be recognized as such by the Government of Puerto Rico before said agencies, so that the information may be requested directly from the body in question. The information obtained, through the inherent power herein granted shall be given by the Office of the Commissioner of Financial Institutions that degree of confidentiality given to said information by the investigative and public law and order agency that has furnished the same.

Section 4. — Definitions. (7 L.P.R.A. § 2004)

To the effects of this Act, the following terms shall have the meanings stated hereinbelow:

- (a) Bank. — Shall mean any person engaged in the banking business in Puerto Rico.
- (b) Banking Business. — Shall mean the business of buying, selling, paying or collecting bills of exchange or bank drafts, issuing letters of credit or receiving money for their

transmittal and transmitting them by bank draft, check or other means, or grant loans, or receive deposits, or engage, in general, through a combination of any of the above functions, in any of the above functions, in any banking transaction that a bank is authorized to perform under Act No. 55, approved May 12, 1993, as amended, [7 L.P.R.A. §§ 1 et seq.], known as the "Puerto Rico Banking Law".

(c) Person. — Shall mean any individual, society, corporation, association, or any other juridical or natural entity.

(d) Commissioner's Office. — Shall mean the Financial Institutions Commissioner's Office.

(e) Board. — Shall mean the Financial Board created in Section 8 of this Act.

(f) Commissioner. — Shall mean the Financial Institutions Commissioner.

(g) Financial Institutions. — Shall mean and include:

(1) Every banking institution doing business in Puerto Rico, pursuant to the provisions of Act No. 55, approved May 12, 1993, as amended, [7 L.P.R.A. §§ 1 et seq.], known as the "Puerto Rico Banking Law".

(2) Every small personal loan company organized under Act No. 106, approved June 28, 1965 as amended, [10 L.P.R.A. §§ 941--959], known as the "Small Personal Loan Act".

(3) Every domestic savings bank doing business in Puerto Rico.

(4) Any trust company doing trust business and functions in Puerto Rico under the provisions of Act No. 40 of April 23, 1928, as amended [7 L.P.R.A. §§ 301--503], known as the "Trust Companies Act".

(5) Any corporation or person which does business in Puerto Rico who is subject to the licensing requirements under the provisions of Act No. 97, approved June 5, 1973, as amended, [7 L.P.R.A. §§ 1051--1063], known as the "Mortgage Institutions Act".

(6) Every real estate investment trust which does business in Puerto Rico, except when it distributes 90% or more of its annual net income to its stockholders.

(7) Any other institution or person who engages in the financial mediation business as a money broker, agent, or as an investment, deposit, loan or financing broker or mediator, with a combined volume of business in excess of ten thousand dollars (\$10,000), without being specifically authorized for such purposes by any law or regulation. Subject to the provisions of Act No. 170 of August 12, 1988, as amended [3 L.P.R.A. §§ 2101 et seq.], the Commissioner is hereby empowered to approve, promulgate, amend, enact, apply and enforce the rules, regulations, orders, resolutions and determinations he/she deems necessary or convenient in order to authorize, deny, regulate, supervise and investigate the activities and persons described in this clause 7.

(8) Any person or personal property leasing company which does business in Puerto Rico under Act No. 20 approved May 8, 1973, as amended, [10 L.P.R.A. §§ 996--996I], known as the "Personal Property Leasing Act".

(9) Any company engaged in the sale of drafts that operates under Act No. 17, approved May 3, 1967, known as the "Act to Regulate the Sale of Drafts".

(10) Any company engaged in the financing of retail sales under Act No. 68, approved May 3, 1967, as amended, [10 L.P.R.A. §§ 731--793], known as the "Retail Sales and Finance Companies Act".

(11) Any company engaged in the business of financing industrial and commercial contracts under Act No. 86, approved June 24, 1954, the "Industrial and Commercial Financing Contracts Act".

(12) Any International Banking Entity organized under the International Banking Center Regulating Act, Act No. 16, approved July 2, 1980.

(13) Any investment company which does business in Puerto Rico under the provisions of the Puerto Rico Investment Companies Act, Act No. 6, approved October 19, 1954, as amended [10 L.P.R.A. §§ 661--683].

(14) Any stockbroker which does business in Puerto Rico under Act No. 60, approved June 18, 1963, as amended [10 L.P.R.A. §§ 851--895].

(15) Any person or entity engaged in the business of conveyance of accounts receivable, under Act No. 8 of October 8, 1954.

(16) Any person or entity that does business under the Uniform Trust Receipt Transactions Act, Act No. 3, approved October 13, 1954.

(17) The Commonwealth of Puerto Employees Association, created by Act No. 133 of June 28, 1966 as amended, [3 L.P.R.A. §§ 862 et seq.], regarding the businesses that are bound by the duty of inspecting and supervising of the Office of the Commissioner.

(h) Unsuitable practices in the operation of the financial institution. Shall be those which occur pursuant to the laws which the Commissioner shall enforce under this Act.

Section 5. — Direction of the Commissioner's Office. (7 L.P.R.A. § 2005)

(a) *Financial Institutions Commissioner.* The Office of the Commissioner shall be under the direction of a Commissioner, who shall be appointed by the Governor with the advice and consent of the Senate of Puerto Rico; the Commissioner shall answer directly to the Governor.

In the performance of his functions, the Commissioner shall answer directly to the Secretary of the Treasury.

The Commissioner may avail himself of the benefits of Act No. 447 of May 15, 1951 as amended, [3 L.P.R.A. §§ 761 et seq.], which establishes the Puerto Rico Government Employees Retirement System.

(b) *Competence of the Commissioner.* The Commissioner shall be a person of unblemished character and reputation, and recognized competence in financial matters.

(c) *Commissioner's Successor.* In the event the Office of the Commissioner should become vacant, the successor shall be appointed as provided in subsection (a) of this section.

Section 6. — Commissioner's Office Personnel. (7 L.P.R.A. § 2006)

(a) *Deputy Commissioner.* The Commissioner shall appoint a Deputy Commissioner and one or more Assistant Commissioners of established moral repute, with experience in and knowledge of financial matters deemed necessary to best comply with the purposes of the Office of the Commissioner. In case of illness, disability, temporary absence, or when for any other cause the office of the Commissioner should become vacant, the Deputy Commissioner shall assume all his/her functions, duties and powers until his/her successor is designated and takes office.

(b) *Commissioner and Deputy Commissioner's Salary.* The Commissioner and the Deputy Commissioner shall earn the annual salary fixed by the Governor according to the standards that govern positions of the same or similar level in the Government of Puerto Rico.

(c) Every official and employee of the Office of the Commissioner, except for the Commissioner, the Deputy Commissioner, Assistants, and Assistant Commissioners, who shall serve as trust employees, shall be career employees. Any person who, prior to his/her service as Commissioner, Deputy Commissioner, Assistant or Assistant Commissioner, was a regular career employee shall have the right to be reinstated in a position equal or similar to that which he/she held in the career service when he/she was appointed to the trust position.

The Commissioner may fix for any personnel that must have special competence and knowledge for the investigation of financial institutions a salary higher than that earned by personnel on an equal or similar level in other government agencies.

(d) The Commissioner may delegate any of his faculties, duties and prerogatives, except the power to regulate, on any official or employee of the Office of the Commissioner.

(e) All officials and employees who, in the performance of their functions, intervene in any way or have custody of money, securities or any public property, shall be covered by a bond as determined by the Commissioner, which bond shall be governed by the Puerto Rico Government Accounting Act, Act No. 230 of July 23, 1974, as amended.

Section 7. — Transfer's to the Office of the Commissioner of Financial Institutions. (7 L.P.R.A. § 2007)

The following are hereby transferred to the Office of the Commissioner of Financial Institutions:

(a) All the functions, powers and duties of the Secretary and/or the Department of the Treasury related to Act No. 221, approved May 15, 1948, as amended [15 L.P.R.A. §§ 71--79], known as the "Games of Chance Act"; Section 2(j) of Act No. 6 of December 15, 1953, as amended [13 L.P.R.A. § 10002(j)], known as the "Puerto Rico Industrial Incentives Act of 1954"; Section 2(j)(3) of Act No. 6 of December 15, 1953 as amended [13 L.P.R.A. § 10013(j)(3)], known as the "Puerto Rico Industrial Incentives Act of 1963"; Section 2(j)(4),(5) and (6) of Act No. 26 of June 2, 1978 as amended [13 L.P.R.A. § 10025(j)(4), (5) and (6)], the "Puerto Rico Industrial Incentives Act of 1978" as amended; Act No. 8, approved October 8, 1954, known as the "Accounts Receivable Conveyance Act"; Act No. 3, approved October 13, 1954, the "Uniform Trust Receipt Transactions Act"; Act No. 20, approved April 9, 1976, as amended, and Act No. 20, approved April 9, 1976, as amended, [13 L.P.R.A. §§ 7 and 8], an "Act to Create a Fund for the Investigation and Inspection of Financial Institutions and Gambling Casinos"; all the functions, powers and duties of the Secretary and/or the Department of the Treasury related to the supervision and control of banking and financial institutions, with regard to Act No. 55, approved May 12, 1933, as amended, [7 L.P.R.A. §§ 1 et seq.], the "Puerto Rico Banking Law"; Act No. 106, approved June 28, 1965, as amended [10 L.P.R.A. §§ 944--959], the "Small Personal Loans Act"; Act No. 97, approved June 5, 1973, as amended, [7 L.P.R.A. §§ 1051--1063], the "Mortgage Institutions Act"; Act No. 20, approved May 8, 1973, as amended [10 L.P.R.A. §§ 996--996l], the "Personal Property Leasing Act"; Act No. 93, approved June 26, 1964, the "Savings Banks Act"; Act No. 17, approved May 3, 1967, the "Law to Regulate the Sale of Drafts"; Act No. 40, approved April 23, 1928, as amended, [7 L.P.R.A. §§ 301--503], the "Trust Companies Act"; Act No. 131, approved June 23, 1974, as amended [7 L.P.R.A. §§ 1401--1407] an "Act on Transfers of Funds Abroad"; Act No. 130, approved June 30, 1975,

the "Loan Pledge Act"; [10 L.P.R.A. §§ 851--895], the "Uniform Securities Act of Puerto Rico"; Act No. 6, approved October 19, 1954, as amended [10 L.P.R.A. §§ 661--683], the "Investment Companies Act of Puerto Rico"; Act No. 16, approved July 2, 1980, as amended, [7 L.P.R.A. §§ 231--231y], known as the "International Banking Center Regulatory Act"; Act No. 17, approved April 18, 1933, as amended [7 L.P.R.A. §§ 206--209]; Act No. 10, approved March 7, 1951 [7 L.P.R.A. § 215]; and the power to supervise the Puerto Rico Credit and Loan Bank, the Puerto Rico Housing Financing Agency and Bank, the Puerto Rico Savings and Loan Labor Bank, the Government Development Bank for Puerto Rico, and the Puerto Rico Development Bank; all the functions, powers and duties related to Act No. 86, approved June 24, 1954, the "Industrial and Commercial Financing Contracts Act"; [10 L.P.R.A. §§ 731--793], known as the "Retail Sales and Finance Companies Act".

(b) All property, documents, unspent amounts from appropriations, items and other funds in possession and in custody of the agencies devoted to the administration of the laws referred to in subsection (a) of this section.

(c) All personnel that the Secretaries of the Treasury and of the Department of Consumer Affairs determine that they have been devoted to the implementation and administration of the laws referred to in subsection (a) of this section. Said personnel shall retain their vested rights and privileges acquired under, the "Puerto Rico Public Service Personnel Act", Act No. 5, approved of October 14, 1975, as amended.

Section 8. — Financing Board. (7 L.P.R.A. § 2008)

(a) The Financial Board is hereby created in the Office of the Commissioner, which shall be composed of nine (9) members, including the Commissioner.

(b) The other members are: the Secretary of the Treasury, who shall act as the Chairperson of the Board, the Secretary of Economic and Commercial Development, the Secretary of Consumer Affairs, the President of the Economic Development Bank for Puerto Rico, the Chairperson of the Planning Board, the President of the Government Development Bank for Puerto Rico, the Executive President of the Public Corporation for the Supervision and Insurance of Cooperatives of Puerto Rico and the Insurance Commissioner.

Said Board is hereby empowered to fix, regulate, increase or reduce, by regulations and, for the time needed, the maximum interest rates or charges applicable to specific financial transactions within the framework of any sector, area or activity of the country not covered by special laws, with the exception of Section 14 of Act No. 55 of May 12, 1933, as amended [7 L.P.R.A. § 111], including the interest payable on deposits in banking institutions and financial institutions, but subject and in accordance to the following norms.

(1) The rate of interest and the financial sector to which it shall be applicable shall be determined by regulations.

(2) The determination to raise the interest rates shall [be] made when it can reasonably be foreseen that because of discrepancies between the interest rates prevailing in the market and the maximum rates allowed by law in Puerto Rico, there is a risk that capital investment in specific sectors or financial activities in Puerto Rico is halted or reduced.

(3) The decision shall be based on a study of the prevailing cost in the market for the money available to finance diverse financial areas or activities and the adverse effect to

the economy in general, or any of its sectors or the citizens, that could occur if no action is taken to change, by increasing or reducing interest rates or charges in effect at a given time. The Financing Board may also determine not to fix maximum interest rates and charges, and leave the market open to free competition.

Provided, further, That the Financing Board may request the advice of the financial industry.

(c) The travel expenses of any Board member in representation of the Board shall be paid according to the regulations issued by it to such effect.

(d) The Board shall meet when the Chairperson calls the same, as it may be deemed pertinent, with due prior notice, of not less than twenty-four (24) hours. Four (4) of its members shall constitute a "Quorum", in which calculation the participation of the Secretary of the Treasury and the Commissioner shall always be taken into account. The members shall be entitled to participate in any meeting by means of telephone conferencing, or other means of communication, through which all the persons participating in the meeting may listen to each other simultaneously. The participation of the Board in the manner described above shall constitute attendance to said meeting. In every determination made by the Board there must be a quorum and it shall be approved by the affirmative vote of the majority of the members of the Board present. In case an affirmative vote of the majority of the Board members present cannot be obtained because of a tie vote, the proposal under discussion shall be defeated. The Board may also issue determinations by means of a referendum. The approval of a determination by means of a referendum requires the affirmative vote of the majority of the members of the Board.

(e) No member of the Board shall take part in the deliberations and decisions on any matter related to any corporation, partnership, unincorporated association or person who is an interested party or who was or has been an officer, director, partner, employee, member, or shareholder thereof, at any time during the previous three (3) years. A member may disqualify him/herself from participating in the deliberations and decisions for any other reason that he/she or the Board deem justified.

(f) Any technical, legal or clerical assistance needed by the Board shall be furnished by the Commissioner.

Section 9. — Functions of the Financing Board. (7 L.P.R.A. § 2009)

The Board shall be the legal successor of the Interest Rates and Financing Fees Regulating Board, created by §§ 998 et seq. of Title 10. As such, it shall be responsible for fixing, regulating, raising or lowering, by regulations and for the necessary term, the interest rates and/or maximum fees applicable to certain financial transactions within the framework of any sector, line or economic activity in the country not covered by special statutes. The Financing Board shall also serve as advisory body to the Office of the Commissioner for the purpose of contributing to the orderly development of the financial institutions, and to propitiate and recommend measures for the creating and maintenance of favorable credit and financing conditions for the economic stability and growth of the country.

The Financing Board shall also advise the Commissioner on the compliance of the public policy established by this Act.

Section 9-A. — Hearings; summons; oaths; information and personnel. (7 L.P.R.A. § 2009a)

In order for the Board to adequately comply with the duties imposed by this Act, it may hold hearings and request any information that it deems pertinent from the persons or entities that could be affected by any of its determinations.

The Financing Board is hereby empowered to conduct all types of studies and investigations on the matters authorized by this Act and for such purposes, the Chairperson of the Board or the person designated by him/her may request the information that is necessary, pertinent and essential to achieve such purposes.

The Chairperson of the Board or the person designated by him/her, may issue summons ordering the appearance of witnesses and the presentation of data or information to carry out the purposes of this Act. He/she may also, per se, or through duly authorized delegation, administer oaths, and take sworn statements, and receive data or information.

If a summons issued by the Chairperson of the Board or the person designated by him/her is not duly complied with, the Chairperson may appear before the Court of First Instance of Puerto Rico and request that compliance with said summon be ordered. The Court of First Instance shall give preference to the course and dispatch of said petition and may issue orders making compulsory the appearance of witnesses or the presentation of the data or information previously required by the Chairperson of the Board or the person designated by the former. The Court of First Instance shall be empowered to sanction for contempt of court the disobedience of said orders.

No person shall refuse to obey a summons of the Chairperson of the Board or the person designated by him/her, or to produce the evidence required, or to answer any question regarding any study or investigation, or refuse to obey a judicial order thus issued, alleging that the testimony or the evidence required, could incriminate him/her or expose him/her to a criminal procedure, or to destitution or suspension from his employment, profession or occupation; but the testimony or evidence produced by said person as required by the Chairperson of the Board or the person he she designates, or by virtue of a judicial order shall not be used or presented as evidence against said person in a criminal procedure, or in civil or administrative procedures that could result in the dismissal or suspension from his/her employment, profession or occupation.

The evidence and testimony obtained through these means shall not be referred, furnished or handed over to any state or federal agency that is not willing to grant immunity to the person giving testimony or producing the evidence that has the same scope that is conferred to it by virtue of this Act.

The federal or state agency shall sign an agreement of immunity with the person giving testimony or producing the evidence before the testimony or evidence concerned can be referred, furnished or given.

The Financing Board shall establish the mechanisms needed for its effective operation, including being informed of the changes in the money market conditions and other matters related to the implementation of this Act. To do this, the Board members shall contribute with the information and personnel resources that may be necessary.

Section 9-B. — Regulations. (7 L.P.R.A. § 2009b)

When a regulation is approved, amended or repealed by the Financing Board, said regulation, amendment or repeal shall comply with the provisions of Act No. 170 of August 12, 1988, as amended [3 L.P.R.A. §§ 2101 et seq.].

The provisions of the regulations approved by virtue of the provisions of Section 8 of Act No. 4 of October 11, 1985, as amended, shall not be applicable to contracts executed nor to obligations made prior to the effective date of the regulations. Every contract shall be governed by the provisions of the regulations in effect on the date of formalizing the contact, even when said regulation is subsequently amended or repealed.

Section 10. — Faculties of the Commissioner . (7 L.P.R.A. § 2010)

(a) The Commissioner, in addition to the powers and faculties transferred hereby, shall have the power and authority to:

- (1) Regulate his own procedures and working standards.
- (2) Implement any provision through regulations; define with the Board's approval any term which is not defined by this or other laws which he is responsible for administering; adopt, approve, amend or revoke such rules and regulations, orders, resolutions and determinations needed to comply with this Act.

Before approving any of the regulations provided in this or any other laws under his administration and jurisdiction, which are not those for the internal operation of his Office, the Commissioner shall submit them to the Financing Board for their recommendation.

- (3) Handle, investigate and resolve the complaints presented to the Board or to the Commissioner's Office.
- (4) File any legal remedies, actions or procedures necessary or convenient for the implementation of the purposes of this or any other act or regulation whose compliance or supervision has been assigned to him/her, be it with through [sic] his/her legal representatives or by the Secretary of Justice, upon previous request for such purposes.

The Commissioner shall also designate an official of the Office of the Commissioner to give support and advise the prosecutor of the Department of Justice who has the task of prosecuting a criminal procedure for a violation of the laws, regulations or orders under the administration of the Office of the Commissioner.

- (5) Enter into contracts or agreements with persons or public or private institutions to perform investigations, studies or any other analysis to implement the purposes of this Act.
- (6) Require any person that is covered by the provisions of this Act, to keep and maintain such records and other documents that are needed to implement it.
- (7) Inspect all kinds of records and documents of any person who habitually or sporadically grants loans, when he deems it is in the best public interest.
- (8) Perform such acts as are needed for the effective achievement of the purposes of this Act.
- (9) Impose administrative fines for violations of the laws he administers, or the rules, regulations and orders approved or prescribed by him, as indicated in § 2020 of this title.

(10)

(i) When any of the laws and regulations he administers does not provide otherwise, to issue, after due notice and hearing, cease and desist orders, and prescribe the terms he determines are for the benefit of the public. When in the Commissioner's opinion said violation causes or could cause immediate grave damage to industry, the citizenry or specific persons, he may issue said order of a summary nature, passing over the requirement of due notice and hearing, until the final disposition of any procedure instituted under this section. In issuing said order, the Commissioner shall promptly serve notice, as specified below, that it has been issued, and the reasons for it, and that within fifteen (15) days, counting from the receipt of a written petition the matter shall be docketed for a hearing. If no petition for a hearing is received and the Commissioner does not order it, the order shall continue in effect until it is modified or rendered ineffective by the Commissioner. If the holding of a hearing is requested or ordered, the Commissioner, after due notice thereof and allowing each person as specified below to be heard, may serve notice or render the order ineffective, or postpone it until the matter is finally disposed of.

(ii) The Commissioner may render ineffective or modify an order if he finds that the conditions that induced him to issue it have changed, or that it is in the public interest to do so for any other reason.

(11) Resort to the Court of First Instance of Puerto Rico to request that any cease or desist order issued by him is put into effect.

(12)

(i) Perform all kinds of studies and investigations on matters that affect any branch of the banking, financial and securities industry for which he may require the necessary, pertinent and essential information to achieve said purposes; may require or allow any person to present a written statement, under oath or in any other manner as the Commissioner may determine, with regard to the facts and circumstances concerning the matter that is to be studied or investigated.

(ii) Take oaths and statements, call witnesses, compel their attendance, hear evidence and require the submission of books, papers, correspondence, notes, agreements, or other documents or registers that the Commissioner may consider as relevant and substantial to the investigation.

(iii) In case of contempt of court or refusal to obey a summons issued to any person, the Court of First Instance by petition of the Commissioner may issue an order requiring the person to appear before the Commissioner or the official designated by him, to produce documentary evidence, or to furnish evidence in connection with the matter in dispute or under investigation or study. Noncompliance of the court's order may be sanctioned by it as contempt of court. The Court of First Instance shall give preference to the course and dispatch of the Commissioner's petition.

(iv) When a person claims that complying with a summons or answering any dispute, investigation or study, or alleges that the evidence required could expose him to an administrative proceeding or could lead to his removal or suspension from his employment, profession or occupation, the Commissioner shall guarantee that the information to be furnished shall not be used against him in any administrative procedure of any nature that could bring about the dismissal or suspension from his

employment, profession or occupation. When the claim is that the information to be furnished exposes a person to a criminal or civil procedure, the Commissioner may arrange with the Secretary of Justice to grant civil or criminal immunity when his investigation requires the person to answer the questions or turn over the evidence required by the Commissioner. Once administrative immunity has been granted by the Commissioner or civil or criminal immunity has been granted by the Secretary of Justice, the person cannot refuse to comply with the Commissioner's summons, or refuse to answer any question in connection with any controversy, investigation or study by the Commissioner, or refuse to turn over the evidence required.

(v) No order may be issued under any part of this section, except for the second sentence of clause (10)(A) of this subsection, unless:

(1) Proper prior notice is served on the corresponding persons in their place of business, or where they are located personally, or by certified mail at their last known address;

(2) the interested parties are given the opportunity to be heard, and

(3) the findings of fact and conclusions of law are stated in writing.

(13) Appoint all personnel needed to carry out his designated functions.

(14) The Commissioner is hereby authorized to establish through regulations, those charges he/she deems are reasonable for producing advice, issuing opinions or administrative determinations, granting permits authorized by law or regulations, or for the rendering of any other similar services with regard to any of the laws and regulations that he/she administers or are under his/her jurisdiction.

(15)

(i) Grant contracts or cooperative agreements with other jurisdictions to, among other things, perform joint examinations and share confidential information compiled in said financial institution's examinations, notwithstanding the provisions of subsection (d) of Section 20 of this act; coordinate and share information with any other supervisory agencies of financial institutions of any other jurisdiction, or any organization affiliated to or representing one or more supervisory agencies of financial institutions.

(ii) Before revealing any confidential information under the provisions of subsection 15(i) of this Section, the Commissioner shall obtain the assurance of said supervisory agency to maintain the confidentiality of such information to the extent possible under this or any other applicable act.

(16) Accept, in his/her full discretion, any examination report or investigation report from any other supervisory agency of financial institutions of any other jurisdiction, with concurrent jurisdiction over a financial institution organized or doing business in Puerto Rico, in lieu of the examination or investigation of said financial institution by the Commissioner him/herself.

(17) Participate in joint examinations or investigations with any other supervisory agency with concurrent jurisdiction over any financial institution of Puerto Rico. Provided, however, That the Commissioner may take any of these actions independently, if he/she determines that such action is necessary or proper to execute his/her responsibilities under this Act and to ensure compliance of the laws of Puerto Rico.

(18) Grant contracts or agreements to obtain the services of examiners or to share examiners with other regulators of financial institutions. Said contracts shall be exempted from the bidding requirements, if applicable; and

(19)

(i) Impose the examination and supervisory fees pertinent to the performance of the duties of the Commissioner under this Act, which shall be paid by the financial institutions organized of doing business in Puerto Rico, pursuant to the regulations adopted by the Commissioner to such effects, which shall be covered into the Fund for the Investigation and Examination of Financial Institutions and gaming casinos.

(ii) Said fees may be shared with other supervisory agencies of financial institutions or with other organizations affiliated to or representing one or more supervisory agencies, pursuant to the agreements granted between these and the Commissioner.

(20) The Commissioner is hereby authorized to established through regulations the necessary provisions to comply with the duty to inspect and supervise the businesses carried out by the Commonwealth of Puerto Rico Employees Association, under his/her jurisdiction.

(b) If as a result of an audit, examination or inspection, or of a report submitted by an examiner, it is shown that a financial institution lacks a solid financial and economic status or that it is operated or administered in such a way that the general public or persons and entities that have funds or shares in its custody are in danger of being defrauded, and in absence of a specific provision in the law to regulate the financial institution in question and which likewise empowers it, the Commissioner may assume the direction and administration of the financial institution, and promptly appoint a trustee who, in the case of insured financial institutions can be its insuring entity. The Commissioner shall hold a hearing before issuing an order to place a financial institution under his/her direction, or that of a trustee. Nevertheless, the Commissioner may issue a provisional order appointing a receiver without having to hold a hearing, when in his/her judgment, the financial institution's status is of such a nature that it is causing or may cause irreparable damage to its interests, or those of the persons and entities with funds or assets in the institution. When the Commissioner issues a provisional order to appoint a receiver, he/she shall notify the Governor of the details and grounds for his/her determination and shall hold an administrative hearing within ten (10) days following the date of notice thereof, in order to determine if it is made permanent or revoked. The receiver thus appointed shall administer the financial institution pursuant to the provisions of the law and the regulations that govern said institution, and in accordance with the regulations that govern said institution, and in accordance with the regulations promulgated by the Commissioner for receiverships or emergency measures declared under this section.

Said receivership shall terminate upon the total liquidation of the financial institution, if it were necessary, or when the operations thereof, as certified by the trustee in the Commissioner's judgment, allow the return of the administration of the institution to the duly elected and appointed officers and officials, under the circumstances stipulated by the Commissioner. The Commissioner shall fix a reasonable compensation for the services rendered by the receiver and his/her employees. The determination of the Commissioner to assume the administration and direction of a financial institution or to appoint a receiver, can

be reviewed by the Circuit Court of Appeals, through a petition filed within the term of ten (10) days from the date of the determination.

Section 11. — Suspension and Removal of Directors and Officials. (7 L.P.R.A. § 2011)

(a) When the Commissioner has sufficient grounds to believe that any member of the board of directors or officials of a financial institution supervised by the Office of the Commissioner has committed a violation or is violating any law related to said entity, or has managed the affairs of said business inadequately, the Commissioner shall bring charges against said member of the board of directors or official, to appear before him or his authorized representative within a stated term, in a procedure established by the Commissioner by regulations, to show cause as to why he should not be removed.

(b) A copy of the charges proffered shall be sent by certified mail with return receipt requested to each member of the board of directors of the financial institution involved.

(c) If the Commissioner should determine, after granting the member of the board of directors or official a reasonable opportunity to be heard, that this member has violated any law related to said financial institution, or has managed the affairs of said institution inadequately, he may direct that said member of the board of directors or official be removed from office.

(d) The Commissioner shall send copy of the order for removal to the person involved, and another copy to the entity of which he is a member of the board or an official, to be submitted immediately to said entity's Executive Committee or Board of Directors. In that case, said member of the board of directors or official shall cease to be a member of the board of directors, or an official of said financial institution immediately after notice of the Commissioner's order is received.

(e) The order and the findings of fact and conclusions of law on which it is grounded shall not be made public nor shall they be revealed to anyone, except the member of the board of directors or official involved and the directors of the banking institution concerned, except in regard to proceedings motivated by a violation of this section or a judicial review brought as provided in Section 15 of this Act..

(f) No member of the board of directors or official who has been removed from office as provided in this section may subsequently participate in any way in the administration of any financial institution, unless he has the Commissioner's prior authorization.

Section 12. — Additional Powers of the Commissioner. (7 L.P.R.A. § 2012)

In addition to the other powers conferred by this Act, the Commissioner is empowered to require the entities that he supervises pursuant to this Act to:

(a) Keep their accounts, records and registers according to those regulations he may prescribe from time to time.

(b) Comply with standards and methods he prescribes by regulations to determine the value of assets and liabilities.

(c) Eliminate from the books all part of any asset that at the moment of the Commissioner's action could not be legally acquired.

(d) Fix the market value of an asset.

- (e) Obtain and deliver a financial statement of the direct or indirect debtors of the supervised institutions, within the limits that the entity may do so.
- (f) Obtain insurance against damages and other contingencies on property or other assets taken as collateral.
- (g) Maintain adequate insurance against all damages that the Commissioner deems necessary and convenient for the protection of the depositors and the public.
- (h) Charge against undistributed profits, reserve funds or capital accounts, any loan or part thereof, any asset or part thereof, which in his judgment constitutes a possible loss for the entity being examined.
- (i) Segregate any part of the future profits he deems convenient until said capital accounts and reserve funds are totally restored.
- (j) Create such reserves of appraisals of assets deemed convenient.

Section 13. — Complaints. (7 L.P.R.A. § 2013)

Any citizen may file a complaint in the Commissioner's Office to vindicate the rights granted to the citizens by the laws administered thereby.

Section 14. — Reconsideration of the Commissioner's Decisions. (7 L.P.R.A. § 2014)

When not otherwise provided by any special law administered by the Commissioner, any party affected by the Commissioner's decision may request a reconsideration thereof within a term of fifteen (15) days after the date the decision is served.

Section 15. — Judicial Review of Resolutions and Orders Issued by the Commissioner. (7 L.P.R.A. § 2015)

- (a) When not otherwise provided by any special law administered by the Commissioner, any party affected adversely by a resolution or order of the Commissioner may appeal for a judicial review of said resolution or order by the Court of First Instance of the Commonwealth of Puerto Rico, San Juan Part, after service of the Commissioner's reconsideration and final decision. The appeal shall be filed before the Court of First Instance within fifteen (15) days after the date the reconsideration of the Commissioner's resolution or order is served.
- (b) The Commissioner's order, resolution or regulation shall remain in full force and vigor until there has been a final and binding decision of the Court of First Instance of Puerto Rico revoking the Commissioner's decision.
- (c) The appeal for review shall be executed by presenting a petition before the clerk of the court in which the grounds for the appeal for review are stated. After the appeal has been filed, the petitioner shall advise the Commissioner thereof within a term of five (5) days from the date of filing.
- (d) It shall be the Commissioner's duty to present a certified copy to the court within fifteen (15) days from the date he was served notice of the issuing of the appeal for review.
- (e) The court shall review the Commissioner's resolutions or orders, using the administrative file submitted as a basis only with regard to the conclusions of law. The Commissioner's

findings of fact shall be conclusive for the court, if they are supported by substantial evidence.

Section 16. — Limitation of Personnel Liability. (7 L.P.R.A. § 2016)

No member, official, functionary or employee of the Board or the Commissioner, or official, functionary or employee in the Office of the Commissioner, shall be liable in a civil suit for damages, for any act or omission in good faith, in the performance of the duties of his office.

Section 17. — Faculty of the Governor. (7 L.P.R.A. § 2017)

The Governor may delegate on the functionary or functionaries he wishes to, and may adopt the measures needed so that the transfer of the functions, duties, responsibilities, obligations, offices, programs, funds, property, files or any others that are needed pursuant to the provisions of this Act to be carried out in an orderly way, without affecting or interrupting the tasks, investigations, proceedings, transactions or agreements initiated prior to the effectiveness of this act, or in the process of being adjudicated, resolved or determined.

Section 18. — Appropriation of Funds. (7 L.P.R.A. § 2018)

(a) The funds of the "Fund for the Investigation and Examination of Financial Institutions and Gambling Casinos", created by Act No. 20 , approved April 9, 1976 as amended [13 L.P.R.A. §§ 7 and 8], are hereby appropriated to the Office of the Commissioner to carry out the purposes of this Act. The appropriations budgeted for the 1985-86 Fiscal Year are also transferred to the Bureaus of Banks, and Financial Institutions and Securities.

(b) In subsequent years, the funds needed for the administration of this Act shall be consigned in the General Expense Budget for the Government of the Commonwealth of Puerto Rico Joint Resolution.

Section 19. — Continuity of the Transferred Acts. (7 L.P.R.A. § 2019)

The provisions of the acts referred to in Section 7 of this measure, which grant powers, functions and duties to the Secretary of the Treasury, and the rules, regulations and orders adopted or issued by said Secretary pursuant to said laws, shall remain in force and shall be administered by the Commissioner, who shall be the legal successor of the Secretary of the Treasury to such respect. This shall also be with respect to "Retail Sales and Finance Companies Act" [10 L.P.R.A. §§ 731 et seq.], administered by the Secretary of Commonwealth Affairs.

Section 20. — Penalties. (7 L.P.R.A. § 2020)

(a) Any financial institution or person who violates the provisions of this Act or the regulations promulgated hereunder shall be subjected to an administrative fine to be determined by the Commissioner, which in no case shall exceed five thousand (5,000)

dollars. Any financial institution or person who violates the provisions of the other laws and regulations under the Commissioner's administration and jurisdiction shall be subjected to the penalty provided for such violation in the applicable laws or regulations.

(b) Any director or official of a financial institution who violates any of the provisions of this Act or its regulations shall be subjected to an administrative fine which shall not exceed five hundred (500) dollars in the case of a first infraction. In case of a second and subsequent infractions, he shall be guilty of a felony and, upon conviction, shall be punished by a fine which shall not exceed five thousand (5,000) dollars for each infraction or by a penalty of confinement for a fixed term of fifteen (15) months. If there were aggravating circumstances, the fixed term established may be increased to a maximum of twenty-four (24) months; if there were extenuating circumstances, it may be reduced to a minimum of nine (9) months. The court may impose both penalties, in its discretion.

(c) The Commissioner may impose an administrative fine that shall not exceed five thousand (5,000) dollars for each day that a financial institution fails to comply with the orders issued under the provisions of this Act; Provided, That in no case may the sum total of the fines exceed fifty thousand (50,000) dollars. The Commissioner may bring civil suit in the Court of First Instance of Puerto Rico, San Juan Part, for the collection of said administrative fine, which shall have exclusive jurisdiction in this proceeding.

(d) Any person who in order to obtain for him or herself or for a third party any benefit, acts, offers, announces or advertises that he or she provides services proper to financial institutions as defined in this Act without being duly licensed or authorized to do so by the Office of the Commissioner and in the course of his or her actions:

- (1) Makes any false statement concerning a material fact for the purpose of inducing or persuading a person to err; or
- (2) engages in misrepresentation for the purpose of inducing or persuading a person to conduct a business transaction;
- (3) unduly retains any property, sum of money and/or document related to any transaction or fails to inform the person with whom the transaction is conducted as to his or her right to any property, sum of money or document that may be part of the transaction; or
- (4) induces a party in a transaction to rescind a contract and execute a new one when the main objective of the new contract is to benefit a third party or him or herself; or
- (5) incurs [in] embezzlement or misappropriation of funds; or
- (6) incurs in falsifying documents that are part of a transaction; or
- (7) employs any trick, ruse or ploy to defraud another person; or
- (8) engages in any act, practice or type of business that results or would result in fraud or is used to deceive another person, or
- (9) injures or intends injury to a third party, shall be sanctioned with the penalty of imprisonment for a fixed term of ten (10) years. Should there be aggravating circumstances the fixed penalty established may be increased for up to a maximum of twelve (12) years; should there be extenuating circumstances, the fixed penalty established may be reduced for up to a minimum of six (6) years.

The court, at its discretion, may impose the fixed penalty of imprisonment established, a fine of not less than five thousand (5,000) dollars, nor of more than ten thousand (10,000) dollars for each violation, the penalty of restitution or any combination thereof.

Any person who takes part, instigates or cooperates with the commission of these acts shall be likewise sanctioned, regardless of whether he or she obtained or failed to obtain any personal economic profits.

(e) Every functionary, official, employee or examiner of the Office of the Commissioner of Financial Institutions and of the Financial Board shall give oath that he will not divulge the information obtained in his investigations or any information derived from the performance of his official duties. The functionary, official, employee or examiner who breaks his oath shall be guilty of a misdemeanor and shall be punished by a fine which shall not exceed five hundred (500) dollars, or by imprisonment for a term that shall not exceed six (6) months, or both penalties, in the discretion of the court.

In the case of confidential information obtained from investigative and public law and order agencies, every officer, official, employee or examiner of the Office of the Commissioner of Financial Institutions who, through negligence or omission, or deliberately, offers information, publishes or publicly comments said information, without the written authorization of the Commissioner, shall be charged with a felony and upon conviction shall be imposed a penalty of imprisonment for a fixed term of three (3) years. If there were aggravating circumstances, the penalty may be increased to a maximum of five (5) years; if there were extenuating circumstances the penalty may be reduced to a maximum of two (2) years. The person thus convicted may be referred to the benefits of a suspended sentence, to be determined by the court.

(f) The first Commissioner of the Financial Institutions Commissioner's Office shall not work nor render professional, consulting, or executive services in a financial institution covered by the provisions of this Act until one (1) year has elapsed from the date he ceases in his functions or office in the Office of the Commissioner. Any violation of the provisions of this subsection shall be subject to the penalty provided in subsection (d) of this section.

The provisions of this subsection do not imply or grant any exemption or release from the application of Act No. 12 of July 24, 1985, [3 L.P.R.A. § 1801 et seq.], known as the Ethics in Government Act, to officers, employees officials and examiners of the Commissioner's Office.

Section 21. — Term for the Appointment of the Commissioner, the members that represent the private sector, and for the organization of the Office.

The Secretary of the Treasury shall appoint the Commissioner within ninety (90) days after the approval of this act. The Governor shall appoint the members of the Board who represent the public sector, within a term of one hundred and twenty (120) days after the approval of this act. The Office of the Commissioner shall be organized within this last term. Until the Office is organized, the Board completed, and the Commissioner is in office, the functions delegated on them shall be administered by the Secretary of the Treasury.

Section 21 [bis]. — Special Fund. [Note: This Article was added by Act No. 23 approved June 2, 2009]

(a) A special fund is hereby created, to be known as the ‘Fund for Consumer Education in Financial Matters and Training of the Personnel of the Office of the Commissioner of Financial Institutions,’ in order to provide financial assistance geared toward the education of the general public in financial matters and to train the personnel of the Office of the Commissioner of Financial Institutions for the purposes provided herein.

(b) The Commissioner may, in his/her discretion, engage in any effort he/she believes shall contribute to a better orientation and education of consumers in their dealings with the financial industry and use such funds for purposes, among others, such as providing resources to such entities,

divisions and/or programs that aim to accomplish the purposes established under this Fund, as well as covering the operating expenses entailed by the administration thereof.

(c) All moneys received by the Commissioner on account of the imposition of administrative fines for violations of the provisions of this Act, as well as of the laws and regulations administered by the Commissioner, may be deposited into this Fund. Likewise, any fines imposed by the Commissioner on account of voluntary agreements or administrative orders, may also be covered into this Fund.

Section 22. — [Omitted]

Section 23. — Transfer of Functions of the Interest Rates and Financing Fees Regulatory Board. (7 L.P.R.A. § 2001 note)

The Interest Rates and Financing Fees Regulatory Board created by Section 2 of Act No. 1, approved October 15, 1973, is hereby extinguished and the faculties which said act and any other laws confer upon the Interest Rates and Financing Fees Regulating Board, are hereby transferred to the Financing Board created in Section 8 of this act.

Section 24. — International Banking Center Regulating Board. (7 L.P.R.A. § 2001 note)

The International Banking Center Regulating Board created under Act No. 16, approved July 2, 1980, as amended, is hereby extinguished and the faculties conferred upon said Board by said act or any other laws, are hereby transferred to the Commissioner of Financial Institutions.

Section 25. — Repealing Clause. (7 L.P.R.A. § 2001 note)

Any law or part thereof that is in conflict herewith is hereby repealed.

Section 26. — Effectiveness.

This Act shall take effect immediately after its approval.

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