

DECREE-LAW N. 2321, of FEBRUARY 25, 1987

Institutes the regime of temporary special administration in private and non-federal public financial institutions, in defense of the public finances, and make other arrangements.

THE PRESIDENT OF THE REPUBLIC, using his prerogatives granted under Article 35, item II, of the Constitution, DECREES:

Article 1 - The Central Bank of Brazil may decree a temporary special administration regime, as regulated hereunder, in private and non-federal public financial institutions authorized to operate in accordance with Law N. 4595, of December 31, 1964, when the following facts have been determined in their regard:

(a) the repeated practice of business contrary to the economic or financial policy guidelines established by federal law;

(b) the existence of uncovered liabilities;

(c) noncompliance with the rules on Bank Reserve accounts held at the Central Bank of Brazil;

(d) negligent or fraudulent management by its officers;

(e) the occurrence of any of the situations described in Article 2 of Law N. 6024, of March 13, 1974.

Sole Paragraph - The duration of such special administration shall be established in the act that decrees it, and it may be extended if absolutely necessary, for a period which shall be no longer than the first.

Article 2 - The decreeing of temporary special administration shall not affect the ordinary course of business of the entity nor its normal operations, and it shall immediately produce loss of office of the administrators and the members of the Fiscal Council of the institution.

Article 3 - Temporary special administration shall be carried out by a Board of Directors appointed by the Banco Central do Brasil, with full management powers, to be composed of as many members as shall be deemed necessary to conduct the business of the institution.

Paragraph 1 - The Board of Directors solely shall call general meetings.

Paragraph 2 - The members of the Board of Directors may be dismissed at any time by the Central Bank of Brazil.

Paragraph 3 - The prior express approval of the Central Bank of Brazil shall be required for any acts which are not characterized as ordinary management acts and which entail disposal or encumbrance of the institution's assets.

Article 4 - The members of the Board of Directors shall take office immediately, regardless of publication of the act of appointment, by means of an instrument drawn up in the book of minutes of the Board, with transcription of the act that decreed the temporary special administration regime and of the act under which they were appointed.

Article 5 - Upon taking office, the Board of Directors shall:

- (a) elect the President from among its members;
- (b) establish the duties and powers of each of its members, as well as the matters upon which they shall pass their joint resolutions; and
- (c) take the measures established in Articles 9, 10 and 11 of Law N. 6024, of March 13, 1974.

Article 6 - Decisions of the Board of Directors may be appealed, without suspensive effect, within ten (10) days of the respective communication to the Central Bank of Brazil, in first instance only.

Sole paragraph - The appeal shall be delivered against receipt and shall be addressed to the Board of Directors, which shall inform and remit the appeal within five (5) days to the Central Bank of Brazil.

Article 7 - The Board of Directors shall render account to the Central Bank of Brazil, regardless of any requirements, immediately when the special regime ceases, or at any time, upon request.

Article 8 - The Central Bank of Brazil may designate legal entities specialized in the area to carry out the temporary special administration hereunder.

Article 9 - Once the regime hereunder has been decreed, the Central Bank of Brazil is hereby authorized to use Monetary Reserve funds to remedy the economic financial condition of the institution.

Sole Paragraph - If there are not sufficient funds in the Monetary Reserve account, the Central Bank of Brazil shall advance them. The amount of such advances shall be included compulsorily in the budgetary law proposal for the subsequent fiscal year.

Article 10 - The amounts drawn from the Monetary Reserve account shall be used to pay obligations of the institutions which are subject to the regime hereunder, by assignment and transfer of the corresponding credits, rights and shares, to be made by the respective holders to the Central Bank of Brazil, and shall be guaranteed in accordance with the agreement to be executed with the beneficiary institution:

(a) by the pledge of promissory notes, bills of exchange, trade acceptance bills, shares, debentures, mortgage and pledge credits, contract of debtor current accounts with duly acknowledged balance, and titles representing federal public debt ;

(b) by the legal mortgage, regardless of specialization, which this Decree-law grants to the Central Bank of Brazil, on the real estate owned by the beneficiary institutions and designed by them for the premises of their head and branch offices;

(c) by the conventional mortgage of other real estate owned by the beneficiary institutions or by third parties.

Paragraph 1 - The papers, documents and securities given in pledge shall be deemed to have been transferred, by symbolic surrender, to the possession of the Central Bank of Brazil, provided they are listed and described in an instrument of surrender drawn up in a separate document, signed by the parties and copied into a special book for such purpose opened and initialled by the competent authority of the Central Bank of Brazil.

Paragraph 2 - Whenever it deems necessary, the Central Bank of Brazil may require delivery of the pledged papers, documents and securities, and if delivery is refused, may provide judicially for full or partial seizure thereof by petition supported by a certificate of the instrument of surrender.

Article 11 - By virtue of a report or proposal of the Board of Directors, the Central Bank of Brazil may:

(a) authorize the transformation, merger, consolidation, spin-off or the

transfer of the shareholding control of the institution in view of the guarantee conditions presented by the interested parties;

(b) propose the expropriation, by necessity or in the public or social interest, of the shares of the institution's capital stock;

(c) decree the extrajudicial liquidation of the institution.

Article 12 - In the event of letter (b) of the preceding article, the Executive Branch is hereby authorized to provide for the expropriation mentioned therein.

Paragraph 1 - The Federative Republic of Brazil is hereby vested with possession of the expropriated shares, by deposit of their equity value as determined in a balance sheet drawn up by the Directors Council, the base date of which shall be the date on which the temporary special administration is decreed.

Paragraph 2 - In an institution on which the net worth is negative, the amount of the deposit under the preceding paragraph shall be symbolic and established in the expropriation decree.

Article 13 - Once the Federative Republic of Brazil has been vested with possession of the shares, it shall exercise all the rights inherent to the condition of shareholder, including preemptive rights, which it may assign, to subscribe for capital increases, and the right to vote in general meetings to increase or reduce the share capital, grouping or splitting shares, transformation, merger, consolidation or spin-off of the institution, and any other measures deemed necessary to remedy the financial condition of the institution and its regular operation.

Article 14 - The regime under this Decree-law shall cease:

(a) in the event the Federative Republic of Brazil assumes the shareholding control of the institution, pursuant to Article 11, letter (b);

(b) in the event of transformation, merger, consolidation, spin-off or transfer of the shareholding control of the institution;

(c) when, at the discretion of the Central Bank of Brazil, the institution's situation has been normalized;

(d) as a result of the extrajudicial liquidation of the institution.

Paragraph 1 - For the purpose of this Decree-law, the Federative Republic of Brasil shall be represented, within its sphere of authority, by the Central Bank of Brazil.

Paragraph 2 - The Central Bank of Brazil shall adopt the measures required for the full recovery of the funds placed in the institution, on the basis of Article 9 hereof, and shall establish, if it is required, the form, term and other conditions for redemption thereof.

Paragraph 3 - Once the extrajudicial liquidation of the institution has been decreed, for all intents and purposes, including for determination of the liability of the ex-administrators, the date when the temporary special administration regime was decreed shall be used as the base date.

Article 15 - Once the temporary special administration regime has been decreed, the persons or legal entities having a control relationship with the institution shall assume joint liability with its ex-administrators for the obligations assumed by the institution, whether or not fraud or negligence has been established.

Paragraph 1 - A control relationship exist when, alternatively or cumulatively, the institution and the legal entities mentioned in this article are under common control; when they are each other's controlling or controlled companies, or when any one of them, directly or through companies controlled by it, of the holder of stockholder rights which permanently assure of a majority vote in the institution's resolutions and the power to elect the majority of the institution's managers.

Paragraph 2 - The joint liability arising out of the control relationship is limited to the uncovered liabilities of the instituion as determined in a balance sheet, the date of which is the base date on which the regime hereunder is decreed.

Article 16 - Item IX, of Article 10, of Law N. 4595, of December 31, 1964, shall have a further sub-item (g), with the following wording:

"Article 10 -

IX -

(g) dispose of or otherwise transfer its shareholding control."

Article 17 - Article 11 of Law N. 4595, of December 31, 1964, shall have a further Paragraph 1 with the following wording, the current Sole Paragraph being renumbered Paragraph 2:

"Article 11 -

Paragraph 1 - In performing its duties referred to in item VIII of Article 10 hereof, the Central Bank of Brazil may examine the books and documents of the individuals or legal entities holding the share control of a financial institution, such persons being subject to the provisions of Article 44, Paragraph 8, hereof.

Paragraph 2 -"

Article 18 - The Central Bank of Brazil shall determine the liability with penalty of dismissal, of the employee or director who permits noncompliance with the rules referring to the Bank Reserve account.

Article 19 - The temporary special administration regulated by this Decree-law shall be subject to the provisions of Law N. 6024, of March 13, 1974, insofar as they do not conflict, and, in particular, to the measures for prevention and determination of the liability of the ex-administrators.

Article 20 - This Decree-law takes effect on the date of its publication.

Article 21 - Contrary provisions are hereby revoked.

Brasilia, February 25, 1987; 166th year of the Independence and 99th year of the Republic.

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