

**LAW N. 9447, of MARCH 14, 1997**

*Disciplines the joint responsibility of controlling shareholders of financial institutions submitted to the regimes instituted by the Law N. 6024, of March 13, 1974 and by the Decree-law N. 2321, of February 25, 1987; the inalienability of their properties; the responsibility of the independent auditing companies or of the independent auditors; the sale for private sector of institutions whose shares have been expropriated, in accordance with Decree-law N. 2321, of 1987, and takes other measures.*

I notify that the President of the Republic adopted the Provisional Measure N. 1470-16, of 1997, which the National Congress approved, and I, Antonio Carlos Magalhaes, President, for the effects of the dispositions of the sole paragraph of Article 62 of the Federal Constitution, ratify the following Law:

Article 1 - The joint responsibility of holders of financial institutions established by article 15 of Decree-law N. 2321, of February 25, 1987, is also applicable to the regimes of intervention and extrajudicial liquidation instituted by the Law N. 6024, of March 13, 1974.

Article 2 - The disposition of the Law N. 6024, of 1974, and of the Decree-law N. 2321, of 1987, concerning the inalienability of properties, is also applicable to the properties of those persons or legal persons who holds, directly or indirectly, the control of institutions submitted to the regimes of intervention, extrajudicial liquidation or temporary special administration.

Paragraph 1 - In order to preserve the normalcy of economic activity and the creditors interests, the Central Bank of Brazil, by decision of its Board of Directors, may exclude the inalienability of assets belonging to legal persons which hold the control of financial institutions submitted to the special regimes.

Paragraph 2 - The properties exempt, by current law, to be alienated or burdened, shall not be affected by the inalienability established in this article.

Paragraph 3 - The inalienability established by this article shall not obstruct the alienation of controlling powers, the spin-off, consolidation or mergers of the institution submitted to the regimes of intervention, extrajudicial liquidation or temporary special administration.

Article 3 - The inquest established by article 41 of Law N. 6024, of 1974,

concerns also the investigation about the acts performed and the omissions incurred by the persons or legal persons responsible for independent auditing services to the institutions submitted to the regimes of intervention, extrajudicial liquidation or temporary special administration.

Sole paragraph - If the inquest comes to a decision based on the negligence or fraud involving the persons appointed in this article, the dispositions of the final part of article 45 of Law N. 6024, of 1974, shall be applicable.

Article 4 - Besides the hypothesis mentioned in the article 1 of the Decree-law N. 2321, of 1987, the Central Bank of Brazil may decree the special temporary administration regime whenever verified the situations mentioned in article 215 of Law N. 6024, of 1974.

Article 5 - Whenever are verified the hypothesis mentioned in articles 2 and 15 of Law N. 6024, of 1974, and in article 1 of Decree-law N. 2321, of 1987, the Central Bank of Brazil may determine the following measures, in order to preserve the normalcy of the public economy and to protect the interest of depositors, investors and creditors, without prejudice to the subsequent adoption of the regimes of intervention, extrajudicial liquidation or special temporary administration:

I - the capital increase of the society, by an outlay of the necessary resources to its raise, in an amount fixed by the Central Bank of Brazil;

II - the transfer of the shareholding control;

III - the shareholding reorganization of the society, including through merger, consolidation or spin-off.

Sole paragraph - Should the measures mentioned in this article not be adopted during the term set by the Central Bank of Brazil, the adequate special regime shall be decreed.

Article 6 - In order to protect the public economy and the interests of depositors and investors, the intervenor, the liquidator or the Board of Directors of the institution submitted to the intervention regimes, extrajudicial liquidation or temporary special administration, upon prior and express approval of the Central Bank of Brazil, may:

I - transfer assets, rights and liabilities of the company or of its businesses, individually or together, to other society or societies;

II - alienate or assign assets and rights to third parties and agree with the

assumption of its liabilities by other societies;

III - work on the constitution or reorganization of a society or societies to which the assets, rights and liabilities of the institution submitted to intervention, extrajudicial liquidation or temporary special administration shall be transferred, partially or as a whole, in order to permit the general or partial continuity of its business or activities.

Article 7 - The implementation of the measures mentioned in the former article and the termination, in any way, of the regimes of intervention, extrajudicial liquidation or temporary special administration shall not affect:

I - the pursuance of the inquest to ascertain the responsibility of controlling shareholders, administrators, members of the institutions' councils, and of persons or legal persons responsible for rendering independent auditing services to the institutions submitted to the regimes of Law N. 6024, of 1974, and of Decree-law N. 2321, of 1987.

II - the legitimacy of the public prosecutor to pursue or to commence the processes established by articles 45 and 46 of the Law N. 6024, of 1974.

Article 8 - The intervention and the extrajudicial liquidation of financial institutions may also be conducted, at the discretion of the Central Bank of Brazil, by legal entities.

Article 9 - Once an administrative process is opened against a financial institution, its administrators, members of its councils, the independent auditing company or independent auditor, and considering the gravity of the fault, the Central Bank of Brazil may take the following preventive measures, upon decision of its Board of Directors:

I - determine the removal from office of the persons under investigation from the management of the institution's businesses, while the investigation of his responsibilities is in progress;

II - prevent those persons under investigation from assuming any directive or managerial role in financial institutions, or from acting as representative or agent of directors or managers;

III - impose restraints to the activities of the financial institution;

IV - determine to the financial institution the substitution of the independent auditing company or the independent auditor;

Paragraph 1 - The decisions taken under the terms of this article by the

Central Bank of Brazil are subject to appeal, with no suspensive effect, to the Council of Recourses of the National Financial System, within a period of five days.

Paragraph 2- Should the administrative process not be concluded, within the Central Bank of Brazil, in the period of 120 days, the preventive measure shall lose its effectiveness.

Paragraph 3 - The dispositions of this article are applicable to any other institution authorized to operate by the Central Bank of Brazil.

Article 10 - The alienation of shareholding control of financial institutions, whose shares are expropriated by the Federal Republic of Brazil, under the terms of Decree-law N. 2321, of 1987, shall be made upon public offering, according to previously fixed rules, being assured the equality to all the competitors.

Paragraph 1° - The expropriation decree shall set, in each case, the term for the shareholding control alienation, and it may be extended for an equal period of time.

Paragraph 2 - Once the share are expropriated, the temporary special administration regime shall proceed, until the transfer of the shareholding control is concluded by the Federative Republic of Brazil.

Article 11 - The financial institutions whose shares are expropriated by the Federative Republic of Brazil shall obey, for all purposes, the rules and laws applicable to the private companies, until the alienation of its shareholding control.

Article 12 - The loans made within the framework of the Program of Incentives to the Restructuring and Strengthening of the National Financial System - PROER, may be accepted as guarantee, securities or rights related to transactions under responsibility of the National Treasury or of entities belonging to the indirect Federal Public Administration.

Sole paragraph - The nominal value of collateral instruments shall exceed in at least 20% the collateralized amount, except in cases when those instruments are papers representing federal public obligations, and sold in competitive auctions.

Article 13 - Whenever a financial lending is effected under the rules of the PROER, the Central Bank of Brazil opportunely shall transmit to the Economic Issues Commission of the Federal Senate, in each case, the following information:

I - the reasons why the financial institution requested its inclusion in the Program;

II - the value of the loan;

III - the comparative data between the financial charges of the PROER and those paid, on the average, by the Central Bank of Brazil as a seller of bonds in the market;

IV - the collateral warranties accepted and its value, in comparison with the loan granted.

Article 14 - Articles 22 and 26 of Law N. 6385, of December 7, 1976, shall be in force with the following changes:

*"Article 22 .....*

*Paragraph 1 - The Securities Exchange Commission is competent to establish directives applicable to the open corporations concerning:*

*.....*

*Paragraph 2 - The dispositions of items II and IV of the preceding paragraph shall not be applicable to the financial institutions and other societies authorized by the Central Bank of Brazil to operate, which shall remain submitted to the dispositions of Law N. 4595, of December 31, 1964, and to the regulation deriving from that Law."*

*"Article 26 .....*

*Paragraph 3 - Without prejudice of the dispositions of the preceding paragraph, the independent audit companies or the independent auditors shall respond before the administrative authority of the Central Bank of Brazil for the acts they have practiced or for the omissions they have incurred in, during their activities of auditing the financial institutions and other institutions authorized to operate by the Central Bank of Brazil.*

*Paragraph 4 - In the hypothesis of the preceding paragraph, the Central Bank of Brazil shall inflict to the transgressors the penalties mentioned in Article 11 of this Law"*

Article 15 - The acts performed according to the Provisional Measure N. 1470-15, of January 17, 1997, are hereby ratified.

Article 17 - This Law shall takes effect on the date of its publication.

National Congress, March 14, 1997; 176<sup>th</sup> year of the Independence and 109<sup>th</sup> year of the Republic.

Senator ANTONIO CARLOS MAGALHAES  
President of the National Congress

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