I. BANKS AND FINANCIAL INSTITUTIONS SUPERVISION

1. Applicable laws and regulations. Provide a list of the main laws and regulations that refer to the supervision and control of banks and financial institutions. Give a brief summary of the substance of each of them.

The main Costa Rican banking and financial statutes (main purpose is inferred from their respective titles) are the following:

(i) Organic Law of the National Banking System (Act No. 1644, dated September 27, 1953);
(ii) Law of Cooperative Associations and Creation of the National Institute for Cooperative Promotion (Act No. 4179, dated July 19, 1969);
(iii) Organic Law of the Popular and Community Development Bank (Act No. 4351, dated September 27, 1953);
(iv) Regulatory Law for Non-Banking Financial Firms (Act No. 5044, dated November 5, 1972 and its By-Law (No. 19530-H, dated September 4, 1990);
(v) Law of the National Financial System for Housing (Act No. 7052, dated September 27, 1986);
(vi) Law for the Costa Rican Financial System Renewal (Act No. 7107, dated November 22, 1988);
(vii) Law for the Regulation of the Financial Intermediation Activities of Cooperatives (Act No. 7391, dated May 5, 1994);
(viii) Private Complementary Pensions Regime and Reforms to the Securities Market Law and Commerce Code (Act No. 7253, dated August 18, 1995);
(ix) Organic Law of the Costa Rican Central Bank (Act No. 7558, dated November 27, 1995);
(x) Securities Market Law (Act No. 7732, dated January 27, 1998);
(xi) Law for the Protection of Employees (Act No. 7983, dated February 18, 2000);
(xii) Law on Narcotics, Psychotropic Substances, Non-Authorized Drugs, Capital Legitimate Sources and Related Activities (Act No. 8204, dated January 10, 2002); and
2. Entities/Authorities in charge of the control and supervision. Purposes, powers and functions of each of them - their organization and structure (i.e., public or private, independency or body of the Government to which they belong, size, etc.).

Pursuant to the Organic Law of the Costa Rican Central Bank (Act No. 7558, dated November 27, 1995); the Central Bank is responsible for the credit, economic and monetary policies of the State.

Affiliated to the Costa Rican Central Bank, the following are the main regulatory and supervisory organizations of the financial system in Costa Rica:

(i) General Superintendency of Financial Institutions (SUGEF):

SUGEF is in charge of granting banking and financial licenses, taking care of its regulation and supervision. Created in 1995, is an autonomous organization affiliated to the Central Bank. Its main role is the supervision and control of the entities that perform financial intermediation to enhance the transparency, stability and efficiency of the financial system.

The model is based on the analysis of the financial quality of the supervised institutions for which a CAMEL approach is used, reflecting the evaluation of each entity in a progressive scale, from best to worst, from one to four.

SUGEF rules for controlled intermediaries are based on the recommendations issued by the Basel Committee on Banking Supervision of the Bank for International Settlements (BIS).

SUGEF’s supervisory purposes are internally divided in three areas:

a. Savings and Loans Companies
b. State-owned banks
c. Private banks and financial groups

(ii) General Superintendency of Securities (SUGEVAL):

SUGEVAL is charged with the regulation, supervision and control of the securities market. Created in 1998 (thus replacing the National Securities Commission created in 1990), is an autonomous entity affiliated to the Central Bank. Its main role is to oversee the securities market transactions to guarantee transparency, adequate price formation, investor protection and information disclosure. To this end, regulates, supervises and controls not only securities transactions but also any individuals or participants, requesting registration to all of the above.

(iii) General Superintendency of Pensions (SUPEN):

SUPEN regulates the pension funds’ market. Created also as an autonomous entity under the umbrella of the Central Bank in 1995, it regulates and controls private pension funds systems as well as medium and long-term capitalization plans.

(iv) National Supervisory Agency of the Financial System (CONASSIF):

With the enactment of the Securities Market Law (Act No. 7732, dated January 27, 1998), the National Supervisory Agency of the Financial System (CONASSIF) was created.

CONASSIF is the institution responsible for issuing all regulations for the financial system as well as the overall policies that govern the three superintendencies of the financial system. Article 171 of the Securities Market Law describes in detail CONASSIF’s functions.

CONASSIF members are (i) the Minister of Finance; (ii) the President or the General Manager of the Central Bank; and (iii) five representatives not holding public sector positions.
3. Describe briefly the activities under supervision and give a list of the types of licenses available.

As mentioned above, SUGEF supervises the banking system (state-owned and private), as well as any other institution performing financial intermediation (non-banking financial entities).

Pursuant to the Regulatory Law for Non-Banking Financial Firms, such entities may offer any financial service except for those exclusively reserved for commercial banks, such as checking accounts.

Chapter II of this memorandum explains in detail SUGEF’s licensing system.

Meanwhile, as the securities regulator, SUGEVAL has the authority to issue the provisions and regulations necessary for the correct implementation of the Securities Market Law and the development of securities transactions in general.

Pursuant to article 2 of the Securities Act, only those entities and individuals registered and authorized by SUGEVAL can publicly offer securities or services for the intermediation of securities in the country.

Pursuant to the Securities Market Law, only authorized entities, called “Central Securities Depositories” can provide services of custody for securities and the management of economic and property rights related to the securities in custody.

Currently, the Central de Valores de la Bolsa Nacional de Valores (“CEVAL”), created in 1994 by its sole owner, Bolsa Nacional de Valores (Costa Rican Stock Exchange) serves as custodian for securities such as the Bonds.

Hence, CEVAL is the central securities depository of the Costa Rican securities markets, executing most of the clearance and settlement operations.

In addition, SUPEN, as supervisor of the pension system, authorizes the formation, management and investment of any pension funds and plans. To this end, the Pension Funds Investment Regulation states in detail the conditions and terms that have to be met for the investment of any such funds, either in local or foreign securities and markets.

4. Describe briefly non-regulated financial and banking activities.

In regards to banking and financial services, license from SUGEF is required when performing financial intermediation. Lending (without correlated) intermediation, leasing and factoring are not regulated.

5. Describe briefly non-permitted financial and banking activities and/or government monopolies.

Financial and/or banking activities should comply with any and all applicable legislation mentioned above. Any activities performed in contradiction of such legislation will be considered illegal, subject to civil, administrative and criminal sanctions. Banks cannot conduct insurance trade, nor are able to conduct securities trading or pension or investment fund management without forming a specialized subsidiary.
II. BANKING ACTIVITIES

6. Different types of banking licenses. Activities permitted under each of them. Activities prohibited.

There are 3 basic types licenses: private banking, cooperative banking, and savings & loans operations ("financieras no bancarias", hereinafter “S&L”).

The private actors in the system, namely the group composed by private banks, cooperative banks and S&L companies, are regulated and supervised by SUGEF, as indicated above, and can thus provide financial intermediation services.

Private and cooperative banks can take deposits and issue stock and debt securities in any currency, and issue checking accounts. They can grant loans and other credit operations, and invest in AAA securities. They can participate in derivative transactions. They cannot act as stock brokers or dealers, or investment fund managers directly, but can be part of a conglomerate with affiliates in these other lines of financial services.

S&L companies can issue debt, take deposits and issue loans, but cannot operate checking accounts or other services reserved to banks under statute.

7. Procedures to be followed and requirements to be met to obtain each of the different licenses. Formalities to be fulfilled, documentation to be submitted, guaranties requested, time estimation.

A written application with 3 copies is filed before SUGEF. The request must detail the following information:

- Distinctive name for the bank
- Estimate of start-up costs, which cannot exceed 10% of the original capital.
- Location of the home office, meeting security standards.
- Data on: sources of financing, pro forma financials, deeds, share structure,
- Background of shareholders controlling more than 5% of the stock.
- Background and resumes of all directors (5 minimum), officers, managers and auditors.
- Compliance mechanisms
- Contingency credit availability from a first order bank for 20% of capital.

A tombstone notice is published in the official newspaper and the national press, summarizing the terms of the application. After the notices are published, SUGEF issues a recommendation to the Board of Directors of the Central Bank. If the Board of the Central Bank denies the request, the applicant has to observe a cool-off period of one year before filing for the license again. The bank has to start operations within 90 days of the Central Bank approval.

8. Legal structure admitted/requested for each of the different licenses.

a) Different types of legal structures that may be used, i.e. corporations, limited liability partnerships, branches, subsidiaries.

Only corporations (sociedades anónimas) may be used.

b) Capital requirements and own fund rules.

For authorization of the license, paid in capital of: 100 million colones (minimum) for commercial banks, 5 million colones (minimum) for cooperative banks and 20 million colones for S&L companies. As of today, one dollar buys 500 colones.
c) Transfer of control and ownership regime. Is it regulated?

Yes. It is regulated in cases where 10% or more of the voting stock is transferred. In such cases, the transfer requires the prior approval of SUGEF. The transfer is also regulated where the purchaser achieves control of more than 10% of the voting stock as a result of the transfer, irrespective of the number of shares being conveyed in the particular transaction.

d) Personal requirements and restrictions that may apply in each case for officers, directors and shareholders.

As indicated above, they must submit background information. For founding shareholders the information includes police records, passport copies, solvency and creditworthiness, letters of recommendation, financials. In the case of directors, officers and managers, proof of banking experience must also be submitted.

e) Special requirements/restrictions for foreigners either individuals or legal entities

None.


No.

10. Interest rate. Is it regulated? Should the answer be affirmative, explain briefly its regulatory framework.

There are very few rules. Interest charged on delinquent debts cannot exceed the ordinary rate set for the defaulted obligation by more than 30%. Individuals collecting unreasonable interest on monetary obligations are subject to prosecution for the crime of usury.

11. Sanctions (civil, administrative, or criminal) for violations of the legal and regulatory dispositions.

The 3 types of sanctions exist in banking law. Applicability depends on the particular violation. The range of sanctions includes warnings and suspensions for minor offenses. Illegal activities for example, entail a 5% fine over new worth. Unauthorized financial intermediation entails prison terms of 3 to 6 years.

III) BANK SECRECY LAWS

12. Is client information protected? Are there any restrictions for its use?

Yes. Regulation is sparse, however.

13. Should the answer to number 12) be affirmative, please describe the legal framework, i.e. scope, limitations, exceptions.

Bank secrecy is derived from several disconnected provisions. SUGEF employees have specific secrecy obligations. The Code of Commerce mandates the secret treatment of checking account information, and there are 2 felonies related with the communication of secret information.

14. Sanctions (civil, administrative, criminal) for violations.

Criminal charges entailing up to 1 year in prison for private bankers, and 2 years for public officers.