

## **Embezzlement in Banking Law No. 5411**

### **I. Introduction**

### **II. General Rules**

1. Embezzlement in general
2. Legal subject of Embezzlement
3. The differences between breach of trust and embezzlement?
4. Perpetrator: Public Agent

### **III. Embezzlement in Banking Law**

1. The Difference Between Embezzlement in Criminal Code and Banking Law
2. Perpetrator: Member of Board of Directors and Employee of a Bank
3. The Material Subject of that Crime
4. The Material and Mental Elements of that Crime
5. Legal Consequences of Embezzlement in Banking Law

### **IV. Summary and Outlook**

## **Annex:**

### **Banking Law No. 5411**

#### **Embezzlement**

**Article 160-** If any member of board of directors or employee of a bank embezzles any money, valuable document, securities or other assets, which have been entrusted to them in connection with their duties or put under custody and supervision thereof, in his own or others' favor, he shall be sentenced to imprisonment from six years to twelve years and a judicial fine up to 5,000 days, and shall compensate for the losses incurred by the bank.

Where the offence has been committed by fraudulent acts which would ensure that the offence will not be discovered, then the perpetrator of such act shall be sentenced to imprisonment for minimum twelve years and a judicial fine up to 20,000 days; however the amount of judicial fine shall not be less than three times the loss suffered by the bank. Furthermore, in the event that the loss caused is not compensated, the court shall issue a judgment for the collection of the damage *ex officio*.

In the event that the real person shareholders who *de jure* or *de facto* have held the control the management and supervision of a bank whose permission for banking transactions has been revoked or that has been transferred to the Fund, are proven to have used the credit institution's resources directly or indirectly in their own interests or in the interests of third persons so as to endanger the soundness of the credit institution, thereby causing loss to the credit institution in any manner whatsoever, their such acts shall be considered embezzlement. Those who commit such offence shall be sentenced to imprisonment from ten years to twenty years and a judicial fine up to 20,000 days; however the amount of judicial fine shall not be less than three times the loss suffered by the bank . In addition, the losses incurred shall jointly be indemnified.

Where any embezzled money, money substitute valuable document or security as well as other assets has been fully returned or the loss has been compensated prior to the initiation of investigation, the punishment shall be reduced by two thirds.

Where any embezzled money, money substitute valuable document or security as well as other assets has been fully returned or the loss has been compensated prior to the initiation of legal proceedings, the punishment shall be reduced by half. If such case takes place prior to the issue of judgment, the punishment shall be reduced by one third.

In cases where the value of the embezzled money, valuable document or security as well as other assets is low, then the punishment shall be reduced up to half from one third.