

November, 2014

## ➤ FINANCIAL STABILITY COUNCIL AND AMENDMENTS TO GENERAL BANKING LAW AND INSURANCE LAW

On November 6, 2014, Law No. 20,789 was published in the Official Gazette, granting legal status to the Consejo de Estabilidad Financiera (Financial Stability Council or "CEF"). The CEF is part of the Ministry of Finance, and was originally created in 2011 by means of a ministerial decree.

The CEF is chaired by the Minister of Finance and comprised also by the Superintendents of each of the Superintendency of Securities and Insurance ("SVS"), of Banks and Financial Institutions ("SBIF") and of Pensions (collectively the "Financial Superintendencies"). The Chairman of the Chilean Central Bank may participate as advisor to the council.

The purpose of the CEF is to oversee the stability of the Chilean financial system and facilitate the technical coordination and exchange of information among its participants on matters regarding the prevention and handling of situations that may constitute risk to the financial system.

Among others, the CEF may (i) commission or request the Financial Superintendencies to perform studies for purposes of monitoring the stability of the financial system; (ii) request from the Financial Superintendencies any information –event subject to reserve– that may be necessary to identify or assess possible risks to the financial stability; and (iii) recommend to competent services or agencies policies that contribute toward the financial stability.

The new law sets forth a framework for joint action among the Financial Superintendencies, which shall report to the CEF the facts, circumstances or events of their relevant sectors which may have systemic consequences.

Additionally, along with granting legal status to the CEF, the law introduces significant changes to the legislation applicable to each Financial Superintendency, which may now require from the entities subject to their supervision sufficient financial information regarding all persons and entities that belong to their conglomerate group, who could materially impact the financial condition or safety and soundness of the entity, that would permit it to assess the financial situation of any such person or entity, and such additional information concerning the relationship among the parties through ownership or control, as well as transactions among the members of the conglomerate group.



If you have any questions regarding the matters discussed in this memorandum, please contact the following attorney or call your regular Carey contact.

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The new legislation amends the General Banking Law to impose a new solvency requirement for the controlling shareholders of a bank, requiring from such shareholders, individually or as a whole, to permanently maintain consolidated net assets in an amount equal to their ownership proportion of the bank's basic capital. In the event of a breach of this requirement for a term longer than the cure period determined by the SBIF, the SBIF will have the right to presume that a serious issue exists which may materially impact the financial condition or safety and soundness of the bank. Under such circumstances, the Superintendent has the authority to designate a delegated inspector who may suspend any resolution or action by the bank's board of directors or its senior executive management. Alternatively, with the prior agreement of the Chilean Central Bank, the SBIF can appoint a temporary receiver, which shall have all the power to take such actions and directives as the law or organizational documents of such bank permits the Board of Directors or senior executive management of the bank to undertake on a day-to-day basis.

The new law amends the Insurance Law to incorporate a new solvency requirement applicable to the controlling shareholders of insurance companies. In this sense, when the level of solvency of the controlling shareholders, either individually or jointly, is reduced to an amount less than the risk assets established in said regulations, and it is not remedied within the period determined by the SVS for these purposes, the SVS has the authority to instruct the companies to refrain from effecting transactions and operations with their related persons or through them, up to a period of six months, renewable for an equal term. Furthermore, under these circumstances, the SVS may suspend the management or all or some of the company's operations, thereby designating a manager for that purpose.

The new law entered into force with its publication. However, exceptionally, the new solvency requirements mentioned above will be enforceable 12 months as of the law's coming into force.