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## LEGAL ALERT

# Chilean Central Bank issues new Payment Cards regulations

Law No 20,950, which authorizes the issuance of prepaid cards by non-banking entities, granted the Chilean Central Bank (the “Central Bank”) the authority to issue certain necessary regulations for its implementation.

Nevertheless and beyond the specific task, the Central Bank has decided to perform a comprehensive and systemic review of the so called “retail” payment methods in Chile, through the issuance of an entire new regulation, which comprehends the issuance and operation of the different kind of cards that currently exist, and which has been published in the Official Gazette on June 30, 2017 (the “New Cards Regulation”).

### **\*\*Main\*\* \*\*innovations\*\***

#### **1.- Reorganization and systematization of the existing regulatory framework**

Until now, the card issuance and operation rules were contained in Chapters III.J.1, III.J.2 and III.J.3 of the Financial Regulations Compendium issued by the Central Bank (the “Compendium”), regarding credit, debit and banking-issued prepaid cards, respectively.

In enacting the New Cards Regulation, the Central Bank has concluded that certain regulatory asymmetries and common elements in all of the existing cards made necessary a new systematization of the existing regulations, and has decided to address the issuance of “Payment Cards” (understanding as such, altogether, the credit, debit and prepaid cards) in a new chapter III.J.1, but ruling the particular aspects of the different payment methods in three new sub-chapters ruling credit cards (III.J.1.1), debit cards (III.J.1.2) and banking and non-banking prepaid cards (III.J.1.3), and establishing the Payment Cards operation rules in a new chapter III.J.2, of the abovementioned Compendium.

**\*\*2.- New regulation applicable to the issuance of prepaid cards by non-banking entities\*\***

In accordance with Law No 20,950, the non-banking issuers of pre-funded payment cards (“Prepaid Cards”) shall be special purpose corporations organized in Chile under the terms of Law No 18,046, and their exclusive purpose must be the issuance or operation of Prepaid Cards. The Central Bank, in the new sub-chapter III.J.1.3 of its Compendium, has established the new specific requirements that will be applicable to such issuers, among which it is possible to highlight the following:

1. The obligation to register in the new Cards Issuers Registry, in accordance with the new regulation that for such purposes the Superintendence of Banks and Financial Institutions (“SBIF”) shall issue.
2. The obligation to keep at all times, the minimum paid capital and reserves required by the New Cards Regulation, which is at least 25,000 Unidades de Fomento (USD1,000,000 approximately), and to constitute a liquidity reserve, in accordance with the algorithm established to that effect.
3. Information and periodical reporting obligations to SBIF, including the immediate notice that must be given to said institution, in case of not fulfilling with any payment obligation, in order to apply the economic recovery program established in the new article 26 bis of the General Banking Act.

The new sub-chapter III.J.1.3 also rules conditions, limits and characteristics applicable to the Prepaid Cards, establishing different regulatory regimes depending if the Prepaid Cards are issued remotely or in-person, or nominally or to the bearer.

### **\*\*3.- Review of the Payment Card Operator notion\*\***

#### **\*\*3.1.- New concept and applicable requirements\*\***

The New Cards Regulation defines the Payment Card operator as the legal entity that performs the settlement and/or the payment of the operations owed to the affiliated entities because of the use of the Payment Cards, in accordance with the title III of chapter III.J.2 of the Compendium.

Consequently, the “authorization and registration” of transactions that formerly were part of the definition of an operator were replaced by the underlined concepts, and nowadays, it is possible to request the performance of said activities to a Payments Processing Service Provider (“PSP”) under the terms that will be explained below.

The new regulation also establishes a new algorithm for the minimum paid capital

and reserves requirements applicable to Payment Card operators.

**\*\*3.2.- Elimination of the requirement of having a direct agreement with the issuer\*\***

Until before the New Cards Regulation, only the legal entities that had an agreement with the card issuer were able to become the operator of such cards. The New Cards Regulation modifies the operator definition, expressly allowing (but not requiring) that the operation activity be performed by legal entities without having a direct agreement with the Payment Cards issuers, to the extent that said operators directly assume the payment responsibility with the affiliated entities.

The abovementioned requires that both the Payment Cards operators and issuers previously adhere to a cards network or system linked to a “Brand Holder”, understanding as such, the legal entity that is the owner, or that has the representation or license of the card brand, who in turn can grant licenses for the use of such brand by one or more Payment Card systems who adheres to said brand. [1] The New Cards Regulation establishes the requirements that the brand must have and the minimum requirements applicable to the contracts to be entered into with the Brand Holder.

**\*\*4.- Payments Processing Service Providers\*\***

The New Cards Regulation introduces the Payments Processing Service Providers figure, expressly excluding them from the application of the regulations regarding Payment Cards operators, to the extent that they provide the Payment Cards issuers or operators one or more services related to (i) the authorization and registration of transactions; (ii) the affiliation of entities to the system; (iii) the supply of electronical channels and (iv) as an exception, and in a very restricted form, the settlement and payment of amounts owed to the affiliated entities.

**\*\*5.- Other innovations\*\***

The New Cards Regulations also introduces regulations regarding frauds and fraudulent use of the Payment Cards, Chilean Anti Money Laundering Authority (Unidad de Análisis Financiero) reporting obligations, the operation of “closed” cards and under “off-line” form, among others.

**\*\*Validity\*\***

The New Cards Regulation is in force since its publication in the Official Gazzette on June 30, 2017, without the prejudice of the deferred validity of

some specific requirements, in accordance with its transitory articles, and of the necessary instructions that SBIF must issue in order to implement certain matters.

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[1] Provided that it does not perform Payment Cards issuance or operation activities under the terms established in the New Cards Regulation, the Brand Holder is not subject to its regulations.

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