

CHILEAN CONGRESS PASSES FINTECH LAW

After one year of processing, last October 12, Chilean Congress passed the Fintech Law initiative (the "Fintech Law").

The speed in the processing of this bill responds to the need to give legal certainty to the Fintech of companies, given their growth in recent years and their importance as a tool for strengthening the national economy. These entities have proven to be a key element in driving the economic boom in Chile, reducing the costs of financial products, extending access to such services, allowing greater transparency and competition in the financial offer as well as using technology to provide more efficient solutions.

The new bill of law, which is aligned on several points with the Financial Market Commission ("CMF") proposal issued on February 2021, establishes a regulatory perimeter for certain kind of services that are based on Fintech technologies, specifically: crowdfunding platforms, alternative transaction systems, credit and investment advice, custody of financial instruments, order routers and financial instrument intermediaries. In addition, it creates an Open Banking System (Open Banking) that allows the exchange of customer information between different financial or related service providers.

Role of the Financial Market Commission

The CMF plays an essential role because it will be the authority in charge of supervising the services regulated by the Fintech Law and will determine the regulations for the application and compliance of this law.

The CMF will have broad powers of oversight, regulation and information requirements. In addition, it will have the authority of issuing differentiated instructions, considering the nature of the service provided, the number or type of participants, the volume of transactions or instruments traded, among other factors. The CMF, in turn, may cancel the registration of certain Fintechs in several scenarios, such as the performance of activities other than those for which they are registered for.

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Finally, the CMF will issue the regulations for the operation of the open finance system, oversee compliance with the obligations of its participants, including the requirement of information and background information necessary to verify compliance with their obligations, and monitor the operation of this system.

Services regulated by the Fintech Law

The Fintech Law regulates alternative transaction systems, such as those to offer, quote and trade cryptocurrencies, the advisory services for credit and investment, custody of financial instruments, order routers and intermediaries of financial instruments, and crowdfunding or crowdfunding platforms. In accordance with the principle of modularity enunciated by the Fintech Law, the focus of the law is on the regulation of services rather than on the regulation of the entities themselves.

Fintechs must have an exclusive line of business and comply with certain requirements in order to obtain authorization to operate from the CMF. Among them, the Fintech Law mentions: 1) Information obligations to financial clients and the general public, 2) Corporate governance and risk management obligations, 3) The constitution of guarantees to ensure compliance with their obligations, 4) The establishment of minimum permanent assets, and 5) Conditions of suitability for the provision of credit and investment advisory services. These requirements apply in a differentiated manner among the different financial service providers.

Finally, in order to operate, Fintechs must be authorized by the CMF and be registered in the corresponding registries.

Open Finance System

The Fintech Act creates a system of open finance (Open Banking) that will enable the exchange of information directly and securely, through remote and automated access interfaces, of financial customers who expressly consent to it.

Information providers such as banks and broker-dealers, information-based service providers and payment initiation service providers will be part of this open finance system. The latter two are also regulated by the Fintech Law, which establishes registration and oversight requirements by the CMF for both.

The operation and implementation of the open finance system will be determined by the CMF, which will issue the instructions for its implementation, supervise compliance with the obligations of its participants and monitor the latter and the system.

Entry into Force and Other Matters

The Fintech Law will enter into force 30 days after its publication in the Official Gazette, with the exception of the provisions contained in Titles II (technology-based financial services) and III (open finance system), as well as other provisions that modify other regulatory bodies, which have their own rules of deferred entry into force. The current Fintech service providers will have a period of 12 months, counted from the General Rule issued by the CMF, to submit their respective applications for registration and authorization to the CMF. If they do not comply with this requirement, they must refrain from continuing to provide their services for the execution of new transactions and must only carry out acts aimed at concluding their existing transactions.

The CMF must issue the regulations for the implementation of the open finance system within 18 months from the publication of the Fintech Law. The regulations to be issued by the CMF must include a gradual implementation schedule for all participants.

Finally, we note that the Fintech Law introduced miscellaneous amendments to other legal bodies, among which we highlight Law 18.045 (Securities Market Law), Law 18.046 (Law on Corporations), Law 20.712 (Law on the Administration of Third-Party Funds and Individual Portfolios), Law 19.913 (which creates the Financial Analysis Unit), Decree with Force of Law 251 of 1931 (which regulates insurance companies), Decree with Force of Law Number 3 of 1997 (General Banking Law) and the Commercial Code, among others.

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