

CHILEAN EXECUTIVE PRESENTS “FINTECH LAW” BILL

On September 3, the executive presented to Congress the anticipated draft of the "FinTech Law", the new regulation that proposes a legal framework applicable to FinTech companies in Chile (the "**Bill**").

Until now, FinTech companies in Chile have operated without their own or specially designed legal framework, which has generated a series of regulatory inconveniences that have impacted their business model and hindered the development of these technologies in Chile.

In this sense, the Bill, which is aligned in several points with what was the proposal of the Financial Market Commission ("**CMF**") published in February of this year, aims to establish a regulatory perimeter for certain types of services based on Fintech Technologies. These are:

- Crowdfunding platforms
- Alternative transaction systems
- Credit and investment advisory services
- Custody of financial instruments
- Order routers and financial instrument intermediaries

These services will be subject to oversight by the CMF and Financial Analysis Unit (UAF).

Likewise, the proposed regulatory body establishes instrumental definitions, such as cryptoassets, financial instrument, crowdfunding platforms, among others.

Registration Obligations

Only those entities that are registered in a new public registry to be kept by the CMF called "Registry of Providers of Financial Services" (the "**Registry**") may professionally provide the services referred to above.

Likewise, prior to beginning to provide the services, such companies must request the corresponding authorization from the CMF and

This news alert is provided by Carey y Cía. Ltda. for educational and informational purposes only and is not intended and should not be construed as legal advice.

Carey y Cía. Ltda.
Isidora Goyenechea 2800, 43rd Floor.
Las Condes, Santiago, Chile.
www.carey.cl

must evidence that they comply with the technical requirements, in terms of systems and procedures to comply with information obligations, sufficient operational capacities (which vary depending on the service), among others. Likewise, they must certify compliance with the corporate governance requirements indicated in point IV. below (which would be specified by the CMF by means of a general rule).

The CMF may cancel the registration in the Register of anyone who has been sanctioned for the serious infringements referred to in Article 14 of the Bill, or who, being registered in the Register, has carried out activities other than those regulated by the Bill or, being the latter, which have not been authorized in accordance with the preceding paragraph.

Suitability of executives

The natural persons that perform functions for the entities that provide FinTech services, as well as the systems that such entities use to provide their services, must comply with standards of objectivity, coherence and consistency between the elements used to make their recommendation or evaluation and the needs expressed by the clients that contract such services. The above will be specified by the CMF by means of a general rule.

Guarantees for intermediation of financial instruments, routing of orders or custody of financial instruments; Minimum Equity of FinTechs that provide intermediation or custody services of financial instruments

Further, once such companies reach a certain size, either in terms of business volume or clients that may be affected by the actions or omissions that they may incur, those who provide financial instrument intermediation, order routing or custody of financial instruments services must provide one or more guarantees, as the case may be, to indemnify for the correct and full compliance of all the obligations arising from their activity and, especially, for the possible damages that may be caused to their clients by their actions or omissions in the provision of those services. The guarantee must be constituted by means of a stand-by Letter of Credit or an insurance policy.

On the other hand, the Bill states that, once the business' volume is reached (which will be determined by the CMF), allowing to

reasonably presume that the risks faced by the entity may compromise the public faith or financial stability, the entities that provide intermediation or custody services of financial instruments must permanently have a minimum equity, of at least than the greater of: (i) UF 5,000, and (ii) 3% of the entity's financial and operational risk-weighted assets (according to the calculation mechanism to be established by the CMF).

Corporate Governance of FinTech companies

In terms of corporate governance, the Bill states that the referred FinTech companies must design, approve and implement policies, procedures and controls that make their economic-financial viability compatible with their capacity to have suitable strategic responses to the risks inherent to their lines of business (taking into consideration their size, volume and nature of their business, and risks).

Information Exchange and Open Banking

The Bill establishes a framework for the implementation and operation of Open Banking, to allow the exchange of information among different lenders, through remote and automated access interfaces, generating an interconnection and direct communication among the institutions participating in the System (the "**Open Banking System**").

The participating institutions of the Open Banking System shall be those that qualify as:

- Information Provider Institutions (which includes banks, and issuers of credit cards, payment cards with provision of funds or any other system similar to the referred means of payment that are authorized by the CMF)
- Institutions that provide information-based services
- Accounts providing Institutions
- Payment initiation service providers

The Bill contemplates specific requirements for each of them within the framework of the development of their activities.

Amendments to other regulatory bodies

The Bill also contemplates the amendment of different legal bodies. Among these, the following stand out:

- Law No. 20,950 that Authorizes Issuance and Operation of Means of Payment with Provision of Funds by Non-Banking Entities

It is amended in order to recognize the possibility of issuing means of payment with provision of funds to carry out payment transactions without cards, by means of electronic transfer of funds between accounts opened in different financial entities.

- Law No. 18,840 Constitutional Organic Law of the Central Bank of Chile

Regulatory and exchange powers of the Central Bank are extended to include crypto-assets issued by centralized entities that receive money from the public (stablecoins).

- Securities Market Law No. 18,045

Among other amendments, it includes the possibility for the CMF to make proportional requirements in the regulation applicable to stock exchanges and securities intermediaries in view of the risk to the public faith. Likewise, the requirements applicable to the issuance of publicly offered securities are simplified by eliminating the obligation to register the issuer, maintaining only the registration of securities.

With respect to financing, a new debt security (Mini bonds) with a simplified registration regime is incorporated to facilitate access to the capital market for medium-sized companies (new Title XXIX).

- Law No. 18,046 on Corporations

The maximum number of shareholders that a corporation may have without the obligation of registration in the Securities Registry is increased from 500 to 2,000. The obligation for special corporations to obtain prior authorization from the CMF for capital increases in cash is eliminated.

- Law No. 20,712 on Management of Third-Party Funds and Individual Portfolios (Funds Law)

The minimum equity requirement is amended from the current UF10,000 to the greater of: (i) UF5,000, and (ii) 3% of the entity's financial and operational risk-weighted assets (according to the mechanism established by the CMF, which may be increased up to 6%).

Authors: Francisco Guzmán; Andrés Latorre