

CHILEAN FINANCIAL MARKET COMMISSION OPENS PUBLIC CONSULTATION ON AUTHORIZATION OF EXISTENCE OF SPECIAL STOCK CORPORATIONS AND INITIATION OF OPERATIONS OF GENERAL FUND MANAGERS

On January 3rd, 2022, the Chilean Financial Market Commission (FMC) opened a public consultation process (the "**Regulatory Proposal**") on new regulations regarding the procedure to authorize the existence of certain special stock corporations (SSCs) and to authorize the commencement of operations of general fund managers (GFMs).

The Regulatory Proposal is addressed to (I) entities that are required to be incorporated as a special stock corporation, subject to FMC oversight, that currently do not have regulations governing this matter (i.e., entities that are not banks, issuers of non-banking payment cards, payment card operators, managers of clearing and settlement systems for financial instrument and insurance companies, for which regulations on the authorization of existence are already in place) and (II) GFMs, which, pursuant to the provisions of Law No. 20,712, may only initiate operations upon providing satisfactory evidence to the FMC that they meet the applicable legal requirements and that they have the policies, procedures and controls required by a general rule.

The public consultation process will be open until January 28th, 2022 and the text of the Regulatory Proposal can be found at the following [link](#)

I. Application for the authorization of existence of SSCs

The Regulatory Proposal establishes that the request for authorization of existence of SSCs subject to FMC supervision must be submitted by one of the future partners of the entity through the FMC's website, together with the following information:

1. Digitalized copy of the public deed containing the bylaws of the

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

future SSC.

2. With respect to individuals that directly or indirectly contribute 10% or more of the capital stock of the SSC, the applicant shall provide identification data of those individuals and their participation (as a percentage) in the capital stock of the SSC.

3. With respect to legal entities directly participating in the incorporation of the SSC, the applicant shall provide identification data of such entities, including the identification of representatives, copy of the public deed of incorporation, certificate of good standing and marginal annotations, and the relevant powers of attorney.

4. With respect to the individuals that will act as provisional or permanent directors of the SSC, and those who will perform the functions referred to in Article 50 of Law No. 18,046, a sworn statement signed by the relevant person that he/she is not under any of the incapacities set forth in Articles 35 and 36 of Law No. 18,046 or, in the case of stock exchanges, in Article 46 of Law No. 18,045.

5. Information on whether any of the foregoing individuals have been accused of or have been convicted for the conducts and/or crimes indicated in the Regulatory Proposal or are subject to liquidation proceedings in Chile or have been declared bankrupt abroad, identifying the person and circumstance.

6. Description of the ownership structure of the corporate group to which the SSC will belong, indicating the main businesses carried out by the companies of that group and, if applicable, a brief description of the company that originated the SCC (in case it is the result of a merger, spin-off or transformation).

7. Summary of the strategic plan and business plan of the SSC, indicating expected revenues and expenses, main lines of business, and organization chart with a description of the main functions of its areas.

8. Documents evidencing that the partners have the necessary liquidity to satisfy their committed capital contributions and comply with the minimum capital requirements of the SSC as provided by law.

Further information on each of the documents and other information that must be submitted with the application is contained in the Regulatory Proposal.

The Regulatory Proposal also regulates the ongoing requirement of communicating to the FMC any modification to the information submitted as part of the application process, regardless of whether

such modification takes place during the authorization process or after the authorization has been granted, which must be satisfied through the FMC's Online Information Delivery System (Sistema de Envío de Información en Línea – SEIL).

Finally, as indicated in the Regulatory Proposal, the regulations on the process of requesting authorization of the existence of SSCs will enter into force as from the date of its enactment and will not be applicable to requests for authorization of existence previously initiated, unless the applicant expressly states so in writing.

II. Application for the initiation of operations of GFM

According to the Regulatory Proposal, in order for GFM to obtain the authorization to initiate operations, allowing them to deliver to the registry kept by the FMC the first internal regulations of any mutual or investment fund, they must submit a request to the FMC, together with the following information:

1. Outline containing the organizational and functional structure, with a brief description of the functions of each unit and identification of the committees that support the management of the GFM and of the persons or units in charge of the risk management, internal audit and compliance functions.
2. Security and information management policies.
3. Risk management and internal control handbook.
4. Handbook for the prevention of money laundering, bribery, or financing of terrorism.
5. Document containing a brief description of the main information or support systems for the GFM's relevant processes, including those for information security.
6. Risk matrix of the entity, divided according to the business cycles contemplated in Section III of Circular No. 1,869 of 2008, indicating the probability of materialization of risks and estimated impact before and after the strategic responses adopted by the entity.
7. Identification of the areas or services to be outsourced, indicating the counterparties in case the respective contracts have been entered into and the safeguards adopted to ensure that such outsourcing does not affect the normal operation of the GFM or the protection of client information, and does not generate circumstances that may result in an inadequate resolution of conflicts of interest.
8. Business Continuity Plan.

More information on each of the documents and other information that must be submitted with the application may be found in the Regulatory Proposal.

Finally, as indicated in the Regulatory Proposal, the regulations on the application for commencement of operations of GFM's will enter in force as of the date of its enactment.

Authors: Diego Peralta; Fernando Noriega