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LEGAL ALERT

Chilean Financial Market Commission opens public consultation on regulation of fees on money lending operations

In compliance with the mandate set forth in Article 19 ter of Law No. 18,010 (the "**Money Lending Operations Act**"), incorporated therein by Law No. 21.314 -published on April 13, 2021- on December 27, 2021, the Financial Market Commission ("**CMF**") opened a public consultation process on new regulations regarding the requirements that fees charged by entities supervised by the CMF in money lending operations (operaciones de crédito de dinero) must meet in order not to be considered as interest in accordance with Article 2 of the Money Lending Operations Act (the "**Regulation Proposal**").

The Regulation Proposal establishes as a general rule that any payment that the lender receives or has the right to receive over the principal amount of a money lending operation, whether directly or indirectly, will be considered as interest, except where such payments comply with all of the following rules, conditions and requirements, in which case it will be considered as a fee:

1. That the concept and total amount of the payment has been informed in a clear and detailed manner, and expressly accepted by the debtor, prior to its collection and provision of the service;
2. That the information on the costs associated with the services that may be hired on the occasion of the money lending operations be made available to the public at large through the same channels used by the lender when an offer to enter into money lending operations;
3. The consideration for the payment of fees must correspond to real, creditable, and effectively rendered services to the debtor; and,
4. The consideration for the payment cannot be related to the evaluation, granting and payment of the loan or have the purpose of reducing the risk of the debtors or ensuring compliance with their obligations.

Any amount or charge related to a money lending operation that does not meet any of the conditions or requirements to be considered a fee must be included in the

interest rate for purposes of calculating the corresponding maximum conventional rate. In any case, the Regulation Proposal indicates that payments directly or indirectly received or entitled to be received by the lender and which according to applicable law should be considered as fees or should not be considered as interest, or payments that the lender does not actually receive or is not entitled to receive (including, for example: prepayment charges, extrajudicial collection charges, insurance premiums that protect the payment of the debt or the goods given as collateral, etc.), will not be considered as interest.

Regarding operations contemplated in Article 6 ter of the Money Lending Operations Act (i.e. maximum conventional interest rate in loans originating from loan facilities for credit cards) entered into prior to the entry into force of Law No. 21,314, the Regulation Proposal establishes the following rules to adapt any existing contracts with the clients: (i) the relevant institutions must deliver a letter to the debtor within the following 3 months indicating that the contracts must be modified in accordance with the new regulation, (ii) that the above term must include a period of 20 business days for the debtor's express pronouncement, and (iii) that attached to the letter referred to in (i) above, the institutions must deliver an annex with the detail of the required amendments for the debtor's acceptance or rejection.

The Regulation Proposal contemplates that the regulations will enter into force six months after its issuance.

The consultation process will be open until January 23 of 2021, and the text of the Regulation Proposal can be found in the following link.
https://www.cmfchile.cl/institucional/legislacion_normativa/normativa_tramite.php

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