

September 1, 2023

## LEGAL ALERT

# Financial Market Commission opens consultation process on new rule on banks' early regularization

On August 29, 2023, the Financial Market Commission ("FMC") published, for public consultation, the proposal of a new Chapter 1-19 of its Updated Regulations Compendium (the "**Regulation Proposal**"), with the purpose of ruling three key aspects regarding banking regularization whose regulatory treatment was pending, i.e.:

- the way and term for banks to communicate to the FMC the occurrence of any of the events indicative of financial instability or deficient management that may have occurred;
- the suitability and technical capacity requirements that the delegate inspectors and provisional managers shall meet, and
- the suitability and technical capacity requirements that the liquidator shall meet, in case of a bank's mandatory liquidation.

Communication to the FMC of an event indicative of financial instability or deficient management

Should an event that indicates financial instability or deficient management occur, pursuant to Article 112 of the General Banking Act ("**GBA**"), the banks shall confidentially communicate this to the FMC within one business day.

Additionally, if the FMC identifies any such events during its supervisory role, it will use its regular communication channels with regulated entities to request information from the bank. This information is necessary to assess whether a regularization plan needs to be developed, according to Article 113 of the GBA.

Suitability and technical capacity requirements for delegate inspectors and provisional managers.

Article 117 of the GBA establishes that individuals designated by the FMC as delegate inspectors or provisional administrators (with the agreement of the

Chilean Central Bank's Council) can either be FMC's officials, excluding its Prosecutor, or external professionals who fulfill the following requirements:

- Holding a professional title of auditor-accountant or a professional degree of a career with no less than 10 semesters of duration, granted by either a State university, or a State-recognized university.
- Having served for at least 5 years as a director, general manager, or main officer of an open stock or special corporation, a loans and savings cooperative supervised by the FMC, a bank organized in Chile, or a similar foreign entity, as the case may be; or having similar work experience in a public organization.

Additionally, the following individuals will be ineligible for the mentioned positions:

- Those unable to be appointed as a director of a corporation for being affected by some inability described in No. 1, No. 2, and/or No. 3 of Article 35 and No. 1 of Article 36 of the Corporations Law.
- Those who fall under any of the hypotheses described in Article 28 letter d) of the GBA, regarding requirements that the banks' founding shareholders or controllers shall fulfill.

Delegate inspectors, provisional administrators, and bank liquidators will be subject to the provisions of Articles 28 and 31 of Law No. 21,000, which establishes the FMC, concerning duties and prohibitions applicable to officials or service providers thereof.

#### Suitability and technical capacity requirements for liquidators

Same as for delegate inspectors or provisional managers, pursuant to Article 130 of the GBA, FMC's officials (other than its Prosecutor) can be appointed as liquidators, as well as external professionals that meet the following cumulative requirements:

- Holding a professional title of auditor-accountant or a degree of at least 10 semesters of duration, granted by a State university a State-recognized university, or by the Supreme Court of Justice, as the case may be.
- Having at least 5 years of such professional experience.
- Pass the qualifying exam for Liquidators, and
- Being actually registered in the Liquidators List of the Superintendency of Insolvency.

The liquidator shall serve within a 3-year period and will have the same faculties, duties and liabilities that legislation mandates for corporation liquidators.

Finally, the Regulation Proposal also amends Rule 108 of the FMC, with the purpose of making applicable these provisions to the Savings and Credit Cooperatives (Cooperativas de Ahorro y Crédito) supervised by the FMC.

The full text of the Regulation Proposal is available at the following [link](#).

The public consultation period of the Regulation Proposal will be extended until October 3, 2023, inclusive.

Authors: Diego Peralta