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FMC ISSUES REGULATIONS ON FEES IN MONEY LENDING OPERATIONS

On August 5, 2022, in compliance with the mandate set forth in the new article 19 ter of the law 18,010, on money lending operations, the Financial Market Commission (" **FMC** ") published, , the General Rule No. 484, with the purpose of regulating the requirements, rules and conditions that the money lending operations granted by entities subject to its supervision or oversight must fulfil (the " **GR 484** ").

The main provisions of the GR 484 can be summarized as follows:

• It distinguishes between "interest", as per the definition of the Law No. 18,010, and "fee", which is such charge that meets the conditions and satisfies the four requirements set forth in the GR 484.
• It sets four requirements for a charge to be considered a fee, i.e. (i) It must be calculated on the basis of the cost of the service provision; (ii) it must correspond to services effectively provided to the borrower and these must not be inherent to the money lending operation; (iii) the reason of the payment, as well as its total amount for the borrower must have been informed and accepted by him in an express manner, prior to the charge and the provision of the services, regardless of the charge for such service being made before to its provision, and (iv) the information on fees must be made available to the public via the same channels through which the lender offers or executes the money lending operations.
• In relation to the limb (ii) above, it specifies that it is "inherent to the money lending operation" every service that is necessary to initiate, execute, materialize or terminate it, or that must be provided by the lender in fulfillment of a legal or regulatory rule. Furthermore, the GR 484 provides that the services provided by third parties for the fulfillment of the formalities required by law for the execution of a money lending operation, or for the granting, enforcement or releasing of their securities, will not be considered inherent to the money lending operation.
• It precises that its provisions are neither applicable to operations that are not subject to the maximum interest rate (interés máximo convencional), nor to operations or services that are not part of the

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money lending operation or that are accessory thereto.
• It provides that the same abovementioned requirements and rules are applicable to the fees originated in the use of credit lines, and that the management, operation and maintenance of the line or card are not considered inherent services. Therefore, these charges to the borrower are deemed as fees. This, to the extent that such charge is not made in consideration to the amount of the money lending operation and that it has not been charged for other product or service.
• It provides that the lender must evidence the fulfillment of the rule before the FMC, and
• It sets a procedure for the entities that must amend their contracts of credit lines associated to credit cards inform of this to their clients, as well as the consequences of their amendment or rejection from the borrowers (including that, in case of rejection, the lender may terminate the agreement, being compelled to observe the originally agreed payment terms).

It should be noted that the GR 484 is the result of 2 prior public consultations opened by the FMC, on December 27, 2021 and April 8, 2022.

The GR 484 will come into force on August 1, 2023, and as from this date, all fee charges that do not observe its provisions shall be deemed as interests. Likewise, the entities to which these regulations are applicable shall have up to that date to adjust the agreements which must be amended as a result of the enactment of the GR 484.

The abovementioned becomes particularly relevant regarding structuring or availability fees charged by lenders in financings that are subject to this regulation.

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