

May 29, 2020

## LEGAL ALERT

### **Law 21,234: Sets a new liability limitation regime for unauthorized use of payment means**

On May 29, 2020, Law No. 21,234 was published in the Official Gazzete and came into force (the "New Law"), amending and replacing in its entirety Law No. 20,009, expanding its scope and establishing a new regime of limitation of liability for unauthorized use of means of payment.

#### **\*\*Scope\*\***

The new law is applicable to both users or holders of "Means of Payment", defined jointly as:

- All Payment Cards (debit, credit and prepaid), either issued or not by entities subject to the Financial Market Commission's ("FMC") supervision, and
- Electronic transactions, setting for this purpose a broad definition, which includes any operations carried out by electronic means that cause debits and credits or money orders in different types of account.

#### **\*\*Liability limitation regime\*\***

The users or holders of Means of Payment shall deliver a notice to the relevant issuer, as soon as they become aware of a lost, theft or fraud that affect their Means of Payment. Immediately after receiving such notice, the issuer shall proceed to block them.

- Regarding transactions executed after to the notice: The user or holder will

be exempt of any liability, and the issuer shall be responsible for them.

- Regarding transactions executed prior to the notice: The user or holder is granted with a 30 business days term after the notice to file a claim, and such claim may refer to transactions executed up to 120 calendar days prior to the date of notice.

The burden of proof for the transactions that the user claims not to be processed shall always lie with the issuer. The mere transactions registry will not be sufficient, necessarily, to prove that they were authorized by the user, nor that the user acted on an imputable negligent or careless manner.

#### **\*\*Funds restitution\*\***

The issuer shall proceed to cancel charges or restitute the funds within a 5 business days-term, as from the date of the claim, to the extent the involved amount is less than 35 Unidades de Fomento ("UF"). Regarding the excess, the issuer shall have 7 additional days to cancel or restitute it, or to bring a lawsuit against the user before the competent local police court (juez de policía local), to the extent user's fraud or gross negligence becomes apparent from its assessment of the claim. The court ruling will finally determine whether the issuer shall make the claimed restitutions or not.

#### **\*\*Other provisions\*\***

- It is forbidden to the issuers to offer insurances whose coverage correspond to risks that must be undertaken by the issuer pursuant to the new law.
- Several criminal sanctions are set forth in connection with certain crimes related fraudulent use of Means of Payment.
- The issuers must block all Means of Payment that are inactive for more than 12 consecutive months, notifying the relevant user.
- The issuers shall inform on their websites, the number of users affected by situations governed by the new law, involved amounts and response terms, on a quarterly basis. They shall also provide such information to the FMC, on a

disaggregated basis.

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