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LEGAL ALERT

New Regulation on Prepaid Cards

The amendments to Chapter III.J.3 of the Compendium of Financial Regulations of the Central Bank introduced a new regulation on prepaid cards (Payment Cards with the Provision of Funds), which seeks to achieve greater financial inclusion by strengthening and promoting this payment method, which has not yet achieved the expected market penetration.

The first draft of this regulation is from June of last year, which received many comments from both banks and regulators. These comments prompted the strengthening of the first draft, resulting in the regulation that is currently in place.

This new regulation has introduced a clear and specific concept of Provision of Funds Accounts. These "Provision of Funds Accounts" are those with a sole purpose of receiving funds for the provision of the cards to be used as a payment method.

The definition of card ("Card") is also modified and extended to a concept that also includes the dematerialization of the traditional instrument, considering virtual means. Thus, transactions can be made through electronic or computer devices.

In addition, the new regulation includes several provisions to prevent the misuse of this system, through money laundering or terrorist financing. Thus, these cards are limited by their acquisition characteristics, whether in person or remotely, and whether they are nominated or innominated . For example, acquiring cards through remote means is permitted, provided that those means include appropriate mechanisms to establish and verify the identity of the holder, in which case, the cards may not accumulate more than CH\$500,000 . In turn, legal persons may acquire cards on behalf of natural persons that are duly identified in a list provided by the contractor to the corresponding Issuer.

The limit for issuers of innominated and disposable Cards rises from CH\$50,000 to CH\$100,000. The use of nominated Cards overseas is permitted, provided that they have been acquired personally.

The definition of “operators” is narrowed. Operators are defined as entities that provide services related to the authorization and registry of transactions to the Issuers, and that perform, by order of the Issuers, acts of administration leading to the payment of services which the issuer owes to affiliated entities for the use of the Cards.

Issuers must be banking companies established in Chile, which are considered to be authorized for these purposes, and have technology that can properly safeguard the inviolability of the information contained in the Cards. Thus, the new regulation eliminates the requirement of prior authorization by the Central Bank in order to issue Cards. The same applies with respect to operators previously registered or licensed as operators of credit or debit cards, while such registration or authorization remains in force. It also allows non-banking companies already operating plastic credit and debit cards to issue Cards without imposing additional requirements.

It should be noted that the regulation does not authorize the issuance of foreign currency cards, nor does it give instructions concerning matters such as the type of exchange rate to be used when these cards are used abroad. Issuers are responsible for defining these aspects of the operation within their systems and to provide the relevant information to the holders.

Furthermore, according to the old regulation, issuers were responsible for the affiliation of the commercial establishments for them to accept their Cards as a payment method, which could have been inhibiting their development. In view of the above, the new legislation states that both issuers and operators can use the infrastructure they already have for the acceptance and use of other means of payment, for their affiliation and operation. Thus, the Issuers may operate Cards of their own issuance, or hire the full or partial operation of these with one or more operating companies.

On November 22, 2013, a bill entered the Chilean House of Representatives which allows the Issuance of Payment Methods with Provision of Funds for Non-Banking Entities with the objective of achieving greater financial inclusion of low-income sectors. The bill aims to increase the number of market actors by establishing that nonbanking companies may issue open-multipurpose prepaid cards, through physical, electronic or any other type of instruments.

The project introduces a number of amendments to the Banking Law and the Financial Analysis Unit and Money Laundering Law, among which are:

Specific authorization for the issuance of prepaid payment instruments or payment through provision of funds by nonbanking institutions.

Power granted to the SBIF to oversee all the issuing companies.

Regulatory powers granted to the SBIF and Central Bank for the necessary prudential regulation.

Power to raise money from the public for the sole purpose of Payment with Provision of such funds, which do not accrue interest or indexation; these funds may only be used to make payments for the use of such systems, in charge of the corresponding commissions or the reimbursement of the funds raised through the holder of the payment method, if any.

Nonbanking issuers will be subject to rules issued by the Central Bank pursuant to Article 35 No. 7 of its Constitutional Organic Law, in terms of liquidity, paid capital and reserves, debt-capital adequacy requirements, among others.

The issuing or operation of Payment Cards with Provision of Funds or any other similar payment methods will be added to the operations that banks, their subsidiaries and banking support institutions can perform.

At present, the abovementioned Bill continues to be discussed in the Chilean House of Representatives, and it has been requested that it be reissued with the Bill that amends the 1997 Decree Law N° 3, the Banking Law and the Central Bank Law, enhancing competition in the market for credit and debit cards.

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