

December 20, 2019

LEGAL ALERT

Norms about netting in derivatives contracts are modified

Resolution number 2270-02-191212 (the “Resolution”), taken by the Council of the Central Bank on its meeting held on December 12, 2019, was published in the Official Gazette on December 17, 2109. By means of this resolution, the Central Bank amended Chapter III.D.2 of its Financial Rules Compendium on “Recognition and regulation of master agreements for entering into derivative agreements for the purposes indicated” (“Chapter III.D.2”).

These amendments seek to adapt Chapter III.D.2 to the current terms of the General Banking Act and those of Law No.20,720 (the “Bankruptcy Law”), introduced by Law No.21,130.

The abovementioned amendments are related to the general terms and conditions, established by the Central Bank, that derivatives master agreements (“Master Agreements”) in which a bank established in Chile or any institutional investor is a party must comply with for netting of related obligations.

The main amendments are:

- All references to banks with solvency problems are adapted so that they accommodate to the current language of the General Banking Act.
- New fourth subparagraph of Article 140 of the Bankruptcy Law states that upon the occurrence of an acceleration event or an early termination event related to financial instability, deficient management or other situations prior to mandatory bankruptcy (“Prior Events”) of a bank or an institutional investor (as long as that event is expressly contemplated by the regulations of the Central Bank), the acceleration or the termination will only occur once elapsed the term established by the Central Bank.

In exercise of said faculty, the Central Bank established a term of two banking days as from the date in which the respective event occurred and that the acceleration or termination event will only operate upon request of the complying party, request that can be only formulated once the two-day

term has elapsed. Also, it is no longer necessary to establish in the Master Agreement or elsewhere that the parties submit to the regulation since they are now mandatory.

- In the same way, the new regulation identifies and makes applicable to fund managers the Prior Events that were previously applicable only to banks incorporated in Chile, insurance and reinsurance entities incorporated in Chile and pension fund managers.
- Finally, the transition provisions were eliminated, being set that the amendments introduced by the Resolution will come into force as of its publication in the Official Gazette, and that its provisions are applicable to all master agreements recognized by the Central Bank and to the derivative agreements entered into under the same, so that it is no longer necessary to amend the Master Agreements entered into before the publication of the Resolution to make applicable thereto the provisions of Chapter III.D.2.

Authors: Diego Peralta