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US APPROVES BCI'S PURCHASE OF CITY NATIONAL BANK OF FLORIDA

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Chilean firm **Carey** and US firms Simpson Thacher & Bartlett LLP and Ávila, Rodríguez, Hernández, Mena & Ferri have helped Banco de Crédito e Inversiones (BCI) obtain US regulatory approval for its acquisition of City National Bank of Florida, the second largest bank in Miami, marking the first time ever a Chilean bank has bought a US counterpart.

BCI's holding company, Empresas Juan Yarur (EJY), paid US$946 million for a 100 per cent stake of CM Florida Holdings, the holding company that owned the Floridian bank. The acquisition closed on Friday after BCI received approval from the Federal Reserve's board of governors on 21 September.

BCI spent two-and-a-half years persuading US regulators to approve the tie-up and overcoming a number of regulatory hurdles relating to the differences between US and Chilean supervision of bank holding companies. Chilean regulators approved the deal in late 2013, with the country's Central Bank following suit in February 2014.

The deal is only the second example of a Chilean financial institution buying outside of its home country and follows Corpbanca's acquisition of Colombia's Helm Bank for US$1.28 billion in 2012. It also broke new ground for Chilean legislation as BCI had to convince regulators the acquisition fell under local regulations allowing Chilean banks to acquire other banks abroad directly, despite the regulations not expressly regulating the possibility of acquiring a holding company.

The banks signed the deal back in 2013, with **Carey** and Ávila Rodríguez advising BCI on the transaction. City National Bank of Florida, which is part of Spain's Grupo Bankia, turned to the New York office of Sullivan & Cromwell LLP. Bankia opted to sell City National Bank of Florida and a number of its other foreign assets following its US$22 billion bailout by the Spanish

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government in 2012. “Bankia Group generated a net capital gain from the sale [of City National Bank] and it allowed it to continue successfully implementing elements of its announced restructuring plan,” says Sullivan & Cromwell partner Werner Ahlers.

BCI beat bids from Banco do Brasil and Miami-based BankUnited to win the rights to purchase City National. Banco do Brasil is no stranger to breaking new ground through acquisitions; in 2011 it became the first Brazilian bank to buy a US counterpart when it paid US$6 million for Florida-based Eurobank.

BCI bought the holding company that owned the Floridian bank, CM Florida Holdings, through its own holding company, Empresas Juan Yarur (EJY), which is controlled by the Chilean bank’s founders, the Yarur family, and which has businesses in insurance, financial services, leasing and consultancy. EJY bought a stake in Chilean retail property group Parque Arauco back in 2009, while other assets have included a vehicle leasing company and a cemetery.

EJY’s ownership structure and business ventures outside the banking sector necessitated a corporate reorganisation of the holding company to meet with US regulators’ approval. “The ownership structure of banks in the US is very different to Latin America, where banks are usually controlled by a family through a holding company, which is engaged in other businesses pertaining to the same family, outside the financial sector,” explains Carey’s Francisco Ugarte. Chilean banking regulators do not have direct supervision over holding companies consisting of financial and non-financial entities, leading the Federal Reserve to request the holding company be restructured to allow greater transparency for local regulators. Consequently, BCI had to spin off EJY’s non-financial assets. Lawyers also had to redraft EJY’s shareholders agreement to create a company with a single-tier ownership structure, whereas previously the company had four tiers to reflect the position of each owner within the family.

The bank also had to convince the US Federal Reserve that Chile’s financial regulators were able to supervise the sector effectively. “It was a full survey by the Federal Reserve of Chilean law and how the financial system had operated over the last decade,” says Ugarte. “It was the first time that the Fed was surveying our laws and regulations and trying to ascertain the degree of sophistication and regulatory powers our local regulators had.” The arduous process of convincing the Federal Reserve took several years, but was expedited by new legislation governing Chile's banking sector passed in November 2014. "One of the concerns of the Federal Reserve was that given the number of different regulators, there was not one single entity for financial conglomerates, and they were worried whether regulators had a common view with which to approach financial conglomerates like the BCI," explains Ugarte. The new law created a financial stability council with representatives from all the country's banking regulators, giving the bodies an outlet to share information on financial risk each regulator attached to Chilean financial conglomerates.

BCI's US counsel Asnardo Garro of Ávila Rodríguez says the transaction marks a big step for other Chilean banking groups thinking of entering the US market. "Knowing it was the first bank from Chile coming into the US always meant we knew there would be a lengthy approval process," he says; however, he warns other Chilean banks will face the same vigorous approvals process that could take just as long. "I think the transaction helps, but every application is unique and the Federal Reserve will take each application on its own merits."

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