

Banking regulation in Chile: overview

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Country Q&A | Law stated as at 01-Oct-2020 | Chile

This Banking Regulation guide provides a high level overview of the governance and supervision of banks, including legislation, regulatory bodies and the role of international standards, licensing, the rules on liquidity, foreign investment requirements, liquidation regimes and recent trends in the regulation of banks.

To compare issues across multiple jurisdictions, visit the [Country Q&A tool](#). This Q&A is part of the global guide to banking regulation. For a full list of jurisdictional Q&As visit global.practicallaw.com/bankingregulation-guide

Legislation and regulatory authorities

Legislation

1. What is the legal framework for banking regulation?

The Chilean banking system is based on the General Banking Act 1997. The General Banking Act was materially amended in January 2019, introducing several innovations on supervision, and adjusting banks' capital requirements and other obligations to the standards set out in Basel III.

The Updated Compilation of Rules issued by the former Superintendence of Banks and Financial Institutions (see [Question 2](#) for current regulator), and the Compendium of Financial Regulations issued by the Central Bank set most of the regulatory framework for banking activities in Chile.

Since banks must be incorporated as special corporations, Law No. 18,046 (Corporations Act) also applies to banks (with certain exceptions), mainly regarding corporate governance.

Law No. 18,010 (Money Lending Operations Act) governs the lending business in Chile, setting out what is understood as a money lending transaction, the rules governing accrual of interests and other matters.

Law No. 18,045 (Securities Market Act) governs the public offering of securities, secondary markets, stock exchanges, brokers and other matters. Since banks are expressly authorised to act as securities intermediaries, it applies to them while acting in this capacity.

The Consumer Protection Act also governs the provision of financial services to final consumers, and so applies to banks.

Law No 19,913 (Anti-Money Laundering Act) requires banks and other entities to report to the Financial Analysis Unit (*Unidad de Análisis Financiero*) (UAF):

- "Suspicious transactions" they are aware of.
- Cash transactions exceeding USD10,000, on a semi-annual basis.
- Documents and antecedents it requires to examine a previously reported suspicious transaction, or one it has detected.

Law No. 20,393 extends to legal entities liability for criminal wrongdoings related to money laundering, financing terrorism and bribery of civil servants (if such crimes are committed directly and immediately in the legal entity's interest or for its benefit, by its owners or controllers).

Regulatory authorities

2. What are the regulatory authorities for banking regulation in your jurisdiction? What is the role of the central bank in banking regulation?

Lead bank regulators

The Commission for the Financial Market (CMF) is the main regulator of the banking industry.

The CMF was incorporated on 23 February 2017, by Law 21,000, and on 1 June 2019, it replaced and assumed, among others, the authorities of the former banking regulator: The Superintendence of Banks and Financial Institutions.

The CMF's main mission (which is the basis for its regulations) is to supervise proper operation, development and stability of the Chilean financial market, and to ensure that entities under its supervision comply with the laws, rules, bylaws and applicable regulations.

In addition, the Central Bank of Chile oversees the flow of money and the proper functioning of financial and capital markets, among others. The Central Bank's main mission is to oversee currency's stability and proper operation of internal and external payments (*see also below, Central Bank*).

Both regulators have enacted several regulations, of which the most important are:

- CMF: Updated Compilation of Rules issued by its predecessor the Superintendence of Banks and Financial Institutions.
- Central Bank: Compendium of Financial Regulations and Compendium of Foreign Exchange Regulations.

Other authorities

Other bodies are the:

- Ministry of Finance promotes amendments and reforms to financial and capital markets laws. In addition, through the Financial Stability Council (*Consejo de Estabilidad Financiera*), it oversees the integrity and solidity of the financial market and facilitates interaction and exchange of information between regulators of the financial sector.

- UAF (see [Question 1](#)).
- National Consumer Service (*Servicio Nacional del Consumidor*) (SERNAC) oversees and protects consumer rights relating to contracts with banks, financial institutions and other credit service providers.

Central bank

The Central Bank of Chile is an autonomous body, which both regulates the financial sector and enacts regulations for the proper functioning of banking and financial institutions, as part of its main mission.

The Central Bank responsibilities include:

- Issuing regulations and terms and conditions applicable to banking entities, financial institutions and savings and loan co-operatives relating to borrowing from the public, through deposits, loans, participation, assignment or transfer of commercial paper, and so on.
- Authorising banking entities to pay interest on bank accounts.
- Issuing regulations and setting limits for banking entities, financial institutions and savings and loan co-operatives, on the ratio between assets and liability operations.
- Issuing regulations for issuers or operators of credit, debit or prepaid cards or similar payment methods supervised by the CMF.
- Authorising and regulating payment systems in Chile, involving banking entities or other financial institutions supervised by the CMF, for the acceptance, clearing and settlement of payment orders of money obligations, whether in Chilean or foreign currency. The Central Bank can also recognise payment systems established abroad, to allow banking entities and other financial institutions supervised by the CMF to participate in these systems.

Others

Banks must appoint external auditors to review and audit their annual financial statements. The external auditors' reports must be submitted to the CMF.

Bank licences

3. What licence(s) are required to conduct banking services and what activities do they cover?

Banking services require prior authorisation from the CMF. Banking services are understood as receiving, in a customary manner, money or funds from the public, to use it to grant loans, discount documents, make investments and perform financial intermediation, while obtaining revenue out of this money and performing related activities permitted by law.

Article 69 of the General Banking Act lists the operations banks can engage in, which include (among others):

- Deposit-taking and accepting other repayable funds from the public.
- Issuing bonds or debentures.

- Lending (in its various forms).
- Money brokerage, intermediation or brokerage of trading and debt instruments.
- Issuing letters of credit and performance bonds.
- Entering into derivative transactions, money collection, payment and transmission services.
- Trading money market instruments, foreign exchange, financial futures and options, exchange and interest instruments.
- Acquisition, sale and trading of debt or fixed income instruments, and providing underwriting services related to the issue and placement of such securities, and acting as a placement agent and underwriter relating to offerings of newly issued shares of the stock of public corporations.

Under Article 70 et seq of the General Banking Act, banks are authorised to incorporate subsidiaries to perform the following operations or activities:

- Stockbrokerage, broker-dealers, management of mutual funds, investment funds or foreign capital investment funds, securitisation, and insurance brokerage.
- Leasing, factoring, financial advice, custody and transport of securities services, credit collection services and other financial services which the CMF, by a general ruling, deems ancillary to the banking business. Banks are also authorised to set up subsidiaries in the real estate business and managers of housing funds.

Additionally, banks are allowed, with prior CMF authorisation, to be shareholders or participate in banking support companies (*sociedades de apoyo al giro bancario*). These are companies whose sole objective is providing services to facilitate compliance with bank purposes, and/or carrying out some banking activity other than raising money. Once the CMF has granted authorisation to a bank to incorporate or participate in a banking support company, the CMF cannot deny the same authorisation to another bank.

4. What is the application process for bank licences?

Application

The application process for the incorporation of a bank is governed by Article 27 et seq. of the General Banking Act. To supplement these rules, the CMF has issued a guide detailing the requirements and steps to incorporate a bank, available on the CMF's website in both Spanish and English (www.sbif.cl/sbifweb/servlet/LeyNorma?indice=3.4&idContenido=1212). There are no application fees.

Stage one: interim authorisation certificate. The founding shareholders must submit to the CMF a prospectus and a three-year business plan to be implemented by the bank, and documents evidencing compliance with the solvency and integrity requirements for the shareholders in Article 28 of the General Banking Act. The CMF gives notice to the public of receipt of an application for a banking licence.

The CMF, within 180 days and after analysing the submitted documents, particularly the business plan, and any other information directly obtained by the CMF, will either grant the founding shareholders an interim authorisation certificate, or reject the prospectus through a well-founded resolution.

In exceptional and serious cases, relating to circumstances that, by their nature, are not convenient for public disclosure, the CMF can delay its decision on the prospectus for an additional 180 days (*Article 30, General Banking Act*). The corresponding decision can omit all or part of its grounds. In this case, the omitted grounds must be made available, in a confidential manner, to the Minister of Finance and the Central Bank, the State Defence Council, the UAF or the Public Prosecutor's Office, as applicable.

When an interim authorisation certificate is issued, it is publicly disclosed by the SBF. The founding shareholders must then provide a security bond equivalent to 10% of the future entity's capital.

Stage two: corporate existence authorisation. Within ten months from the issue of the interim authorisation certificate, the public deed of incorporation of the bank must be executed before a notary public. It must contain at least the information in Article 42 of the General Banking Act, in addition to the general information required about corporations.

The person appointed in the public deed must then apply to the CMF to issue an order authorising the bank's existence. The application must contain two certified copies of the bank's notarised bye-laws and provide evidence that the minimum capital required by law has been paid in as of the date of execution of the deed.

Once these requirements are met, the CMF will issue an order authorising the existence of the bank. This order, containing an excerpt of the bank's by-laws, must be registered in the relevant registry of commerce, and published in the *Official Gazette*, within 60 days from its issuance.

Stage three: authorisation for operation. The entity's representative must then apply to the CMF for an authorisation for operation. The CMF will ascertain, within 90 days, whether the bank is ready to start its activities, in particular if it has the necessary professional and technological resources and procedures to carry out its activities.

The CMF examines:

- Compliance with the above requirements, as well as with tax and fiscal/municipal obligations.
- If the bank has an adequate organisational and personnel structure.
- If its information systems allow it to comply with the regulatory demands imposed by the CMF.
- General factors allowing it to perform its operations. In particular, control structures and policies to manage the various risks the bank will face.
- The entity's business plan in detail for the first three years.

Once these requirements are met, and within 30 days, the CMF will grant an authorisation for an operation charter, and set a term for commencing activities of up to one year.

The order granting authorisation of operation must be registered in the margin of the bank's bye-laws excerpt registered with the registry of commerce.

Requirements

The bank's founding shareholders (those who, in addition to signing the prospectus, have a significant interest in the ownership of the company, under the rules of Article 36 of the General Banking Act) or controlling shareholders must meet the solvency and integrity requirements in Article 28 of the General Banking Act. For legal entities, these requirements must be met by their controlling entities, majority partners or shareholders, directors, managers, chief officers and main executives at the time of the application.

If they are also financial institutions, investment companies or other types of entities incorporated abroad, they must also meet the requirements under Article 29 of the General Banking Act (*see below, Foreign applicants*).

Under Article 50 of the General Banking Act, the minimum capital to organise a bank must be at least UF800,000 (the UF (*unidad de fomento*) is a unit of account used in Chile, and the exchange rate between the UF and the Chilean peso is constantly adjusted for inflation). Article 51 of the General Banking Act states that at the time of execution of the bank's public deed of incorporation, only 50% of the minimum capital must have been paid, with no established term to pay the remainder. However, until the minimum capital of UF800,000 is fully paid, the bank must maintain an additional basic capital up to 2% of its risk-weighted assets (*activos ponderados por riesgo*), pursuant to the instructions provided for these purposes by the CMF.

If all other requirements are fulfilled, and having paid the first UF400,000, the bank can start its business in Chile before having the minimum capital (UF800,000) completely paid.

The CMF can only reject the prospectus and business development plan based on non-compliance with the legal requirements, within 180 days and through a well-founded resolution (*see above, Application*).

There are no limits on the number of banks that can be incorporated in Chile.

Foreign applicants

In case of foreign individuals, the requirements are the same as above.

If the founding shareholders of a bank are financial institutions, investment companies or other type of entities incorporated abroad, the financial institution can only be authorised by the CMF to incorporate, or to have a material shareholding in a bank in Chile if it also meets all the following requirements (*Article 29, General Banking Act*):

- There is a banking regulator exercising effective control and supervision of all its operations and risks, in the country where its main office is located and operating.
- The foreign regulator has granted the main office a prior authorisation and licence to act as a banking and financial institution.
- The foreign regulator and the CMF can exchange material information about these entities.

Companies incorporated in a country in which the Basel Committee's rules are applicable are exempt from meeting the above requirements, to the extent they undertake to provide, as per the instructions issued by the CMF, reliable financial information regarding themselves, issued by their regulatory authorities, or, if this is not possible, subscribed by external auditors of recognised international reputation.

Timing and basis of decision

See above, *Application*.

Cost and duration

Authorisation requires no fee and there is no renewal fee. A banking licence once granted is indefinite, provided the bank complies with applicable laws and regulations.

5. Can banks headquartered in other jurisdictions operate in your jurisdiction on the basis of their home state banking licence?

Only entities authorised under the General Banking Act (*see Question 4*) can perform core banking activities in Chile.

A bank organised abroad can also set up a branch (*agencia bancaria*) or a banking subsidiary in Chile. The procedure to set these up is different and both require previous authorisation from the CMF. The legal nature of both is also different, as a branch is not a legal entity separate from the foreign parent entity. As such, the foreign entity is liable to the branch's creditors. When setting up a branch in Chile, a foreign legal entity must maintain in Chile liquid assets sufficient to meet the branch's obligations in Chile. It must also agree that its assets will be subject to Chilean laws (particularly in relation to obligations incurred in Chile).

The CMF can also authorise foreign banks to maintain representative offices acting as business agents for their main offices. The CMF has the same supervision authority over them as granted by the General Banking Act with respect to banks. Representative offices cannot perform any act relating to banking business. However, they can advertise the credit products or services of their main offices, in accordance with the rules issued by the CMF.

Financial activities that are not regarded as core banking activities are permitted without a banking licence (for example, lending, financial advice (not intermediation) and derivative transactions).

Forms of banks

6. What forms of bank operate in your jurisdiction, and how are they generally regulated? Does the regulatory regime distinguish between different forms of banks? Are there any specific requirements for banks or banking groups in your jurisdiction in relation to the scope of business or organisation?

Banks are solely authorised to conduct the specific business activities described in the General Banking Act, and they cannot engage in other non-banking or general commercial activities.

Despite this, banks are authorised either to organise, to invest in, or to affiliate with non-banking companies. However, in broad terms, such investments must be authorised by the CMF, and the target companies must have specific corporate purposes set out in the General Banking Act and the Updated Compilation of Rules issued by the CMF.

State-owned banks

Banco del Estado de Chile is the only state-owned financial institution (wholly owned by the state) and operates as an autonomous entity governed by its own law (Organic Law).

Like any other Chilean bank, it is subject to the General Banking Act, the Corporations Act and the other banking regulations. It is authorised to engage, directly or through its subsidiaries, in all activities, operations and investments authorised by the Chilean constitution, the Organic Law, General Banking Act and laws applicable to privately owned Chilean banks.

The Organic Law permits Banco del Estado to conduct its operations through branches or agencies established at its sole discretion in or outside Chile. In addition, it is generally prohibited from acquiring shares in any entity, but it can acquire shares of foreign banks or international entities with the prior consent of the Central Bank.

Universal banks, commercial and retail banks

Chilean banks can only conduct activities permitted under the General Banking Act. Bank investments are restricted to real estate and physical assets for their own use, gold, foreign exchange and debt securities.

Through subsidiaries, Chilean banks can also engage in securities brokerage services, mutual fund management, factoring, securitisation and leasing activities. Subject to certain limitations and the prior approval of the CMF and the Central Bank, Chilean banks can own majority or minority interests in foreign banks.

The concept of a universal bank is not expressly regulated, but Chilean banks are authorised to engage in activities that exceed the traditional concept of banking business, within the boundaries set by the General Banking Act and other applicable regulations.

Investment banks

Investment banks are not included in the traditional concept of a bank in Chile, and a banking licence is required to perform core banking activities. Banks organised in Chile are allowed, among other activities, to provide financial advice services, act as agents of local or foreign or international institutions, provide specially entrusted activities (*comisiones de confianza*) and perform financial services related to banking.

Private banks

See above, *Universal banks, commercial and retail banks*.

Other banks

See above, *Universal banks, commercial and retail banks*.

Regulation of systemically important financial institutions (SIFIs)

The General Banking Act empowers the CMF to determine which factors and methodology will be used to determine whether a bank or group of banks can be considered as SIFIs. The CMF opened a public consultation on 12 August 2019 (which ended on 26 September 2019) for a Bill proposal which sets out the four different factors on which to determine the importance of an institution referred to below:

- Size.
- Interconnectivity.
- Replaceability.
- Complexity.

The CMF indicated that the list of banks to be considered as SIFIs will be published in March 2021 and the additional capital requirements will have to be gradually fulfilled over the subsequent three years, with 100% of the additional capital reached in 2024.

The CMF is authorised to require additional capital requirements to SIFIs to increase their technical reserve amount or to decrease their margin of interbank indebtedness capability pursuant to the conditions and limits set forth in Article 66 *quáter*

of the General Banking Act.

Organisation of banks

Legal entities

7. What legal entities can operate as banks? What legal forms are generally used to operate as banks?

Banks in Chile must be incorporated as corporations, following the specific requirements in the General Banking Act and the Corporations Act. Every bank in Chile must be a special corporation (*sociedad anónima especial*) under the specific requirements of the General Banking Act (*Article 27, General Banking Act*).

Corporate governance

8. What are the legislative and non-legislative corporate governance rules for banks?

Article 40 et seq of the General Banking Act and regulations issued by the CMF provide the general corporate governance framework for Chilean banks. Rules in the Corporations Act and its regulations also apply to Chilean banks, to the extent not amended by the General Banking Act.

Under the General Banking Act, the main body is the board of directors, entrusted with the direction of the bank and proper risk management (*see Question 9*). Directors cannot be both directors and employees of the bank.

9. What are the organisational requirements for banks?

The internal organisation of banks is mostly carried out by the board of directors which must provide necessary governance of the banking entity through the senior management, committees and policies.

The board must adopt necessary measures to remain informed of the management and general situation of the bank. The board must have at least five members and a maximum of 11 and must always be composed of an odd number of directors. The directors remain in office for three years and can be re-elected. The board must meet once a month.

Article 49 of the General Banking Act sets various rules regarding the organisation of banks, such as:

- Contributions by shareholders can only consist of cash in Chilean pesos. This does not apply in a merger of banks, or an acquisition of assets and liabilities of one bank by another. The capitalisation of shareholders loans is deemed as cash.
- There is no limit on the number of shares for which each shareholder can vote in shareholder meetings, except those set by law.
- The treasury, public services, fiscal institutions, semi-fiscals, autonomous agencies, state-owned companies and, in general, all public services created by law, cannot be shareholders of a bank.

Chapters 1-13 of the Updated Compilation of Rules (*Recopilación Actualizada de Normas*) of the CMF defines corporate governance as a set of institutional instances, guidelines and practices that influence the bank's decision-making process, contributing, among other things, to the sustainable creation of value, within a framework of transparency and adequate management and control of risk. It classifies the banks according to their organisational rules as level A, B or C, with A being the most compliant with management proceedings.

The following are considered by the CMF as inherent to good corporate governance and criteria for evaluating a bank's management:

- Establishing strategic objectives, corporate values, lines of responsibility, monitoring and accountability.
- Verifying the performance of senior management and compliance with policies established by the board of directors.
- Promoting sound internal controls and effective audit.
- Establishing proper disclosure mechanisms.

There are no regulatory differences regarding organisational requirements of SIFIs in Chile.

10. What are the rules concerning appointment of auditors and other experts?

Banks (whether SIFIs or not) must appoint external auditing firms to review their accounting, inventory and financial statements, and to report on their findings to the shareholders and the CMF (*Article 16, General Banking Act*). External auditors must be appointed by the bank's shareholders at the regular shareholders meeting which must take place within the first quarter of each year.

11. What is the supervisory regime for management of banks?

A director of a bank (whether an SIFI or not) must not be:

- A director or employee of any financial institution.
- In a position appointed by the President of the Republic.
- An employee of a state company or other associated public entity.
- An employee of the same bank (unless they are general manager for a maximum of 90 days).

(Article 49 bis, General Banking Act.)

The same provision sets several honourability and solvency requirements that directors shall fulfil to be appointed as such. These requirements include not being convicted by serious crimes described thereto; not being sanctioned by infringements to market regulations, and not have incurred in serious conducts that may risk the bank's stability or the safety of its depositors.

It is forbidden to set special requirements, based on the nationality or profession, to be appointed as bank director, and notwithstanding the fulfilment of abovementioned conditions, there are neither specific approvals from regulators nor certifications required in this regard.

According to the CMF's Guide to the Banking Supervision Process, the main objective of banking supervision is assessing the quality of risk management used by banks. This approach, according to the CMF, corresponds to a Supervision Based on Risks (SBR) approach, which reflects the maturity of the banking industry in Chile.

According to the Guide to the Banking Supervision Process, Supervision Based on Risks is based on the following pillars that set standards for choosing persons with control functions, based on the levels of technical knowledge required:

- Government and supervision. The board of directors and the banks' committees must strongly promote the risk policy, requiring and receiving information to correctly assess the risks and apply agreements reached.
- Risk management framework. A clear demarcation of the policies and procedures decided by the board, which must be consistent with the bank's volume of business.
- Measurement and continuous monitoring of risk. This in turn includes:
 - risk quantification: review and evaluation of the bank's risk assessment methodologies, to determine if these are duly documented, updated and consistent with the business depth and volume;
 - timely follow-up of risk: early warnings (constantly reviewed under established protocols) for risk detection and boundaries that limit the risks, with necessary analysis and bases for it;
 - risk information system: involving a management report structure, this must address the needs of the bank's different levels; and
 - independent review: internal independent and qualified auditing, with adequate depth and coverage. Its analysis approach should consider risk, compliance with internal policies and regulations, obtaining a recognised and validated opinion by different levels of the bank, and appropriate technological tools for developing their work.

12. Do any remuneration requirements apply?

There are no remuneration policies.

13. What are the risk management rules for banks?

The General Banking Act links risk management with solvency, by establishing various categories of banks based on these factors. Chapters 1-13 of the CMF's Updated Compilation of Rules, on Management and Solvency Classification, states that the board and senior management of a bank must ensure proper management of all relevant risks for their business, while the CMF ensures that this is done properly.

To comply with these requirements, banks must prepare, develop and follow-up a Market Risk Management Policy, to cover issues and subjects detailed in Annex 2 of Chapter 1-13. Banks are not obliged to have a special committee regarding risk, although they must have an internal organisation with a specialised and sufficiently independent function, in charge of managing the various risks faced by the institution.

To ensure banks meet their risk management obligations, the CMF carries out periodic evaluations. The factors to be examined are:

- Counterparty risk management and global lending process assessment.
- Financial risk management and treasury operations.
- Operational risk management.
- Administration of exposure risk abroad, and control over investments in companies.
- Prevention of money laundering and terrorist financing.
- Management of business strategy and capital management.
- Management of quality of attention to users and transparency of information.
- Management of the internal audit function and the audit committee.

These are broadly examined by the CMF, which can classify the bank's performance with accomplishment, material accomplishment, unsatisfactory accomplishment and breach.

Every bank must perform an internal evaluation using these criteria once a year, producing a report to be presented to the board and then delivered to the CMF.

These rules apply equally to every bank in Chile.

Liquidity and capital adequacy

Role of international standards

14. What international standards apply? How have they been incorporated into domestic law/regulation?

A major amendment to the General Banking Act was introduced on 12 January 2019, with the aim of modernising banking regulations. Following the recommendations of Basel III, the current regulations on capital requirements were updated, increasing them from a quantitative and qualitative point of view to address the risks currently associated with banking activity.

Capital requirement. The minimum required level of effective equity is maintained at 8% of risk-weighted assets. The Tier 1 minimum capital requirement, corresponding to the composition of assets with the best loss-absorbency capacity, was increased from 4.5% to 6% of risk-weighted assets. This increase is achieved by incorporating an additional Tier 1 capital requirement equivalent to 1.5% of risk-weighted assets. Additional Tier 1 capital can be made up of preferred shares or bonds with no maturity (perpetual).

Conservation buffer. A conservation buffer of 2.5% of risk-weighted assets above the established minimum must be set, which must be made up of basic capital. Similarly, progressive restrictions are established on the bank's profit distribution when this requirement is not met.

Supplementing this conservation buffer, the law incorporates an additional basic capital requirement of a countercyclical nature, which will be generally applicable to all banking companies incorporated or authorised to operate in the country, by means of which it seeks to mitigate the development of systemic risks. The Central Bank, depending on the phase of the economic cycle, can set this reserve at up to 2.5% of the risk-weighted assets, subject to the consent of the CMF.

Additionally, the CMF is granted the authority to require basic capital or additional effective equity for up to 4% of the risk-weighted assets in those cases in which the legal requirements are not sufficient to cover the specific risks faced by a determined entity.

Main liquidity/capital adequacy requirements

15. What liquidity requirements apply?

The Central Bank updated its liquidity regulation in 2015. The key rule is Chapter III.B.2.1. of the Central Bank's Compendium of Financial Regulations. Even though local banks solidly endured the global financial crisis, the Central Bank introduced this rule to prevent future liquidity shocks.

The rule states that the board of directors is responsible for setting the liquidity risk assumed by the bank, ensuring that the bank has a liquidity management policy (PAL) and establishing tolerance levels specific to this risk. The senior management is responsible for proposing liquidity management policies compatible with the nature, scale and complexity of the business and risk tolerance of the bank to the board, and enforcing and updating the PAL.

The PAL must contain stress tests, which must be performed at least quarterly, considering the structure of the bank's assets and liabilities, the scale and complexity of its operations, and possible effects on its cash flow and liquidity position. The PAL must also establish a formal contingency plan, setting the strategies to be adopted when facing a liquidity deficit in stress scenarios.

Under Chapter III.B.2.1. of the Central Bank Act's Compendium of Financial Regulations, the liquidity position is measured through the difference between expenses and income flows in and out of the balance sheet, for a given period. This difference is called a term mismatch.

Banking companies must observe the following limits regarding term mismatches:

- The sum of all term mismatches for up to 30 days cannot exceed the basic capital.
- The same requirement must be met considering only flows in foreign currency.
- The sum of the term mismatches of up to 90 days cannot exceed twice the basic capital.

Therefore, projected net cash outflows in 30 days cannot be higher than the equity capital of the bank, and projected net outflows in 90 days cannot surpass twice that amount.

16. Is a leverage ratio applicable?

Chile has adopted a leverage ratio restriction of 3% (common equity capital to total assets). Legal restrictions to large exposures and related lending have long been in place. This reflects Chile's regulatory framework, which is generally conservative. Most complex activities are explicitly prohibited, for example banks cannot invest directly in equities, commodities or credit default swaps. Banks can only trade derivatives using two types of underlying assets (interest rates and currencies) so leverage is strongly limited.

For SIFIs, the CMF is empowered to ask for up to 2% on top of the 3% minimum leverage ratio restriction.

17. What is the capital adequacy framework that applies to banks?

The rules are in Article 66 of the General Banking Act, which states that banks must comply with a capital adequacy ratio of 8% of its risk-weighted assets, net of their required provisions. The application of Article 66 is detailed in Chapter 12-1 of the SBF's Updated Compilation of Rules, which establishes the rules to determine a bank's assets, risk-weighted assets, and other relevant calculations. These requirements apply to every bank established in Chile.

For SIFIs, the CMF can ask for between 1% and 3.5% on top of the 8% basic capital requirement.

Consolidated supervision

Role and requirements

18. What is the role of consolidated supervision of a bank in your jurisdiction and what are the requirements?

Role

The regulatory framework entrusts the control of financial institutions to different government agencies.

CMF. The CMF controls not only banks but their subsidiaries and banking support companies, as well as retail lenders, credit and saving unions and credit, debit and prepaid card issuers and operators. It also oversees the Securities Market Law, controlling stocks, brokers, listed corporations, funds and other relevant institutions.

Financial Stability Council. This was created in 2011 to ensure the integrity and soundness of the financial system. It provides mechanisms for co-ordination and exchange of information for preventive management of systemic risk, and to resolve critical situations involving exercise of the regulators' functions. Law No. 20,789, enacted in November 2014, gave it legal status. Its members are the Ministry of Finance as chairman, the chairman of the CMF, and the Superintendent of Pensions. A member of the Central Bank is also present at its meetings.

The main objectives of the Financial Stability Council are consolidated analysis of information on regulated activities, to:

- Adequately manage systemic risks.
- Have proper co-ordination between regulatory bodies, for the integrated supervision of financial conglomerates and implementation of public policies.
- Make relevant recommendations on legislative and regulatory rules.

The Pensions Superintendency (*Superintendencia de Pensiones*). This supervises pension funds.

Capital Markets Advisory Council (*Consejo Consultivo del Mercado de Capitales*). This is a commission of the Finance Ministry. Its aim is to support dialogue and interaction between the government and private sector on strategies for developing the financial market. It is composed of renowned professionals, including academics and representatives from the banking, insurance, mutual fund and investment fund sectors, corporate and financial attorneys and representatives of issuers and intermediaries of publicly offered securities. It creates reform proposals, identifies legal or regulatory issues requiring improvement, and evaluates regulatory changes in the financial environment.

Requirements

See above, [Role](#).

International co-ordination and co-operation

19. To what extent is there co-operation with other jurisdictions?

The CMF is empowered to provide technical assistance and to collaborate, within the scope of its authority, in the investigation of infractions that are within CMF's competence, when required by foreign regulators, supervisors or international bodies, including providing information it may have, by virtue of agreements or memorandums of understanding that the CMF may have executed, for technical cooperation, information exchange and reciprocal assistance.

Chilean banking authorities are part of various regional and global bodies related to banking activities. The Central Bank is a member of the Bank of International Settlements (BIS). The Central Bank and the CMF are observers of the Basel Committee on Banking Supervision.

The CMF is an associated member of the Association of Banking Supervisors of the Americas (ASBA). This seeks to strengthen bank regulation, supervision and financial system stability in the region, by sharing information and disseminating knowledge.

Chile is a founding member of the Financial Action Task Force of Latin America (GAFILAT). This is a regionally based inter-governmental organisation, which seeks to combat money laundering and terrorist financing.

Shareholdings/acquisition of control

20. What reporting requirements apply to the acquisition of shareholdings in banks?

No person can, directly or through third parties, acquire shares in a bank which, alone or in addition to those already held, represent more than 10% of the bank's capital, without having previously obtained authorisation from the CMF (*Article 36, General Banking Act*). Shareholders in this case that are not authorised by the CMF do not have voting rights.

If the shareholder holding such shares is a company, its partners or shareholders cannot assign a percentage higher than 10% of the rights or shares in their company, without having obtained authorisation from the CMF. An unauthorised transfer deprives the holding company of voting rights as shareholders of the bank.

The CMF can exclude from these obligations companies where, due to the large number of partners or shareholders or other factors, the partners/shareholders can be assumed to have no significant influence on decisions.

The CMF can only deny authorisation through a well-founded resolution.

21. What requirements or restrictions apply to the acquisition of shareholdings and of control of banks?

CMF authorisation is required to acquire more than 10% of a bank's equity (*see Question 20*). The acquirer must comply with Article 28 of the General Banking Act. This establishes the requirements, both ownership and behavioural, that the founding shareholders of a new bank must comply with to obtain authorisation and a subsequent banking licence. The CMF has to authorise or deny authorisation by a well-founded resolution, based exclusively on not complying with Article 28 requirements.

Foreign investment

22. Are there specific restrictions on foreign shareholdings in banks?

Foreign investors wanting to acquire a significant shareholding in a bank must comply with the requirements in Article 32 of the General Banking Act for foreign institutions or entities planning to set up a bank in Chile, or a subsidiary of a foreign bank in Chile (*see Question 4, Foreign applicants*).

Article 29 of the General Banking Act defines a significant shareholding as one that requires CMF authorisation (*see Question 20*). The General Banking Act does not differentiate based on the nature of the acquirer (for example, private equity houses or sovereign wealth funds).

Liquidation, resolution and transfer

23. What is the legal framework for liquidation of banks?

Article 112 et seq of Title XIV of the General Banking Act provides a set of rules that apply to banks in financial distress and governs their resolution and liquidation. Banks have a specific insolvency regime, and reorganisation and bankruptcy liquidation procedures set out in the Insolvency Law No. 20,720 are solely applicable to banks in voluntary liquidation.

24. What is the recovery and resolution regime for banks? Does your jurisdiction have any specific mechanisms for the transfer of banking business in a resolution scenario, for example to a bridge bank or a regulatory agency?

Obligations to prepare recovery plans

Banks are under an obligation to immediately communicate to the CMF the occurrence of any fact that may imply financial instability or deficient administration, and once notice has been served they must file a stabilisation plan (*plan de regularización*), approved by their board of directors, which must contain concrete measures to remedy the situation and secure regular functioning of the relevant entity. In any case, the CMF can instruct a bank to do submit its stabilisation plan as soon as it becomes aware of a situation which threatens such bank's financial stability.

If the stabilisation plan is rejected by the CMF, or if the relevant bank does not file it or breaches its terms, the CMF is empowered to designate a delegate inspector, who will have the authority delegates to it at the CMF's discretion, and the ability to suspend both any resolutions adopted by either the board of directors, and any act of the bank's representatives.

In the same context, the CMF (prior Central Bank's resolution approving CMF's decision) can appoint, additionally, a provisional manager, which will have all powers granted to both the board of directors and the general manager of the relevant bank.

Powers of the regulator

If the CMF determines that a bank (either SIFI or not) does not have the necessary solvency to continue its operations, or that the safety of its depositors or creditors requires its liquidation, the CMF will:

- Revoke its banking licence.
- Declare it in compulsory liquidation.
- Appoint one or more liquidators.

When a bank is in liquidation, all its clients' deposits will be paid with its cash balance, with funds deposited in Central Bank or with funds that correspond to its technical reserve. If those funds are insufficient, the liquidator is empowered to sell other of the bank's assets. In this scenario, the Central Bank can purchase such assets or grant loans to the bank.

Further, the liquidator is authorised to transfer to another bank the accounts and other deposits payable on demand, as legal successor of the insolvent bank.

In connection with foreign operations, when a bank is in voluntary liquidation, Law 20,720 is applicable, which sets transnational insolvency provisions, with the purpose, among others, of promoting cooperation between local and foreign courts and insolvency authorities (*see Question 19 and Question 22*).

The General Banking Act, by contrast, does not include specific regulations on a forced liquidation scenario, and thus, foreign creditors would be subject to the same rules as domestic ones.

Transfers of business

In a liquidation, the liquidator appointed by the CMF is empowered to transfer part of the bank operations to another bank (*see above, Powers of the regulator*). Further, in the same situation, Article 138 of the General Banking Act sets a simplified regime for banks which voluntarily transfer assets to another financial institution, in whole or in part, under which they do

not need to notify the relevant creditors, nor to fulfil common formalities and requirements as in regular transfers.

Additionally, Chile has a depositary guarantee scheme, regulated in Articles 144 et seq of the General Banking Act. The state guarantees and covers deposits and term deposits, made in savings accounts, nominative documents or documents on demand, issued by banks and financial companies. It only benefits natural persons (entities of all kinds are excluded) and covers 100% of the amount of the obligation. The guarantee covers up to UF200 per bank, on an annual basis, and UF400 in total, on an annual basis.

Regulatory developments and recent trends

25. What are the regulatory developments and recent trends in bank regulation?

Recent developments include:

- Law 21,234. This law sets a new liability regime for the unauthorised use of payment methods issued by banking and financial institutions, and provides that, in the case of fraud or misuse, duly notified by the client, the burden of proof always lies with the relevant issuer.
- For further details, please refer to our relevant news alert at <https://www.carey.cl/en/law-21234-sets-a-new-liability-limitation-regime-for-unauthorized-use-of-payment-means/>.
- Law 21,236. This law sets the financial portability statute, which simplifies the process of transferring financial products and services between local banking and financial institutions.
- Among other improvements, this law facilitates the refinancing of loans granted to both individuals and small enterprises, decreasing costs and times involved in these processes. Additionally, it sets a new kind of legal subrogation, by means of which the security documents granted in favour of the original lender will benefit the new lender to the extent the new loan's proceeds are used to pay the outstanding secured amounts, and the other requirements set out by this law are fulfilled.
- For further details, please refer to our relevant news alerts at <https://www.carey.cl/en/law-no-21236-on-financial-portability-is-published-in-the-diario-oficial/>; <https://www.carey.cl/en/law-on-financial-portability-come-into-force/> and <https://www.carey.cl/en/sernacs-new-interpretative-circular-regarding-the-notification-of-breaches-to-financial-portability-regulation/>.
- Law 21,253. By means of this law, the Political Constitution of the Republic de Chile was amended, empowering the Central Bank of Chile to buy and sell debt securities issued by the Chilean Treasury (*Fisco*), which was formerly prohibited.
- For further details, please refer to our relevant news alert at <https://www.carey.cl/en/constitutional-reform-empowers-chilean-central-bank-to-buy-and-sell-debt-instruments-issued-by-the-chilean-treasury/>.

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