

LATIN LAWYER REGULATORS

Superintendency of Pensions (Chile)

Superintendencia de Pensiones (SP)

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Carey

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Useful pages on the regulator website

Main homepage

List of entities supervised by the SP

Applicable laws and regulations

Registry of monetary and non-monetary sanctions

Organisational structure

Key individuals

- Osvaldo Macías Muñoz, Superintendent, SP chief officer
- Marcela Gana Caro, Oversight manager
- Úrsula Schwarzhaupt Gueneau De Mussy, Regulations manager
- Mario Valderrama Venegas, Legal counsel

Regulatory oversight

The SP is responsible for the oversight and control of pension fund managers (AFP's) in the legal, administrative and financial fields. It also supervises other participants in and aspects of the Chilean pension system, such as unemployment fund managers and the Social Security Institute (Instituto de Previsión Social) – in connection with the social solidarity pension system created in 2008 – and the pension advisers.

The most relevant functions and authorities of the SP are as follows:

- to authorise requests to create new AFPs or for changes of control in an existing AFP;
- to oversee the operations of AFPs and the correct provision of services and payments of pensions to their users;
- to inform users of the system of their rights and obligations with respect to the system;
- to provide for generally applicable and binding interpretations of the laws and regulations of the pension fund system and issue generally applicable rules for the correct application of such laws and regulations by AFPs and other supervised entities;
- to control AFPs' compliance with the minimum equity and other solvency and financial requirements;
- to control the investments of pension funds and the composition of the portfolio of each fund in accordance with the rules set forth in the pension funds investment regime;
- to supervise the commissions charged to affiliated individuals;
- to assist the Ministry of Work and Social Security (Ministerio del Trabajo y Seguridad Social) in all aspects subject to its competence and propose legal and regulatory modifications advisable from a technical perspective;
- to require any and all financial information necessary to ensure the compliance of AFPs with applicable laws and regulations and review all the books and records of overseen entities;
- to address all consultations, requests or claims made by the beneficiaries of AFPs;
- to conduct investigations of the operations of any AFP and apply the corresponding applicable sanctions or fines (and to file criminal claims with the criminal courts, if applicable);
- to conduct the liquidation of AFPs and pension funds;
- to oversee the use of privileged information and investigate insider trading conduct in connection with investments of pension funds, and the operations of AFPs and those individuals who have access to privileged information; and
- to appoint a special representative upon the occurrence of certain events such as, among others, material breaches of laws and regulations, commencement of a bankruptcy procedure and a short-fall in the minimum equity required by law.

Reporting and disclosure obligations

AFPs must be incorporated as publicly held corporations, and therefore are subject to all reporting and disclosure obligations applicable to those entities under the Chilean corporations law and securities law, and the applicable rules of the Commission for the Financial Market (Comisión para el Mercado Financiero (CMF)). Corporations subject to the supervision of the CMF, such as AFPs, shall also disclose to the CMF, in a truthful, sufficient and prompt manner, any material or essential information about themselves or their securities. Material information in this case is any information that a prudent person would consider important in his or her investment decision-making and that is related to facts or events that are capable of having a significant impact on a company's assets and liabilities, business or financial condition. Publicly held corporations must report to the CMF any material information as soon as they become aware of it; however, boards of directors, with a three-quarters majority vote, may report certain information on a reserved basis when it refers to pending negotiations the knowledge of which may harm the best interests of a company. AFPs, as publicly held corporations, must also periodically report to the market certain information that is generally determined by the CMF, such as annual audited financial statements (consolidated or individual) and quarterly financial statements (consolidated or individual).

AFPs shall also periodically report to the SP disaggregated information regarding:

- the amount of funds they manage (note that funds are divided in five types of funds, ranging from the most aggressive from an investment risk-return standpoint (Fund A) to the most conservative (Fund E);
- the profitability of each pension fund;
- the ratio between pension funds and AFPs' own funds invested in the same instruments;
- the fees that affiliated individuals shall pay to AFPs;
- the composition of the investment portfolio of each pension fund;
- information regarding mandatory versus voluntary contributions (known as voluntary pension contributions or APV) made by affiliated individuals;
- any relevant change to, inter alia, their corporate governance, portfolio or equity; and
- any other information that SP may request.

Monetary sanctions and recent behaviour

The SP is entitled to impose the following monetary sanctions:

- fines of up to 15,000 Unidades de Fomento (UF) (unit of account) (approximately US\$540,000) or up to 30% of the amount of the operations conducted or agreements executed in breach of the applicable laws and regulations; or
- revocation of the SP's authorisation of the existence of the AFP.

The latter sanction is only applicable in cases of material breach of the applicable laws and regulations, when such laws and regulations provide for this specific sanction, or if an AFP has been repeatedly sanctioned for breaching one or more laws and the applicable regulations or instructions of the SP.

In 2020, the SP imposed 11 fines on AFP's: all of them were monetary, with fines generally ranging from UF2,000 to UF2,500. The highest fine imposed in 2020 was UF3,500, and the lowest fine imposed was UF200. The sanctions were mostly based on delayed, incomplete or incorrect compliance with disclosure obligations (either financial or administrative), while others referred to the breach of other duties and non-compliance with obligations by affiliated individuals.

In 2021, there has been only one fine imposed by the SP, for an amount of UF4,800, based on lack of oversight of irregular employee actions.

Non-monetary sanctioning powers and behaviour

While the SP is entitled to reprehend supervised entities, this is a very rare sanction. No non-monetary sanctions have been imposed during 2020 and 2021.

Recent and upcoming developments

Due to the economic consequences of covid-19 sanitary crisis, on 30 July 2020, a law was published authorising affiliated individuals to withdraw 10% of their funds from their individual accounts. In December 2020, a law was published authorising affiliated individuals to a second withdrawal of 10% of their funds from their individual accounts. Finally, in April 2021, a third law was published in the same order.

Currently, there is a bill of law under discussion in Congress for a new withdrawal of funds for the affiliated individuals from their individual accounts.

The SP has informed that, if a fourth withdrawal is approved (within the same conditions that the previous ones), around 5.5 million people will run out of balance in their pension accounts (approximately 55% of the affiliated individuals).

There is currently an important, in-depth discussion occurring about the pensions system in Chile. There is currently a bill of law under discussion in the Congress about, among other things, the following matters:

- increasing the amount to be collected by AFPs to increase AFP-affiliated individuals' pensions; and determining the portion of such amount to be allocated to increase the pensions of the individuals paying such amounts, and the portion of such amount destined to increase the pensions of individuals receiving lower pension amounts;
- imposing liability on AFPs for losses generated to their funds as a consequence of their management;
- creating a state-managed entity related to social security funds; and
- allowing other entities (such as general fund managers or cooperatives) to manage pension funds to increase competition and obtain lower commissions for affiliated individuals.

These modifications would require the SP to supervise additional tasks and roles of AFPs and other entities, and to issue relevant regulations containing instructions about, among other things, new collection mechanisms, calculation methodologies and pension payment processes.

Due to the current situation related to the covid-19 outbreak in Chile, Congress has concentrated its efforts on discussing certain particular regulations to face the crisis and protect the funds of those individuals who were in the process of retiring at the time the outbreak occurred. This scenario has consequently delayed discussion of the above-mentioned bill of law seeking to incorporate relevant changes into the Chilean pensions system.

In accordance with this bill, it should be noted that Chile is in the process of drafting a new Constitution, in which it is highly probable that a reference to a new pension system will be made.

Challenges

During the past few years, the appropriateness of a pensions system based on individual accounts managed by AFPs has been questioned, mainly because it may result in low pensions for affiliates. Two consecutive governments have proposed some bills of law modifying the pension system (some changes being more structural than others), and the latest bill is currently under discussion in the Congress. This has forced the SP to continuously assess the impact that such reform would have on specific regulations, pensions and the market, as well as how to implement any possible regulatory outcome.

Additionally, and especially in the past few months, AFPs and the SP have faced complex litigation from several individuals who have challenged the pension system in court – for example, to gain the possibility of accessing pension funds prior to retirement or becoming disabled, so they may use their

funds for other purposes, or to access SP and AFP sensitive information based on the Transparency and Access to Public Information Law.

All of the above issues have placed stress on the relationship between the SP and AFPs: people appear to be requiring the regulatory authorities to scrutinise AFPs' operations more strictly, seeking to obtain a solution to the low amounts of their individual pension funds. Pensions are at the centre of discussions about the demands that caused the social unrest Chile has faced since October 2019.

Additionally, within the past two years the SP has issued several regulations concerning the investments of AFPs, allowing regulated entities to invest pension funds into new risk assets such as private equity funds, operations and agreements representing real estate investments, private debt and infrastructure. These new regulations provide for, inter alia, new investment limitation thresholds, valuation mechanisms, and provisions regarding the safety of investments and the custody of foreign instruments. These regulatory innovations have consequently represented challenges for the SP in terms of supervision functions and authorities, and the modernisation and sophistication of the tools necessary to supervise, and resulted in the SP recently issuing a formal, consolidated regulation in this respect.

Interacting with the regulator

Most communications with the SP are made through an electronic system on which AFPs must file their periodical reports. It is also very common that formal communications are made through the mail, such as any official letter issued by the SP. In cases where a personal meeting is required, it shall be requested in compliance with the Lobby Law (Law 20,730) requirements and outline the topics to be discussed and attendees. This information should be made public by the SP on its official website.

Notes for foreign investors

All AFPs operating in Chile must be locally incorporated. The oversight authorities of the regulator in connection with foreign investors are mainly exercised at the time of an AFP's local incorporation, when a range of information (financial, corporate governance, corporate group information, management, etc) regarding those shareholders holding 1% or more of the shares of an AFP shall be provided for review and approval. The SP also exercises its authorities over foreign entities, when applicable, every time there is a change of control of the property of an AFP.

Other regulators it works closely with

- Comisión para el Mercado Financiero (CMF): Financial Market Commission (Chile);
- Ministerio del Trabajo y Seguridad Social (MTSS): Ministry of Work and Social Security (Chile);
- Comisión Clasificadora de Riesgos (CCR): Risk Qualification Commission (Chile); and
- Consejo de Estabilidad Financiera (CEF): Financial Stability Counsel (Chile).



Felipe Moro
Carey

Partner of Carey and co-head of the firm's Banking and Finance Group. His practice focuses primarily on lending transactions, project financing, structured products and derivative transactions. He also has a vast experience in the area of mergers and acquisitions.

Related Areas

- Banking and Finance
- Infrastructure and Project Development
- Capital Markets

Education

- Law, Universidad Católica de Chile.
- Graduate studies, School of Economy and Administration, Universidad de Chile (2000).
- LL.M., The University of Chicago (2005).



Cristián Figueroa
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Partner of Carey and co-head of the firm's Corporate / Mergers & Acquisitions / Capital Markets Group. His practice focuses on advising international and local clients in mergers and acquisitions, including tender offers, private asset and stock acquisitions, auction processes, project development, joint venture, private equity, securities and debt offerings, capital markets, corporate law, commercial law, derivative transactions, infrastructure concessions and general practice.

Related Areas

- Mergers and Acquisitions
- Capital Markets
- Private Equity
- Insolvency, Bankruptcy and Restructuring

Education

- Law, Universidad Católica de Chile.
- Degree in Tax Planning, Universidad Católica de Chile (2007).
- MSc in Law and Finance, University of Oxford (Beca Chile scholarship) (2011).



Patricia Silberman
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Partner of Carey and co-head of the Corporate / Mergers & Acquisitions Group. Her practice focuses on mergers and acquisitions, corporate transactions, global finance, securities, capital markets and international trade.

Related Areas

- Mergers and Acquisitions
- Capital Markets

Education

- Law, Universidad de Chile (Summa Cum Laude).
- LL.M., University of Pennsylvania (2006).



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Partner of Carey and co-head of the firm's Banking & Finance / Capital Markets Groups. His practice is focused on banking law, lending transactions, project financing, as well as issuance of debt instruments, capital markets and foreign investment.

Related Areas

- Banking and Finance
- Capital Markets
- Infrastructure and Project Development

Education

- Law, Universidad de Chile (Summa Cum Laude).
- LL.M., Banking Law and Financial Regulation, London School of Economics and Political Science (LSE) (2014).



Diego Lasagna
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His practice is focused mainly on commercial, corporate, banking and financial law, advice to local and foreign banks and financial institutions, and on local and foreign project financing.

Related Areas

- Banking and Finance

Education

- Law, Universidad de Concepción (Summa Cum Laude).



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His practice focuses on corporate, commercial and corporate matters, mergers and acquisitions, capital markets and general practice.

Related Areas

- Capital Markets
- Mergers and Acquisitions

Education

- Law, Universidad Católica de Chile.



Rodrigo Sifón

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His practice focuses on mergers and acquisitions, corporate and business law, and general practice.

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