

LATIN LAWYER REGULATORS 2020

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# Central Bank of Chile

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Carey

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## Useful pages on the regulator website

- Homepage (English version)
- Bank duties
- Compendium of Financial Regulations
- Compendium of Foreign Exchange Regulations and its Manual

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## Key individuals

- Mario Marcel Cullel, President since December 2016
- Joaquín Vial, Vice President and member of the board since February 2012
- Alejandro Zurbuchen S, General Manager since August 2006
- Juan Pablo Araya Marco, General Counsel since June 2014

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## Regulatory oversight

The Central Bank of Chile is an autonomous body created by the Chilean Constitution. It is responsible for overseeing the stability of Chile's currency and the proper operation of internal and external payments.

Its functions and operations are governed by the rules of the Constitution and those set forth in Law 18,840, the Constitutional Organic Law of the Central Bank of Chile, enacted in October 1989, last amended on 26 October 2016.

The Central Bank's corporate governance is vested in a board of five members, all appointed by the President with the consent of the Senate. The board has overall responsibility for the management of the Central Bank and exercising its functions.

The Central Bank has been granted with the following authorities and powers (among others):

- Issuing regulations and terms and conditions applicable to banking entities, financial institutions and savings and loan cooperatives relating to borrowing from the public through deposits, loans, participations, assignment or transfer of commercial paper, derivative agreements, 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 cooperatives on the ratio between assets and liability operations.
- Setting reserve requirements.
- Issuing regulations for issuers or operators of credit, debit or prepaid cards or similar payment methods supervised by the Comisión para el Mercado Financiero (CMF) (Financial Market Commission).
- 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 the Chilean or a 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.
- Requesting that certain foreign exchange transactions be reported to it by the intervening parties, and to request that such transactions be conducted exclusively through the Formal Exchange Market, as defined below.
- Authorising banks to perform certain investments abroad.
- Agreeing on the issuance or amendment of certain foreign exchange regulations enacted by the Financial Market Commission.

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## Reporting and disclosure obligations

Pursuant to Article 40 of its Constitutional Organic Law, the Central Bank is empowered to request that certain foreign exchange transactions be reported to it by the intervening parties. The rules that govern the reporting obligations of foreign exchange transactions are set forth in the Compendium of Foreign Exchange Regulations (Compendium) issued by the Central Bank, which contains a set of foreign exchange regulations divided in 14 chapters, including an operational manual and different forms.

Pursuant to Chapter XIV of the Compendium, any loans, deposits, investments and capital contributions made in Chile from abroad in excess of US\$10,000 (or its equivalent in other currencies) need to be reported to the Central Bank in the terms and conditions set forth therein. Usually the entity responsible for such reporting is the commercial bank that receives the funds in Chile, following the instructions of its clients. A similar rule, contained in Chapter XII of the Compendium, applies to loans, deposits and investments made abroad from Chile, also in excess of US\$10,000 (or its equivalent in other currencies). Foreign loans and investments made by Chilean banks need to be reported as well to the Central Bank, as required under Chapter XIII of the Compendium. Chapters VIII and IX of the Compendium require that other foreign exchange operations (not covered by Chapters XII, XIII and XIV), including derivatives transactions, be reported to the Central Bank in the form and under the conditions indicated therein.

Note that these are reporting obligations that need to be satisfied after the completion of the relevant foreign exchange operation and do not imply the prior approval or consent of the Central Bank.

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## Monetary sanctions and recent behaviour

The Central Bank is empowered to apply fines up to two times the total amount of the relevant transaction in the following cases:

- If the relevant obligors (as determined in the Compendium) fail to report to the Central Bank such foreign exchange transactions that they are obliged to report, pursuant to the Compendium.
- If the relevant obligors (as determined in the Compendium) fail to fulfil their obligation to enter a foreign currency into the country through the entities authorised by the Central Bank to do so – that is, banks, stockbrokers and other entities, which are known as the Formal Exchange Market – when such currency has come from international good exports, payments that have accrued abroad for the benefit of Chilean residents or other activities listed in Article 42 of the Organic Constitutional Law of the Central Bank of Chile as determined by the Central Bank.

The Central Bank is also empowered to apply fines of up to 100% of the total amount of the relevant transaction in cases where there is a breach of the Central Bank's rules regarding foreign exchange transactions different from those listed above. If for any reason whatsoever such total amount cannot be determined, the fine amount shall not exceed approximately US\$110,000.

Note that in practice these powers are not frequently exercised by the Central Bank, and thus we are not aware of common sanctioning issues or of recent sanctioning procedures in this regard.

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## Non-monetary sanctioning powers and behaviour

The Central Bank has no non-monetary sanctioning powers, although in cases where the Financial Market Commission decides to revoke either a bank's or payment card company's authorisation to exist, such sanction can solely be applied with the prior approval of the Central Bank.

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## Recent and upcoming developments

Following the recommendations of Basel III, the regulations on capital requirements for Chilean banks were updated by recently enacted Law 21,130, which increases such requirements from both a quantitative and qualitative point of view to address the risks currently associated with banking activities. Some of these innovations will require the involvement of the Central Bank in setting new reserve requirements and approving specific regulations to be proposed by the CMF, which is the banking regulator. In particular, the new capital requirement standards that will require Central Bank involvement are as follows:

- Capital requirement: the Tier 1 minimum capital requirement for Chilean banks, corresponding to the composition of assets with the best loss-absorbency capacity, has been 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 composed of preferred shares or bonds with no maturity (perpetual). The terms and conditions of these perpetual bonds will be determined by the banking regulator by means of a general rule to be enacted in the future with the prior consent of the Central Bank.

- Conservation buffer and additional basic capital: a conservation buffer of 2.5% of risk-weighted assets above the established minimum must be set, which must be composed of basic capital. 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 Chile, 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.
- Role of the regulator in the weighting of assets to determine the required capital: the banking regulator will have the facility to determine the risk weighting of assets through the implementation of standardised methodologies that must have the consent of the board of the Central Bank.

Separately, and as a response to the financial stress caused by the covid-19 outbreak in the Chilean financial market, on 23 March 2020, the Central Bank, in exercise of its legal authorities, announced a series of measures destined to provide liquidity to the economy, to support credit flow and to transmit monetary policy.

As a key component of such measures, the Central Bank has made available a special credit facility to allow Chilean banking entities to continue granting financing (by way of new loans or refinancing of existing loans) to both individuals and companies, in order to maintain the liquidity of the market. This credit facility has been named the Conditional Credit Facility to Increase Loan Granting.

The Central Bank has also announced a transitory flexibility of its regulations on banking industry liquidity management through the activation of a special liquidity credit facility for the local currency.

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## Challenges

As explained above, the Central Bank will have an increased participation in the determination of the capital requirements of commercial banks in Chile. The challenge the Central Bank faces is to perform this increased role in coordination with the CMF and to implement the new regulations in a progressive manner so that the impact on the general operation and functioning of the market and its members are not disrupted.

During 2020, the Central Bank will face important challenges to manage the negative economic effects caused by the covid-19 pandemic. On 1 April 2020, as part of its monetary policy report presentation, its President pointed out that the Central Bank, along with other institutions, will be working to facilitate individuals, families and companies to obtain financing at a reasonable cost, contributing to the recovery of the Chilean economy's growth rate.

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## Interacting with the regulator

Pursuant to Law 20,730, or the Lobby Law, and its rulings, enacted by means of Decree No. 71 of the Ministry General Secretariat of the Presidency, lobbyists and particular interest managers that intend to interact with the regulator shall request an audience through the relevant forms available for such purposes in both paper form and on the regulator's website (see <https://leylobby.bcentral.cl/audiencia/solicitud-audiencia>).

Public entities to whom Law 20,730 and its rules are applicable shall register and publish all public audiences held in accordance with the above-mentioned regulations.

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## Notes for foreign investors

The Central Bank has no direct powers over foreign entities, although it is expressly authorised by Article 54 of its Organic Constitutional Law to provide banking services to foreign financial companies and foreign financial organisations to the extent such services do not comprise financing. When entering into those agreements, the Central Bank is empowered to submit itself to foreign courts' jurisdiction, to appoint attorneys abroad and to waive its foreclosure immunity (Article 85 of its Organic Constitutional Law).

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## Other regulators it works closely with

- Comisión para el Mercado Financiero (CMF): Financial Market Commission;
- Ministerio de Hacienda: Finance Ministry; and
- Consejo de Estabilidad Financiera (CEF): Financial Stability Council.



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Felipe Moro is a partner at 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 vast experience in the area of mergers and acquisitions.

Mr Moro has been recognised as a leading individual in projects and banking and finance by several international publications including, among others, *Latin Lawyer*, *Chambers and Partners* and *Best Lawyers*.

He has been a professor of the Master of Business Law programme at Universidad de Los Andes (2014–2015), and an assistant professor of securities market law at different universities.

Mr Moro graduated from Universidad Católica de Chile and holds an LLM degree from the University of Chicago. Between 2005 and 2006 he worked as a foreign associate in the finance group of Shearman and Sterling in New York.



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Mr Figueroa graduated from Universidad Católica de Chile and holds a degree in tax planning from Universidad Católica de Chile and an MSc in law and finance from the University of Oxford. Between 2011 and 2012 he worked as a foreign associate at Cleary Gottlieb Steen & Hamilton LLP in London, England.



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After starting her professional career at Carey, she worked as a foreign associate at Gibson Dunn and as a permanent associate at Chabbourne & Parke, both in New York. She is an arbitrator at the Arbitration and Mediation Centre of the Santiago Chamber of Commerce and a member of the International Steering Committee of the Women in the Profession programme of the Vance Center.

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Mr Lasagna graduated from Universidad de Concepción, and he worked as the chief attorney at Bank Itaú Chile (2015–2016) and as a corporate governance attorney at Bank Itaú CorpBanca (2016).

He has also authored several publications.



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Mr Garcés graduated from Universidad Católica de Chile.



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The firm is an effective bridge between legal systems. Most of its partners and senior associates have worked in North America, Asia and Europe as foreign or regular associates with leading international law firms, or as in-house counsel for major corporations or international institutions.

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