

# The YEAR IN REVIEW

AN ANNUAL SURVEY OF INTERNATIONAL LEGAL DEVELOPMENTS AND  
PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

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## *International Legal Developments Year in Review: 2022*

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JASON S. PALMER AND KIMBERLY Y. W. HOLST

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### **III. Chile**

#### **A. NEW FINTECH REGULATION**

On October 12, 2022, the Chilean Congress approved the bill for promoting competition and financial inclusion of innovation and technology in the provision of financial services (Fintech Law). The new law has not yet been published in the Official Gazette as it is before the Constitutional Court for the established procedure of preventive constitutional control. According to Article 1 of the Fintech Law, the purpose of this regulation is to “establish a general framework to encourage the provision of financial services through technological means by providers governed by [this law.]”<sup>43</sup> These providers are those who render the following services: (1) crowdfunding platforms; (2) alternative transaction systems; (3) credit and investment advisory services; (4) custody of financial instruments; and (5) order routing and intermediation of financial instruments.<sup>44</sup>

As the former president of Chile, Sebastián Piñera, said in his message for the presentation of the bill, the Fintech Law represents a significant advance to promote financial innovation and greater competition in the financial system, as well as the development of new financial products and services for consumers.<sup>45</sup> Furthermore, fintech companies have proven to be a key element in driving the economic boom in Chile, reducing the costs of financial services, extending access to such services, enabling greater

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43. Law No. 21521 art. 1, Promueve la Competencia e Inclusión Financiera a Través de la Innovación y Tecnología en la Prestación de Servicios Financieros, Ley Fintec [Fintech Law], 22 diciembre, 2022, DIARIO OFICIAL [D.O.] (Chile).

44. *Id.* at art. 2.

45. See Message No. 172-369 1, 3, Sept. 3, 2021, CHAMBER OF DEPUTIES, <https://www.camara.cl/legislacion/ProyectosDeLey/tramitacion.aspx?prmID=15054&prmBOLETIN=14570-05> [<https://perma.cc/XNG4-8H8T>] (Chile).

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transparency and competition in financial offerings, and using technology to provide more effective solutions.<sup>46</sup>

The Fintech Law provides that entities that carry out intermediation and custody operations, or provide transaction platforms and advice on financial instruments (including crypto assets) will be regulated by the Financial Market Commission (CMF, by its Spanish acronym) and must prove compliance with the requirements set by the authority in order to operate.<sup>47</sup> The CMF will have broad powers of supervision, regulation, and information requirements.<sup>48</sup> In addition, it will have the possibility of issuing differentiated regulations for each actor, considering the nature of the service provided, the number or type of participants, and the volume of transactions or instruments traded, among other factors.<sup>49</sup> The Fintech Law also regulates payment initiation service providers, who will be able to provide services to make electronic transfers from customers' accounts to third party accounts, operating as a means of payment without the need to use cards.<sup>50</sup>

The use of crypto assets as a means of payment is expressly recognized in the new regulation, extending the powers of the Central Bank of Chile to consider as means of payment crypto assets whose value is determinable and backed by money and which meet the requirements established by the issuing institute.<sup>51</sup>

On the other hand, Title III of the Fintech Law creates an Open Banking System that will enable financial service providers to exchange customer financial information, thus addressing the information asymmetry faced by incoming players and facilitating the development of new financial product and service offerings.<sup>52</sup>

Ultimately, with the Fintech Law, different laws governing traditional financial institutions are amended in order to achieve regulatory symmetry in the provision of similar financial services, and certain entry barriers to fintech companies are lowered. Amendments were made to the Corporations Law, the Securities Market Law, the General Banking Law, the Constitutional Law of the Central Bank and the Commercial Code, among others.

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46. See *id.* at art. 3, 8.

47. See Fintech Law at art. 2.

48. See *id.*

49. See *id.* at art. 4, 5.

50. See *id.* at art. 20.

51. See *id.* at art. 30.

52. See *id.* at tit. III.

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**B. NEW CHAPTER OF THE COMPENDIUM OF INTERNATIONAL EXCHANGE REGULATIONS OF THE CENTRAL BANK OF CHILE**

On August 25, 2022, and after a public consultation carried out within the framework of the modernization process of its foreign exchange regulations, the Central Bank of Chile added a new Chapter III to its Compendium of International Exchange Regulations (New Chapter).<sup>53</sup> This amendment seeks to allow a more expeditious access to the Formal Exchange Market for financial institutions supervised by the CMF and to simplify the submission of information for non-banking institutions.<sup>54</sup>

The New Chapter allows the following non-banking institutions to participate in the Formal Exchange Market: (1) stockbrokers and securities agents; (2) foreign banks with a representative office in Chile supervised by the CMF; and (3) legal entities, domiciled and resident in Chile, whose exclusive purpose is to intervene in international exchange transactions as determined by the Central Bank.<sup>55</sup> These entities shall correspond to open stock corporations and must be registered in the Securities Registry of the CMF.<sup>56</sup> Further, they must also submit to the Central Bank a request for authorization for such purpose, accompanied by the information indicated in Annex 1 of the New Chapter; and, additionally, they must certify their registration in the Securities Registry of the CMF, as well as that they have, as of the date of the request, a net worth of not less than the equivalent of approximately USD \$442,070, which they must maintain on a permanent basis.<sup>57</sup> Additionally, the New Chapter simplifies the requirements for non-banking institutions to enter the Formal Exchange Market.<sup>58</sup>

The Central Bank's aim is that the New Chapter will encourage greater participation in the Formal Exchange Market by non-banking entities. The foregoing furthers the Central Bank's mandate to ensure that the Formal Exchange Market is made up of a sufficient number of persons or entities to allow it to operate under conditions of adequate competition, as established in accordance with the provisions of Article 43 the law that regulates the Central Bank.<sup>59</sup>

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53. *Agreement Adopted by the Council of the Cent. Bank of Chile in its Ordinary Sess. No. 2497, CENT. BANK OF CHILE* (Aug. 25, 2022), <https://www.bcentral.cl/documents/33528/133259/Acuerdo-2497-03-220825.pdf/8a3970e1-aaf3-3f62-e7c5-19a260bb470f?t=1661877156480> [https://perma.cc/AL3K-KWRK].

54. See generally *CHAPTER III OF COMPENDIUM OF INT'L EXCH. REGUL. 1, CENTRAL BANK OF CHILE* (Aug. 30, 2022), <https://www.bcentral.cl/documents/33528/115571/CapIII.pdf/85e6d12e-84d1-7cc9-8492-048a6bede81a?t=1661867887647> [https://perma.cc/TA3E-C7B6].

55. See *id.*

56. See *id.*

57. See *id.* at 2.

58. See *id.* at 1–2.

59. Law No. 18840 art. 43, octubre 10, 1989, DIARIO OFICIAL [D.O] (Chile).

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