

Banking regulation in Chile: overview

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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, amended most recently in 2015, has expanded banks' traditional business. This has allowed them to engage in new activities, such as underwriting new issues of certain debt securities and creating subsidiaries for new related areas such as brokerage, equity underwriting, investment advice, mutual fund services, administration of investment funds, factoring, securitisation and financial leasing services.

The Superintendency of Banks and Financial Institutions (SBFI) and the Central Bank of Chile are the main regulators of the banking sector. The SBFI's Updated Compilation of Rules 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 others entities to report to the Financial Analysis Unit:

- "Suspicious transactions" they are aware of.
- Cash transactions exceeding US\$10,000, 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 Superintendency of Banks and Financial Institutions (SBFI) and the Central Bank are the main regulators of the banking sector.

The following, among other activities, must be authorised by the SBFI:

- Incorporation of banks, branches or representative offices of banks.
- Amendments to organisational documents (including capital increases or reductions).
- Direct or indirect changes in ownership above 10%, and any merger or acquisition in the banking industry.

Additionally, the SBFI requires banks to provide a broad range of information, including independent auditors' opinions, operational reports and financial statements on a monthly, quarterly and annual basis.

Other authorities

The Ministry of Finance promotes amendments and reforms to financial and capital markets laws.

The National Consumer Service (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 and technical body. Its objectives are, among others, promoting the stability and effectiveness of the financial system, and ensuring the normal functioning of internal and external payments.

Some of the responsibilities of the Central Bank are to:

- Issue 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.
- Authorise banking entities to pay interest on bank accounts.
- Issue regulations and set limits for banking entities, financial institutions and savings and loan co-operatives, on the ratio between assets and liability operations.
- Issue regulations for issuers or operators of credit, debit or prepaid cards or similar payment methods supervised by the SBFI.

- Authorise and regulate payment systems in Chile, involving banking entities or other financial institutions supervised by the SBFI, 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 SBFI to participate in these systems.

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 SBFI. 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 SBFI, 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 SBFI authorisation, to be shareholders or participate in banking support companies (*sociedades de apoyo al giro bancario*). This is a company with the sole objective of providing services to facilitate compliance with bank purposes, and/or carrying out some banking activity other than raising money. Once the SBFI has granted authorisation to a bank to incorporate or participate in a banking support company, the SBFI 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 SBFI has issued a guide detailing the requirements and steps to incorporate a bank, available on the SBFI'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 SBFI a prospectus and 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 SBFI gives notice to the public of receipt of an application for a banking licence.

The SBFI, within 180 days and after analysing the submitted documents, particularly the business plan, and any other information directly obtained by the SBFI, 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 SBFI 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 Financial Analysis Unit or the Public Prosecutor's Office, as applicable.

When an interim authorisation certificate is issued, it is publicly disclosed by the SBFI. 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 SBFI 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 SBFI will issue an order authorising the existence of the bank. Within 60 days this order, containing an excerpt of the bank's bye-laws, must be registered with the applicable registry of commerce, and published in the *Official Gazette*.

Stage three: authorisation for operation. The entity's representative must then apply to the SBFI for an authorisation for operation. The SBFI 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 SBFI 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 SBFI.
- 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 SBFI 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) 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 effective equity (*patrimonio efectivo*) of:

- At least 12% of its risk-weighted assets, when its effective equity is less than UF400,000.
- At least 10%, when its effective equity is less than UF600,000.

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 SBFI 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

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 SBFI to incorporate 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 SBFI can exchange material information about these entities.

Investment companies or other companies (different from regulated financial entities) incorporated abroad must also comply with these requirements if they have or acquire a significant shareholding in a financial institution in Chile. These companies can comply with these requirements if they are incorporated in a country that complies with the Basel Committee's rules, and they can either:

- Provide the information their financial authorities compile and publish.
- If they are not under an authority's supervision, or are not required to deliver such information to it, provide the information through external auditors of recognised international standing.

Timing and basis of decision

See above, *Application*.

Cost and duration

Authorisation has 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 SBFI. 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 SBFI can also authorise foreign banks to maintain representative offices acting as business agents for their main offices. The SBFI 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 SBFI.

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?

State-owned banks

BancoEstado 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 and the Corporations Act (to the extent it is consistent with the General Banking Act). 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 BancoEstado 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 SBFI 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)

Currently, the General Banking Act does not provide specific rules for SIFIs, and the Central Bank and the SBFI have not issued any special regulations for them. The reform of the General Banking Act (see *Question 25*) is expected to address SIFIs.

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 is a special corporation (because of the specific requirements of the General Banking Act) (*sociedad anónima especial*) (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 SBFI 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 entrusted to 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.
- Banks are not allowed to issue privileged or preferential shares, shares of industry or shares to remunerate services. They can issue different series of shares.
- 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.

Chapter 1-13 of the Updated Compilation of Rules (*Recopilación Actualizada de Normas*) of the SBFI 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 SBFI 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 specific rules regarding organisational requirements of SIFIs in Chile.

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

Banks must appoint external auditing firms to review their accounting, inventory and financial statements, and to report on their findings to the shareholders and the SBFI (*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?

According to the SBFI'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 SBFI, 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 policies 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. Chapter 1-13 of the SBFI'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 SBFI 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.

To ensure banks meet their risk management obligations, the SBFI 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 SBFI, 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 SBFI.

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?

The General Banking Act's is in line with the Basel I framework for capital regulation. The General Banking Act requires banks to comply with an effective equity of 8% of its risk-weighted assets, and a "basic capital" (equivalent to tier 1 capital, in Basel documents) consisting solely of equity to risk weighted assets, which cannot be lower than 4.5%. Subordinated debt is limited in both size and nature of permitted instruments. Additionally, the leverage ratio cannot be higher than 3%.

The financial industry and its authorities have publicly stated that they are keen to adopt Basel III standards in Chile. The key issues to tackle are:

- High quality capital (introduction of additional tier 1 capital instruments).
- Introduction of anti-cyclical buffers.
- An update of market risk treatment.
- A new banking resolution regime.

The Ministry of Finance, the Central Bank, the SBFI and a group of advisory experts are working on a bill to reform the General Banking Act in this direction (*see Question 25*).

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, 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.

17. What is the capital adequacy framework that applies for 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.

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.

The SBF 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.

The Superintendency of Securities and Insurance enforces and applies the Securities Market Law, controlling stocks, brokers, listed corporations, funds and other relevant institutions.

The Pensions Superintendency supervises pension funds.

The Financial Stability Council (*Consejo de Estabilidad Financiera*) 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 Superintendent of Securities and Insurance, the Superintendent of Banks and Financial Institutions, 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 Capital Markets Advisory Council (*Consejo Consultivo del Mercado de Capitales*) 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?

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 SBF are observers of the Basel Committee on Banking Supervision.

The SBF 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.

Mario Marcel, governor of the Central Bank, and Eric Parrado, Superintendent of the SBFI, are the representative members of the Chilean institutions before the Financial Stability Board (FSB) Regional Consultative Group for the Americas.

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

Shareholdings

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 SBFI (*Article 36, General Banking Act*). Shareholders in this case that are not authorised by the SBFI 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 SBFI. An unauthorised transfer deprives the holding company of voting rights as shareholders of the bank.

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

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

SBFI 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 SBFI 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 SBFI 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).

RESOLUTION

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

Article 118 et seq. of Title XV 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 are not subject to the Insolvency Law No. 20,720.

24. What is the resolution regime for banks?

The resolution framework is in Articles 24 and 118-153, Title XV of the General Banking Act. The current regulation has changed little since 1986. It relies mainly on market based mechanisms and liquidation when those mechanisms fail. The following are the triggers established by the General Banking Act:

- Article 118: basic capital below 3% and/or total capital ratio below 8%. This triggers the preventive capitalisation of a bank.
- Article 122: solvency problems that compromise the timely payment of obligations. These are basic capital below 2%, and/or total capital ratio below 5%. This triggers the agreement phase with creditors.
- Article 24: the entity has engaged in repeated offences or incurred fines, or another serious incident that raises concerns regarding its stability. The SBFI determines whether these have occurred. This triggers the SBFI to take over administration of the bank.
- Article 130: the SBFI states that a bank does not have the solvency to continue operating, after obtaining approval from the Central Bank council. This triggers the forced liquidation of the bank.

Depending on the trigger, the bank has the following options:

- Preventive capitalisation: a shareholders meeting must be summoned to do a capital increase. The bank remains operating.
- Agreement with creditors: the bank proposes an agreement to its creditors (except depositors and other demand obligations creditors). This can include credit capitalisation, term extensions, and write downs, among others. When the bank presents the proposed agreement with creditors, the payment of deposits and other on demand obligations are not enforceable. The SBFI is not part of this phase, it only plays a regulator/controller role. Creditors can refuse the proposal, triggering the forced liquidation of the bank.
- Temporary administration: SBFI takes over the bank's administration, appointing a temporary manager for one year, which can be renewed indefinitely after obtaining approval of the council of the Central Bank.
- Capitalisation by the financial system: the bank holds loans for up to two years with other financial institutions. These loans can be computed as capital.
- Forced liquidation: if the superintendent considers that the bank lacks the necessary solvency to continue operating, or that the safety of its depositors or other creditors demands it, or if the creditors reject a proposed agreement, he/she will revoke the authorisation of existence (banking licence) after obtaining approval from the Central Bank council. The bank goes into liquidation.
- Various resolution tools, such as the transfer of assets and liabilities to another institution, and forced mergers or acquisitions.

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 90% of the amount of the obligation. The guarantee covers up to UF120. A pool of deposits that an individual has in a bank is considered a single obligation for these purposes.

The bill reforming the General Banking Act that is being prepared by the Ministry of Finance is expected to radically change the resolution regime, adding various features such as:

- Mandatory recovery plans.
- Mandatory resolution plans.
- Good bank-bad bank measures.
- Resolution tools like bridge banks and bail-in.
- A new procedure to declare a state of liquidation, and a new proceeding for the liquidation itself.

REGULATORY DEVELOPMENTS AND RECENT TRENDS

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

Recently enacted, Law No. 21,000, the Financial Market Commission Act (FMCA), sets a new supervisory framework in Chile, creating the Financial Market Commission (FMC), a professional body and technical entity that will replace the current Superintendency of Securities and Insurance. It will enter into force

in August 2018, or earlier if the FMC becomes operational sooner. The FMC aims to ensure the proper functioning, development and stability of the financial market, facilitating the participation of market agents and promoting standards. Further, it will ensure that regulated persons or entities comply with laws, regulations, statutes and other provisions.

Any institution, person or activity expressly subject to the supervision of the SBFI is outside the FMC's jurisdiction. Likewise, pension fund administrators are not subject to its supervision. However, a one-year deadline (expiring on 23 February 2018) has been established by the FMCA for the President to present a bill, before the National Congress, to amend the General Banking Act (New General Banking Act Bill) and replace the SBFI with the FMC.

The New General Banking Act Bill is expected to update Chilean regulatory standards, adapting and adopting Basel III, including the anti-cyclical buffers, the AT1 capital instruments and a new banking resolution regime. It will create a complete FMC that will control and regulate the entire market, and establish a consolidated supervision regime. These changes are not expected to occur for at least another two years.

THE REGULATORY AUTHORITIES

Superintendency of Banks and Financial Institutions, Chile (SBFI)

T +56 2 2887 9200

W www.sbif.cl

Central Bank of Chile

T +56 2 2670 2000

W www.bcentral.cl

ONLINE RESOURCES

Biblioteca del Congreso Nacional, Chile

W www.bcn.cl

Description. This is an official government website containing all relevant and up-to-date legislation in Chile. In Spanish only.

Superintendency of Banks and Financial Institutions, Chile (SBFI)

W www.sbif.cl

Description. Includes the Official Compendium of Updated Regulations issued by the SBFI. In Spanish only.

Central Bank of Chile

W www.bcentral.cl

Description. Includes the Official and updated Compendium of Financial Regulations of the Central Bank of Chile. In Spanish only.

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