

Chile

Chamber of commerce:

Camara Nacional de Comercio de Chile
Merced 230
Santiago Centro
Chile
Tel: +56 2 365 4000
Fax: +56 2 365 4001
Email: cnc@cnc.cl
Web: www.cnc.cl

Professional body:

Colegio de Abogados de Chile
Ahumada 341 piso 2
Casilla 224, Santiago Centro
Chile
Tel: +56 2 639 6175 /
+56 2 633 6720 /
+56 2 639 7945
Fax: +56 2 639 5072
Web: www.colegioabogados.cl

Chile's next steps in the capital market and financial sector

Felipe Moro and Elena Yubero
Carey y Cía
Santiago

Chile 2011-12 presents an attractive forecast for legal changes in the capital market and financial sector, including the following reforms being promoted by the new government:

- (i) the creation of a Council of Financial Stability (CEF);
- (ii) the restructuring of the Securities and Insurance Commission (SVS) and the Banks and Financial Institutions Commission (SBIF, and together with the SVS hereinafter referred to as the Commissions);
- (iii) regulation of taxation applicable to derivative transactions; and amendments to insurance and data protection laws.

Creation of the CEF

This reform's main objective is to ensure the integrity and soundness of the financial system and preserve macroeconomic stability by providing better coordination between regulatory authorities. The CEF will be integrated by the Ministry of Finance, the President of the Chilean Central Bank, the presidents of the restructured Commissions and the current Superintendent of Pension Funds. The main functions of the CEF will be the management of systemic risk, supervision of financial conglomerates and strengthening cooperation between regulatory authorities. Decisions adopted by the CEF will not affect the independence of the regulators and the CEF will not be empowered with the authority to direct changes or issue regulations, except matters related to macro financial stability and the ability of the CEF in the event of ambiguity in the construction of a significant systemic rule, to provide a binding interpretation of the same.

Restructuring the Commissions

The amendments to the Commissions being analysed include: the efficient use of resources, proportionality between the regulatory burden and the expected benefits, the stability of the financial system and to assist in the fulfilment of goals set by other regulators; a broader scope of authorities, so they will be able to timely adequate regulations to new market realities; and the improvement of its sanctioning proceedings in order to grant assurances of objectivity and impartiality.

This reform also seeks to enhance the corporate governance of the Commissions by replacing the superintendent as the head of each Commission, with a collegial body of five councils designated for a term of six years, one of which shall be elected as president and as such be part of the CEF.

Taxation on derivatives

Today, Chilean tax law does not provide a specific regulation for derivative transactions and analysis is being based on scattered rulings issued by the tax authority in that regard. To solve this situation, on September 2010 a bill was submitted to the Congress. The bill defines what should be considered a derivative contract and set forth the general taxation framework applicable to those contracts and to the transactions and documents related thereto, some control measures and specific regulations for options (such as considering the option price paid as part of the acquisition value of the underlying asset if the option is exercised as envisaged).

In particular, the bill establishes, among other matters, that income from derivatives perceived or accrued by individuals or entities without domicile or residence in Chile (with some exceptions such as income arising from derivatives liquidated by physical delivery of shares or interests in companies organized in Chile) shall not be subject to taxes in Chile. It also provides that deduction of expenses related to derivative transactions is allowed as long as the general conditions for recognition of

expenses set forth in the Chilean Income Tax Law are complied with (even if those expenses are not related to the business purpose of the tax payer), including transactions with related parties if it is evidenced they were entered into on arm's length conditions. Payments made abroad shall be accepted as expenses when contracted with counterparties or intermediaries not domiciled in tax heaven jurisdictions, and in stock exchanges duly regulated.

Amendments to the Insurance Law

As an OECD (Organisation for Economic Co-operation and Development) member since 2010, Chile has to comply with certain commitments such as not discriminating among OECD members. Therefore, due to the 'Most Favored Nation' clause included in certain international treaties executed by Chile allowing the hiring of maritime transport insurances, international commercial aviation and 'in transit' international goods, on January 2011 a bill was submitted to the Congress in order to amend the Chilean Insurance Law. The bill will allow companies incorporated in a country with which Chile currently has an international treaty of those mentioned above, to hire and trade insurances in our country. Chile also accepted to extend this authorisation to insurances over satellites and the cargo transported by them.

Amendments to the Private Data Protection Law

Chile enacted on 1999 a law on private data protection, which needs to be amended in order to adapt it to the guidelines issued on the matter by the OECD and the European Union.

Accordingly, discussions on the bill submitted to the Congress on August 2008, shall be restarted and revamped addressing among other matters, the lack of:

- (i) a registrar of the private entities responsible of maintaining data bases and of distinction for purposes of liability between

those entities and the individuals or entities managing the same;

(ii) an independent data controller entity, competent to decide about the contents and use of personal data (which according to the bill will become the existing Council for Transparency created on year 2008, to be known as Council for Transparency and Protection of Personal Data);

(iii) regulations dealing with transfer of data to countries that do not have regulations protecting private data similar to those existing in Chile (which according to the bill will require a prior express authorisation from the Council for Transparency and Protection of Personal Data, which will also be required for data in transit i.e. data which pass through a member country of the OECD without being used or stored with a view of usage, in that country); and

(iv) certainty of applicability of the existing law to legal entities and not only to individuals.