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Chilean Financial Market Commission opens a new public consultation on regulation of fees on money lending operations

In compliance with the mandate set forth in Article 19 ter of Law No. 18,010 (the " **Money Lending Operations Act**"), incorporated therein by Law No. 21,314 -published on April 13, 2021- the Financial Market Commission ("**CMF**") opened on April 8, 2022 a new public consultation process on regulations regarding the requirements that amounts charged by entities supervised by the CMF in money lending operations (*operaciones de crédito de dinero*) must meet in order not to be considered as interest in accordance with Article 2 of the Money Lending Operations Act (the "**Regulation Proposal**").

The Regulation Proposal incorporates comments received from different market sectors (including the Association of Banks and Financial Institutions, consumer associations, financial retail, among others) to the original proposed regulation on this issue, which was submitted for public consultation between December 27, 2021 and January 23, 2022 (please see our News Alert on that proposal: https://www.carey.cl/en/chilean-financial-market-commission-opens-public-consultation-on-regulation-of-fees-on-money-lending-operations/).

The Regulation Proposal establishes that any payment that the creditor receives or has the right to receive, in any capacity, will be considered as interest of a money lending operation, except where such payments comply with the following requirements, rules and conditions, which will be considered as "*fees*":

1. That the concept and total amount of the payment has been informed, and expressly accepted by the debtor, prior to its collection and provision of the service;
2. That its amount in no case exceeds the cost of providing the service. However, fees or charges that are expressly regulated elsewhere shall continue to be subject to those particular rules, such as, for example, prepayment fees regulated by article 10 of the Money Lending Operations Act; the fees regulated in article 19 of that same act; or the amounts payable in connection with extrajudicial collection expenses in accordance with Article 37 of Law 19,496, on consumer protection.
3. That the service has been effectively rendered to the debtor and corresponds to a real service, different from those performed to materialize or terminate the money lending operation. Among others, the following events shall not be considered as an actual service:
    a. cash advances arising from a credit facility;
    b. services incurred to advance or disburse a loan, such as transfers, issuance of *vale vista* (on demand notes), or ATM withdrawals;
    c. rescheduling, refinancing or portability processes,
    d. creditworthiness or risk evaluations;
    e. the issuance of certificates; and,
    f. those services that the creditor is obliged to provide in compliance with legal and regulatory requirements.

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In the case of transactions originated in the use of credit facilities associated with credit cards or checking accounts, management, operation or maintenance of the facility will be considered as real services, provided that the fees charged to the debtor correspond to a fixed, periodic charge and that is not contingent on the used or authorized amount of the facility;

4. That the service is not for the exclusive benefit of the creditor; and,

5. That the information on the costs associated to the services that may be contracted as consequence of money lending operations be made available to the public at large through the same channels used by the lender when an offer to enter into money lending operations.

Any amount or charge related to a money lending operation that does not meet any of the conditions or requirements to be considered a fee must be considered as interest rate for purposes of calculating the maximum conventional rate.

Regarding operations contemplated in Article 6 ter of the Money Lending Operations Act (i.e. maximum conventional interest rate in loans originating from loan facilities for credit cards) entered into prior to the entry into force of Law No. 21,314, the Regulation Proposal establishes the following rules to adapt any existing contracts with the clients: (i) the relevant institutions must deliver a letter to the debtor indicating that the contracts must be modified in accordance with the new regulation within the following 6 months as of the issuance of the new rules (and not from the date that the new regulation enters into force, which may be an omission), attaching an annex detailing the modifications for the debtor's acceptance or rejection, (ii) that the above term must include a period of 20 business days for the debtor's express pronouncement, and (iii) that, upon expiration of said term of 20 business days, even if the debtor has not expressed its approval or rejection, any fees that do not comply with the rules, conditions and requirements set forth in the regulation shall be considered as interest. The foregoing, regardless of to the right of the creditor to terminate the respective contract in the event of rejection of the proposed modifications by the client, as determined by transitory article 8 of Law No. 21,314. In the event of termination of the contract, the Regulation Proposal states that the creditor must facilitate payment by the debtor the necessary payment facilities and shall be prevented from accelerating loans that are outstanding.

The Regulation Proposal contemplates that the regulations will enter into force twelve months after its issuance.

The consultation process will be open until April 22 of 2022, and the text of the Regulation Proposal can be found in the following link.

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