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Introduction

According to the Central Bank of Chile's ("**Central Bank**") 2024 semi-annual Financial Stability Reports and Monetary Policy Report, even though inflation in Chile has been higher than anticipated due to a combination of factors (such as global appreciation of the dollar and increase in labour costs, among others), the financial situation of credit users continues to normalise and aggregate indebtedness remained relatively stable during the last few months of 2024. The report also indicates that the profitability of the banking sector has stabilised somewhat above its historical average, and that capital adequacy indicators have increased as the Basel III implementation process has progressed. As a result, the Central Bank decided during 2024 to maintain the countercyclical capital requirement for banks at 0.5% of risk-weighted assets, conciliating macro-financial conditions and gradual compliance with Basel III requirements, most of which, according to regulator estimates, will be in compliance by the end of 2025.

In line with the continued increase in banking activity, Chilean regulatory entities kept busy during 2024 working in banking and financial matters, discussing and enacting regulations aimed at keeping up with international requirements and standards, expanding competition, transparency and innovation and generally protecting investors and clients.

An example of new financial regulations is the recent enactment of the rules providing for an Open Finance System ("**OFS**"), which aims to create an environment for financial institutions to exchange financial information of their clients so that migration will be easier. From an operational and logistical perspective, this new regulation has not been without challenges, but at the same time it will allow industry players to develop and benefit from new business opportunities. The first players to participate in the OFS and give access to client information will be banks and card issuers, showing how quickly these entities are adapting to the new regulatory environment. It remains to be seen how these key players and other industry participants will benefit from it and create new value for themselves, clients and other stakeholders.

Additionally, during 2024 we witnessed the creation of the first so-called "neobank" in Chile, with a fully digital, technology-based banking model, which has promised to offer low-cost and efficient financial services, creating a more accessible financial system.

All in all, these new regulations, along with other regulatory developments discussed below, generally aim to improve the Chilean banking system to maintain the country's status as one of the best and more reliable investment destinations in the region.

Regulatory architecture: Overview of banking regulators and key regulations

Regulators and key regulations

The Central Bank is an autonomous entity, whose main purpose is to safeguard currency stability and proper functioning of internal and external payments. In the exercise of its constitutional mandate, it is vested broad regulatory powers regarding foreign exchange transactions, and monetary, lending and financing matters.

Furthermore, working closely with the Central Bank and supervising proper fulfilment of some of its regulations, the Financial Market Commission or "**CMF**" is the main regulator of the banking industry.

The CMF was incorporated on February 23, 2017 by Law No. 21,000, and on June 1, 2019 it replaced and assumed, among others, the authorities of the former banking regulator: the Superintendence of Banks and Financial Institutions.

The CMF's main mission (which is the basis for its regulations) is to supervise proper operation, development, and stability of the Chilean financial market (including banks), and to ensure that entities under its supervision comply with the laws, rules, bylaws, and applicable regulations.

The Central Bank's main mission is to oversee the currency's stability and proper operation of internal and external payments.

The Chilean banking system is based on the General Banking Act of 1997. The General Banking Act was materially amended in January 2019, introducing several innovations on supervision, and adjusting banks' capital requirements and other obligations to the standards set out in Basel III.

Since banks must be incorporated as special corporations, Law No. 18,046 (the Corporations Act) also applies to banks (with certain exceptions), mainly regarding corporate governance.

In addition to the above, both regulators have enacted several regulations, of which the most important are:

- CMF: Updated Compilation of Rules (*Recopilación Actualizada de Normas*), mainly issued by its predecessor (i.e., the Superintendence of Banks and Financial Institutions).
- Central Bank: Compendium of Financial Regulations and Compendium of Foreign Exchange Regulations.

Restrictions on the activities of banks

Only entities authorised under the General Banking Act can perform core banking activities in Chile. 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). However, financial advice has been increasingly regulated, as per Law No. 21,521, known as the "**Fintech Law**", General Rule No. 502 ("**NCG 502**"), and regulations on social media and investment advice, as further described below.

Banking services are understood generally 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 that banks can engage in, which include (among others):

1. Deposit-taking and accepting other repayable funds from the public.
2. Issuing bonds or debentures.

3. Lending (in its various forms).
4. Money brokerage, intermediation or brokerage of trading and debt instruments.
5. Issuing letters of credit and performance bonds.
6. Entering into derivative transactions, money collection, payment and transmission services.
7. Trading money market instruments, foreign exchange, financial futures and options, exchange, and interest instruments.
8. 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 that the CMF, 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 CMF authorisation, to be shareholders or participate in banking support companies (*sociedades de apoyo al giro bancario*). These are companies whose sole objective is to provide services to facilitate compliance with bank purposes, and/or carry out banking activity other than raising money. Once the CMF has granted authorisation to a bank to incorporate or participate in a banking support company, the CMF cannot deny the same authorisation to another bank.

Recent regulatory themes and key regulatory developments

Open Finance System

On July 3, 2024, the CMF published General Rule No. 514 ("**NCG 514**"), which regulates the OFS established by the Fintech Law. The OFS aims to create an environment for the exchange of financial client information (of those who have expressly consented to it) among various financial service providers qualifying, according to the provisions of the Fintech Law, as participants in the OFS. The OFS participants will be those that, according to the Fintech Law, qualify as (i) Information Providing Institutions, (ii) Account Providing Institutions, (iii) Information-Based Service Providers, and (iv) Payment Initiation Service Providers.

The implementation of the OFS will be gradual and shall commence 24 months after the publication of NCG 514, i.e., from July 4, 2026. The graduality depends on the type of participant and the type or category of information to be shared. Banks, credit and prepaid card issuers shall be subject to stricter rules, and shall implement the Application Programming Interface (which is the main mechanism for data exchange within the OFS) to share information within six months from July 4, 2026.

Concerning the security and safeguards of the OFS, NCG 514 sets, *inter alia*, requirements related to: risk management and internal control of the participants; cybersecurity and incident reporting; the mechanism for reporting operational incidents; and the elements that participants must consider regarding business continuity, among others. Additionally, it considers the requirements and manner in which client consent must be given as an essential condition for entities to access their financial information. Regarding this and in line with the spirit of the Fintech Law, NCG 514 allows such consent to be manifested through any means, physical, oral, digital, or electronic, as long as they offer sufficient certainty and meet other requirements established in the standard, and establishes prohibitions and restrictions on participants when obtaining it.

Financial service providers

In compliance with the mandate of the Fintech Law, on January 12, 2024, the CMF completed the first stage of implementation of said law, with the issuance of NCG 502, which became effective on February 3, 2024. This regulation establishes in a single regulatory body the registration requirements, authorisation process and obligations applicable to all Fintech service providers, including crowdfunding platforms, alternative transaction systems, intermediation of financial instruments, order routing, credit rating services, investment advice and custody of financial instruments.

On December 3, 2024, following a public consultation process, the CMF amended NCG 502 in order to address certain implementation issues related to some of the requirements established in NCG 502 and to incorporate a methodology for assessing the quality of corporate governance and risk management standards included in the mentioned rule.

Social media and investment advice

On July 5, 2024, the CMF updated its "*Frequently Asked Questions*" document related to NCG 502. NCG 502 regulates the registration, authorisation, and obligations of financial service providers under the Fintech Law. The update aims to establish guidelines on how the creation and dissemination of financial and/or investment content through media and social platforms may constitute investment advice under the Fintech Law, clarifying that individuals or entities involved in producing and sharing financial and investment content, targeting the general public or a specific group, will fall under the regulatory scope of the Fintech Law if two conditions are met: (a) the communication of an evaluation or recommendation is capable of and/or intended to influence the audience's decision regarding the advisability of a particular investment; and (b) the communication is conducted regularly.

Other legal and regulatory themes and key regulatory developments

On July 3, 2024, Law No. 21,680 ("**Law 21,680**"), which creates a Consolidated Debt Registry (*Registro de Deuda Consolidada*), was published in the Official Gazette. Law 21,680 aims to centralise information on financial debts, thus improving the credit evaluation of individuals and providing more data to the CMF for its regulatory functions. Financial institutions and other entities under CMF supervision will have access to the registry to more thoroughly assess commercial and credit risks, on the condition that information on debts overdue for more than five years or prescribed is not available without the explicit consent of the debtor, which must be properly recorded in writing, verbally, or electronically. Law 21,680 will come into effect in April 2026, and the CMF must create and have enabled the corresponding registry by November 2025.

Bank governance and internal controls

Governance and risk management

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 must be a special corporation (*sociedad anónima especial*) under the specific requirements of 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. Directors cannot be both directors and employees of the bank.

The internal organisation of banks is mostly carried out by the board of directors, which must provide necessary governance of the banking entity through the senior management, committees, and policies.

All directors must fulfil several honourability and solvency requirements to be appointed as such. These requirements include: not being convicted of serious crimes described in the General Banking Act; not being sanctioned by infringements to market regulations; and not being involved in serious conduct that may risk the bank's stability or the safety of its depositors. It is forbidden by law to set special requirements based on nationality or profession in order to be appointed as bank director, and notwithstanding the fulfilment of the abovementioned conditions, there are neither specific approvals from regulators nor certifications required in this regard.

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.

Sound internal governance is measured in accordance with the CMF's Guide to the Banking Supervision Process. Pursuant to this Guide, the main objective of banking supervision is assessing the quality of risk management used by banks. This approach, according to the CMF, 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, the SBR approach 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 whether 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.

Internal control

Chapter 1-13 of the Updated Compilation of Rules of the CMF 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 aspects, among others, are considered by the CMF as inherent to good corporate governance and criteria for evaluating a bank's management:

i. Establishing strategic objectives, corporate values, lines of responsibility, monitoring, and accountability.

ii. Verifying the performance of senior management and compliance with policies established by the board of directors.

iii. Promoting sound internal controls and effective audit.

iv. Establishing proper disclosure mechanisms.

Outsourcing of functions

Banks in Chile are allowed to outsource certain functions, provided the requirements set forth by the CMF are complied with. Chapter 20-7 of the Updated Compilation of Rules of the CMF contains the rules applicable to outsourcing of functions. Certain activities of banks may under no circumstances be outsourced, such as: those related to raising funds from third parties outside the bank's offices; the opening of bank accounts; and functions related to internal controls of the banks.

Banks are required to assess all the risks associated with outsourcing functions and establish an outsourcing policy that appropriately addresses those risks, including a proper governance structure, a sound framework of applicable regulations and procedures, and an environment that allows the identification, control, mitigation, monitoring and reporting of such risks.

Any outsourcing policy should consider, in general, the following elements: (i) general conditions approved by the board of directors regulating the activities or functions that may be outsourced; (ii) continuity of business; (iii) safety of the bank's own information and its clients; (iv) observance of banking secrecy; (v) access to the information by the CMF; and (vi) the political risk (*riesgo país*) of the country where the service provider is located (with banks not being allowed, except under certain exceptions, to outsource services to companies located in a country that does not have investment grade).

The abovementioned Chapter 20-7 also sets additional regulatory requirements applicable to the outsourcing of data processing services and reinforced due diligence obligations when contracting cloud computing services.

Bank capital requirements

Following the recommendations of Basel III, the current regulations on capital requirements were updated by Law No. 21,130, which increased such requirements from both a quantitative and qualitative point of view to address the risks currently associated with banking activity. Main innovations in this regard can be summarised as follows:

1. *Capital requirement*. The minimum required level of effective equity is 8% of risk-weighted assets. The Tier 1 minimum capital requirement, corresponding to the composition of assets with the best loss-absorbing capacity, was 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 made up of preferred shares or bonds with no maturity (perpetual).
2. *Conservation buffer*. A conservation buffer of 2.5% of risk-weighted assets above the established minimum must be set, which must be made up of basic capital.
3. *Additional 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 the country, 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. As indicated above, in 2023, the Central Bank activated this additional basic capital by 0.5% of the risk-weighted assets, to be implemented by banks within one year (i.e., up until May 2024).
4. *CMF authorities*. Additionally, the CMF is granted the authority to require basic capital or additional effective equity for up to 4% of the risk-weighted assets in those cases in which the legal requirements are not sufficient to cover the specific risks faced by a determined entity.

Banking liquidity requirements

Article 35 No. 6 of Law No. 18,840, the organic constitutional law of the Central Bank, empowers it to enact regulations and set restrictions applicable to the relationships between active and passive banking activities.

Based on the above, the Central Bank enacted Chapter III.B.2.1 of its Compendium of Financial Regulations, which sets rules on management and measuring of banks' liquidity positions. Even though local banks solidly endured the global financial crisis, the Central Bank introduced this rule to prevent future liquidity shocks.

In this regulation, the Central Bank has established minimum standards and requirements that shall be observed by banks, with the purpose of maintaining an adequate liquidity position, in both local and foreign currency, and that allow banks to properly fulfil their payment obligations in both regular conditions and in exceptional stress scenarios whose occurrence can be considered plausible.

Chapter III.B.2.1 states that the board of directors is responsible for setting the bank's liquidity risk tolerance, understood as the liquidity risk level that the relevant bank is willing to assume as a result of both the risk/return assessment of its global policies, and the manner as to which such risks are managed. For these purposes, the board of directors must adopt, lead, and oversee the implementation of a liquidity management policy (*Política de Administración de Liquidez*, or "**PAL**"). The bank's senior management is responsible for proposing to the board the PAL compatible with the nature, scale and complexity of the business and risk tolerance of the bank, 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's Compendium of Financial Regulations, 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.

Banks 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.

The PAL shall be available at all times for CMF review, and term mismatches, if any, must be reported by the bank to the CMF.

In 2020, the Central Bank's council introduced an amendment to these rules, by means of which it will be entitled to suspend or increase flexibility on the abovementioned limits, to the extent the term mismatches occurred during a national emergency or due to other serious exceptional cases.

Rules governing banks' relationships with their customers and other third parties

In their relationship with clients, the general rules applicable to each type of banking activity will apply. Therefore, banks need to follow the rules contained in the Money Lending Operations Act, which governs the lending business in Chile, setting out what is understood as a money-lending transaction, the rules governing accrual and amount of interests and other matters (including a maximum interest rate (*interés* *máximo convencional*), applicable, as of November 30, 2023, also to money lending "in" foreign currency (i.e., operations payable in foreign currency)), the Consumer Protection Act (Law No. 19,496), and the Data Protection Act.

In addition, there are other specific rules that govern the relationships of banks with their customers. Most of these specific rules are contained in sectorial regulations enacted by the CMF, such as those regarding bank hours, bank accounts, leasing and factoring operations, other banking operations, issuance of subordinated loans, etc. Banks are also required to observe lending limit regulations.

Anti-money laundering regulations are also applicable in the relationship between banks and their customers. In fact, banks need to follow Law No. 19,913 (the Anti-Money Laundering Act), which sets forth the general framework on anti-money laundering. In particular, banks are required to report to the Financial Analysis Unit (*Unidad de Análisis Financiero*):

1. "Suspicious transactions" they are aware of.
2. Cash transactions exceeding US$10,000, on a semi-annual basis.
3. Documents and antecedents required 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 of terrorism and bribery of civil servants. It is worth mentioning that on May 15, 2023, Chilean Congress approved the bill that systematises economic crimes and offences against the environment and innovates in a series of matters, including: (i) the systematisation of offences related to business activity under four major categories of crimes that correspond to so-called "Economic Crimes"; (ii) the creation of new offences (e.g., a new title has been incorporated into the Criminal Code called "Offenses against the environment", among others); (iii) the inclusion of new offences based on the crime of money laundering typified in Article 27 of Law No. 19,913; (iv) the establishment of new penalties and sanctions, as well as the strengthening of existing ones, seeking that custodial sentences are effectively complied with by those who are involved in the commission of an Economic Crime; and (v) the exponential growth of the number of predicate offences for which legal entities (including banks) may be criminally liable under Law No. 20,393.

The CMF requires banks, in addition to following the rules set forth in Law No. 19,913, to have specific anti-money laundering systems in place, which are based on the "know-your-customer" system. Chapter 1-14 of the Updated Compilation of Rules of the CMF lists the main features that every bank's "know-your-customer" system should contain.

Finally, with respect to sanctions applicable to banks in Chile, the Banking Law establishes that those banking entities that do not comply with the law, regulations and other norms that govern them, may be sanctioned in accordance with Law No. 21,000 mentioned above, without prejudice to the sanctions established in other legal bodies.

In line with the above, Law No. 21,000 establishes three sanctions for banks:

1. Censorship.
2. Fine for fiscal benefit, which may be, depending on the case, (i) twice the amount of the benefit obtained from the illegal transaction, (ii) 30% of the amount of the illegal transaction, or (iii) 15,000 UF (*Unidad de Fomento*), which corresponds to approximately US$600,000 as of January 12, 2024.
3. Revocation of the company's authorisation of existence.

The sanctions above are applied by the CMF, taking into consideration the seriousness of the infraction, the economic benefit obtained, the damage caused to the financial market, recidivism, the economic power of the offender and the collaboration provided by the offender in the investigation.

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- Bank capital requirements
- Rules governing banks' relationships with their customers and other third parties