

FINANCIAL MARKETS COMMISSION OF CHILE

New governance framework and information sharing powers

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Context: Development and challenges

- In the last decades, the **financial market in Chile has experienced a substantial development and steady growth.**
 - *Ample and more complex offer of financial products and services*
 - *Access to investors with different risk profiles*
 - *Entrance of new market players, new business models and new technologies*
 - *High presence of financial conglomerates and interconnection within the financial system*
 - *Increasingly globalized and integrated financial markets*
- This scenario poses relevant challenges to **financial regulators who need a solid legal framework and ample authorities** to be able to react promptly and adequate to this developments.
- However, the **framework for regulation and supervision in Chile designed in the 1980's**, based on Superintendences focused on specific sectors of the financial market (like the SVS), evidenced **weaknesses** to address these challenges.

Recommendations and International Standards

- Several international organizations like **World Bank, IMF and OECD** highlighted the importance of **improving and strengthening the independence and legal powers of the financial supervisors**, providing adequate checks and balances

OCDE (2010): "Independence of the Securities and Insurance Regulator, providing adequate checks and balances that protected it against the risk of political intervention in enforcement decisions"

"SVS should seek legal authority to comply with the requirements of IOSCO's Multilateral MOU on Consultation and Cooperation on Exchange of Information"

FSAP WB - IMF (2011). Chile's financial regulatory and supervisory system is robust. Areas for further strengthening are independence and legal protection of regulatory authorities, the oversight of financial conglomerates

Recommendations and International Standards

- Likewise, **IOSCO's Principles of Securities Regulation set specific standards relating to the securities regulator**, to achieve the objectives of investor protection, fair, efficient and transparent markets, and reduction of system risk, through regulation, supervision, efficient enforcement and collaboration with other regulators.
 - **Principle 1: Responsibilities of the Regulator** should be clear and objectively stated
 - **Principle 2:** Regulator should be **operationally independent and accountable**
 - **Principle 3:** Regulator should have **adequate powers and proper resources**
 - **Principle 4:** Regulator should adopt clear and **consistent regulatory processes**
 - **Principle 5:** Regulator's staff highest professional standards and **confidentiality**
 - **Principle 6:** Regulator should contribute to identify, monitor, mitigate **systemic risk**
 - **Principle 7:** Regulator should **review the perimeter of regulation** regularly
 - **Principle 10 and 11:** Regulator should have comprehensive **inspection, investigation surveillance and enforcement powers**
 - **Principle 13.** Regulator should have authority to **share both public and non-public information with domestic and foreign counterparties**

New institutional framework for financial regulation and supervision

- Chilean authorities recognized the **importance of the regulator's independence in fostering market certainty, transparency and stability.**



- **Law 21,000** in place as of January 2018 creates a **new institutional framework for the securities and insurance regulator**, turning the former SVS into the **Financial Market Commission**
 - ✓ **Improvements in governance:** collegiate body-aimed at fostering technical nature and independence
 - ✓ Providing the regulator with **additional investigative and enforcement tools, and with additional powers to collaborate with foreign regulators**
 - ✓ Enhancement of **regulatory transparency and accountability standards.**

Legal Mandate and Perimeter of CMF

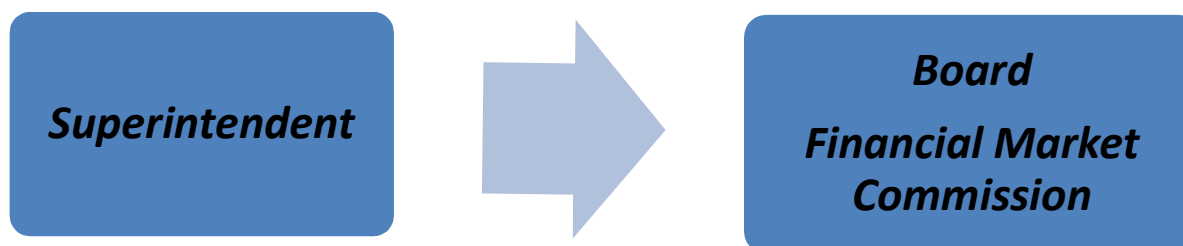


- **CMF maintains the role of regulation and supervision of the securities and insurance sector** and the powers already vested in the SVS.
- **However, with a broader mandate to promote sound functioning of the financial system, market development and oversight financial stability and systemic risk.**
 - **At a later stage**, through an *extensive reform to the General Banking Law pending in Congress*, the supervision and regulation of **banks and other financial institutions** would also be incorporated under the CMF's oversight.
 - The latter will allow laying the foundations to have a **consolidated supervision policy, with a special focus on financial conglomerates**



Strengthen of independence and governance

- The sole authority of the Superintendent in charge of SVS (appointed-at will by the President of the Republic), is replaced by **a 5 member Board, 1 of them being the Chairman of the Commission.**



- **The Board is responsible for adopting strategic decisions at the Financial Market Commission, approving policies, issuing regulations and applying sanctions in enforcement procedures.** The Chairman of the Board is entrusted with the day-to-day management of the institution.
- *This collegiate governance structure is aimed at **fostering technical nature and independence of the CMF from political cycles, promoting long term view and institutional stability.***

Strengthen of independence and governance

- **Board of CMF comprised by 5 members**, chosen among candidates that have professional or academic backgrounds in the financial sector, under **fixed term mandates, which may only be removed by legal cause**.
- Strict eligibility, inability and incompatibility requirement, conflict of interest and disclosure obligations

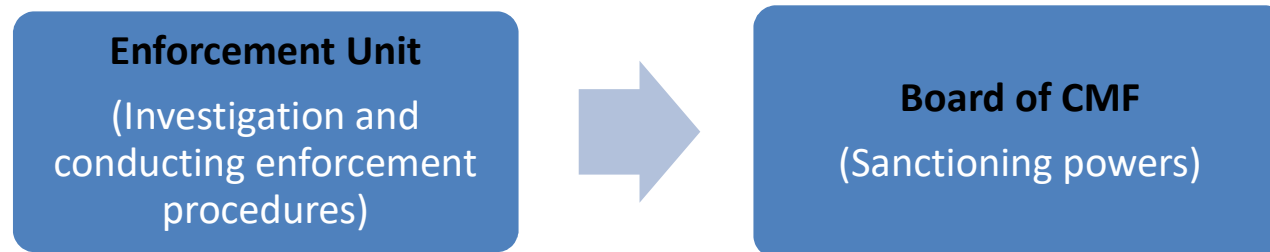
Appointment	<ul style="list-style-type: none">• Chairman: Appointed by the President of the Republic, fixed 4-year term• Commissioners: Appointed by the President of the Republic with the agreement of 4/7 of the Senate, for fixed 6 year term, with staggered renewal
Removal by cause	<ul style="list-style-type: none">• Infringement of the inability or incompatibility clauses.• Gross infringement of functions or duties.

Strengthen of independence and governance

- **Duty of confidentiality.** Members of the CMF are not allowed to disclose in any way the information they receive on the performance of their official duties.
- **Regulation on conflicts of interest**
 - Commissioners may not engage in other activities in public or private sector during the term
 - To prevent the “revolving door”, abstention and information duties apply to Commissioners and employees for the following year after they leave the CMF.
- **Legal protection is provided for all members and employees of the CMF** in case of legal actions filed against them as to actions adopted in the performance of their official duties.

Enforcement and additional investigation tools

- Enforcement procedure and due process guarantees are substantially enhanced by the **appointment of a Special Prosecutor (SP) that will be in charge of the Enforcement Unit of the CMF handling the investigation and enforcement proceedings.**
- **Sanctions are to be applied by the CMF Board,** based on the investigation report presented by the SP, which shall include the allegations made by interested parties in the procedure.



- **Investigation procedures and its stages are established by the law** in order to ensure an efficient and transparent administrative process. More **expedite judicial review** of sanctions.

Enforcement and additional investigation tools

- **Additional investigative tools are granted to the CMF** to be used in local enforcement procedures and also to attend foreign regulators request, with court approval:
 - **Access to information on banking operations of specific persons, protected under bank secrecy or confidentiality,**
 - Access to private properties and force-entry, if necessary
 - Register and seize objects and documents; intercepting of communications
 - Ordering other public agencies to provide background information, even when the information is confidential or classified.
- Self-report and leniency mechanisms to achieve greater collaboration and effective enforcement
- Substantial increase in fines in case of reoccurrence. CMF may set fines according to the amount of illicit profits obtained

Collaboration with foreign regulators

- CMF may enter into **agreements or MoUs with international or foreign organizations** on:
 - Technical cooperation, training and mutual assistance, **joint investigation of possible infractions of the relevant regulations, exchange of information**, access to international organizations, interconnection of online information systems or any other issue deemed convenient.
 - CMF currently maintains 27 bilateral MoUs and MMoU with IAIS
- To foster international collaboration, **CMF shall collaborate with foreign supervisors in their investigation or enforcement procedures under MoUs**
 - CMF may access to **information on banking operations of specific person**, with prior court approval, and share such information with foreign regulators upon a **request made under an MoU for exchange of information**.
 - *Expedite process, subject to strict confidentiality provisions*

Regulatory transparency

- Enhanced standards for regulations issued by the CMF, introducing the requirement to **conduct regulatory impact assessments and public consultation process.**
- **Mandate of regulatory coordination** among public agencies before issuing regulation that may have impact on several markets
- CMF shall have **authority to issue recommendations to the President of the Republic, on legal or regulatory amendments** required to promoted sound performance and development of the markets, as well as to address changes needed to the regulatory perimeter.
- The above shall allow **Congress to progressively extend the regulatory authorities of CMF, to be able to react promptly to the market dynamism.**

Transparency and accountability standards

- CMF shall elaborate an **annual report**, to disclose and explain the activities carried out by the CMF during the previous year, the execution of the granted budget, etc.
- Board of the CMF must **appear before the Senate** annually, to present the annual report, and answer questions regarding the activities of the prior year, and provide a general assessment of the financial market.
- The **CMF shall independently prepare a budget proposal**, to be submitted directly to the Budget Office and to be considered during the discussion of the Annual Budget Law in Congress.

Final remarks

- Creation of the CMF introduces **substantial improvements and to the financial regulation and supervision landscape in Chile.**
- CMF's mandate is to supervise the **sound operation, development and stability of the financial market, facilitating the participation of markets agents and fostering the protection of public faith**, maintaining a systemic view of the market and considering investors and policyholders interests.
- Improvements on **governance structure, regulatory transparency and accountability** shall strengthen the technical character and independence of the CMF, giving greater institutional stability, allowing a more **comprehensive and long-term outlook of the financial markets.**
- In a context of increasingly globalized markets, **CMF remains fully committed to the collaboration and cooperation among regulators and cross border exchange of information** to attend requests for assistance from foreign authorities under MoUs.

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