

Chile

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1. Fintech regulatory framework: a summary of the most relevant laws and regulations concerning fintech and financial innovation.

Currently, the most relevant laws and regulations on fintech and financial innovation in Chile comprise Law No 21,521 which promotes competition and financial inclusion through innovation and technology ('Fintech Law' or 'Law') and its secondary regulation issued by the Financial Market Commission (CMF).

The Fintech Law

The main objective pursued by this Law is to establish a general framework to encourage the provision of financial services using technological means by the financial service providers (FSPs) governed by it.

Among the many innovations contained in the Law, the following aspects must be highlighted.

- The incorporation of the term 'financial instruments', which encompasses a group of instruments that may be subject to the financial services regulated under the Fintech Law.
- The legal recognition and regulation of virtual financial assets or crypto assets.
- The regulation of parametric insurance, ie, insurance that, upon the occurrence of a predefined event covered by the policy, obligates the insurer to pay the claim, releasing the insured party from having to justify the existence or amount of the damage, and even if there was no actual loss.
- Contracts for difference (CFDs) are now expressly regulated as financial instruments.¹
- The Fintech Law incorporates new reporting entities to the Financial Analysis Unit (UAF) pursuant to Law No 19,913 (anti-money laundering and countering the financing of terrorism (AML/CFT)): entities registered in the Registry of Financial Service Providers (RPSF) and in the Registry of Payment Initiation Service Providers regulated in the open finance system, which provide the services of crowdfunding platforms, alternative trading systems, custody of financial instruments, intermediation of such instruments, and initiation of payments.
- New payment methods: digital, electronic or computerised representations, registered through systems that use distributed ledger or other similar technologies (such as blockchain), of units whose value is directly determinable and backed by money ('cryptocurrencies'). These cryptocurrencies may be the object of payment orders regulated in the Organic Law of the Central Bank of Chile.
- New foreign currencies: the cryptocurrencies mentioned above are now also included in the concept of foreign currency.

¹ Before the Law, as was the case of crypto assets, CFDs were not considered securities by the CMF and, therefore, were outside its scope of regulation and oversight.

Regarding the Law, it is divided into two main subjects: (1) regulated fintech services and (2) an open finance system.

Financial services

Regarding the regulated fintech services, the Fintech Law regulates the commercialisation of the following technology-based financial services ('financial services') by the FSPs.

CROWDFUNDING PLATFORMS

Physical or virtual places through which those who have investment projects or financing needs divulge, communicate, offer or promote those projects or needs, or the characteristics thereof, and contact or obtain contact information of those who have available resources or the intention of participating in or satisfying those projects or needs; in order to facilitate the materialisation of the financing operation.

ALTERNATIVE TRADING SYSTEMS (ATS)

Physical or virtual places that allow its participants to quote, offer or trade financial instruments, or publicly offered securities and that are not authorised to act as a stock exchange or commodities exchange pursuant to applicable laws (includes operations in crypto assets, derivatives and CFDs).

CREDIT ADVISORY

Provision of evaluation services or recommendations to third parties regarding the capacity or probability of payment by a person or entity, or concerning their identity, for the purpose of obtaining, modifying or renegotiating a loan or financing agreement.

INVESTMENT ADVISORY

Provision of evaluation services or recommendations to third parties regarding the convenience of making certain investments or transactions in publicly traded securities, financial instruments or investment projects.

CUSTODY OF FINANCIAL INSTRUMENTS

Safekeeping, on their own behalf but on the account of third parties, or on behalf of third parties, of financial instruments, money or foreign currencies arising from cash flows or from the selling of financial instruments held in custody, or that have been delivered by them for the acquisition of financial instruments or to guarantee transactions with such instruments.

ORDER ROUTING

Service for channelling orders received from third parties for the purchase or sale of publicly offered securities or financial instruments to ATS, securities intermediaries or commodity exchange brokers.

INTERMEDIATION OF FINANCIAL INSTRUMENTS

A service consisting of carrying out purchase or sale activities of financial instruments on behalf of third parties, through any of the following forms: acquiring or disposing of financial instruments on own account with the prior intent of selling or purchasing those same instruments to or from the third party, or acquiring or selling financial instruments in the name of or for such third party.

The Fintech Law establishes the obligation of registration in the RPSF, to any person who decides to professionally engage in the provision of the financial services regulated by it. After the registration, the Law establishes that the proper authorisation from the CMF must be obtained prior to initiating the provision of the financial services regulated therein.

Notwithstanding the above, some entities already supervised by the CMF may provide the financial services regulated in this Law without the need to register in the RPSF.

Open finance

The Fintech Law establishes basic rules and principles to regulate an open finance system. This would allow the exchange of information between different information service providers regarding financial customers who have expressly consented to it and other types of data set forth in the Law, through remote and automated access interfaces that allow for interconnection and direct communication between 'participating institutions', namely:

- information providers;
- information-based services providers;
- account providers; and
- payment initiation services providers.

These institutions must adopt the necessary measures to allow the consultation, access, delivery and exchange of information regarding the types of data, products and financial services related to financial clients who have contracted such products or services, or carried out transactions with them, in an expeditious and secure manner, under the conditions established by the CMF by means of General Rule.

The delivery and exchange of information shall be carried out through one or more remote and automated access interfaces (APIs) maintained by the participating institutions, whose minimum standards are determined by the CMF by means of a General Rule.

Other relevant rules established in the Fintech Law

The Fintech Law also regulates the following matters related to FSPs.

- It establishes that such providers must adopt policies, procedures and controls aimed at preventing the offering of products that do not meet the needs, expectations and risk-profile that customers have previously communicated to them regarding the products and services they wish to acquire. Therefore, they should offer their financial products and services according to the customer's profile.
- Moreover, banks offering current account services must establish public, objective and non-discriminatory conditions to offer and provide access to such services to financial providers regulated by this law, to issuers and operators of payment cards and to other financial institutions supervised by the CMF.

Secondary regulation

The Fintech Law delegated to CMF the issuance of the secondary regulation of activities governed by said Law.

In this regard, on 12 January 2024, the CMF issued General Rule No 502 ('NCG No 502') which regulates the registration, authorisation and obligations of financial services providers, and which came into effect on 3 February 2024. NCG No 502 consolidates in a single regulatory framework the instructions and requirements for FSPs.

The main aspects regulated by NCG No 502 concerning FSPs include:

- registration in the RPSF;
- authorisation for the provision of financial services as defined above;
- disclosure obligations and information delivery to clients and the public;
- corporate governance and risk management;
- minimum capital and guarantees for certain FSPs;
- operational capacity;
- ancillary activities;
- records; and
- additional provisions.

In addition, on 4 July 2024, the CMF issued General Rule No 514 ('NCG No 514') which regulates the open finance system. The main aspects regulated by NCG No 514 regarding the open finance system include:

- perimeter;
- operation;
- security and safeguards;
- information;
- temporary suspensions;
- sanctions; and
- terms to implement it.

2. Regulations on crypto assets: a summary of the legal framework regarding crypto assets and how they are regulated.

In Chile, virtual financial assets or crypto assets are regulated mainly in the Fintech Law and in its secondary regulation NCG No 502. In this context, for the purposes of the Fintech Law, virtual financial assets or crypto assets are defined as a 'digital representation of units of value, goods, or services, with the exception of money, whether in national currency or foreign currency, that can be digitally transferred, stored, or exchanged'.

The Fintech Law defines financial instruments as:

'Any security, contract, document, or intangible asset designed, used, or structured for the purpose of generating monetary income, or representing an outstanding debt or a virtual financial asset. For the purposes of this law, financial instruments shall include securities not registered in the Securities Registry or the Foreign Securities Registry under Law No 18,045, derivative contracts, CFDs, invoices, among others, regardless of whether their format is physical or electronic.'

The Fintech Law introduced amendments to various regulatory frameworks, establishing that digital, electronic or computerised representations of units whose value is directly determinable and backed by money or foreign currency, as applicable, or of documents recording obligations payable in any of such currencies, or in a basket of foreign currencies, as applicable ('cryptocurrencies'), shall be considered to be: (1) a means of payment, (2) currencies, and (3) subject to payment orders.

In this context, for the foregoing to apply, it was established that such representations and systems must comply with minimum standards and conditions regarding security, reliability, acceptability, use and widespread adoption, among others, as determined by the Central Bank of Chile through general regulation. However, it should be noted that such regulation has not yet been issued.

Consequently, the Fintech Law considers that crypto assets are financial instruments when they: (1) are represented in a title, contract, document, or incorporeal asset that was designed, applied or structured for those purposes, and (2) are not a means of payment, currencies or subject to payment orders as the cryptocurrencies defined above.

As for relevant tax implications, the Chilean Internal Revenue Service (Servicio de Impuestos Internos) has issued several rulings on the taxation applicable to crypto asset transactions. In its General Notice No 963 of 2018, relating to the taxation arising from the purchase and sale of crypto assets (specifically, Bitcoin), both at the income tax level and at the VAT level, it concluded that the income gains are taxable pursuant to general application income taxes. With regards to VAT, the sale of Bitcoin, or other virtual or digital assets, is not subject to this tax, as it concerns intangible goods.

On a different case, analysed in its General Notice No 1371-2019, the Chilean Tax Authority considered that the intermediation of digital assets is classified in No 4 of Article 20 of the Income Tax Law, and that the commission received by the intermediary is subject to VAT.

3. Payment service providers and digital wallets: a summary of regulations applying to payment service providers and/or digital wallets.

Payment service providers

Payment processing service providers

The Central Bank of Chile's Compendium of Financial Regulations (*Compendio de Normas Financieras* or CNF), in Chapter III.J.2 concerning the operation of payment cards (credit, debit, and prepaid cards), regulates payment processing service providers (PSPs).

In this context, Chapter III.J.2 of the CNF establishes that such companies will be exempt from said regulation when they only render the following services to payment cards issuers and/or operators:

- the authorisation and registration of transactions made by cardholders or card users;
- the procedures for affiliation of entities to the system, not including the provision of services regulated as part of the operation of cards;
- the provision of point-of-sale terminals or electronic or computerised channels or applications that allow the authorisation, capture, aggregation and communication of payment transactions, so that they may be subsequently processed by an operator for settlement and/or payment purposes; and
- other activities related to the operation of cards provided that they do not involve the settlement and/or payment of benefits due to affiliated entities for the use of such instruments.

The aforementioned chapter states that PSPs may exceptionally provide services that include the settlement and/or payment of amounts due to affiliated entities for transactions made with payment cards, without being subject to the requirements and obligations imposed on payment card operators, provided that two conditions stated in the aforementioned regulations are met:

- that the PSP enters into a contract or agreement with an issuer or acquirer, in which it is expressly stated that any of the latter has assumed or shall assume the corresponding

payment responsibility before the affiliated entities, notwithstanding that the respective PSP shall make the settlements and/or payments that may be applicable;² and

- the settlement and/or payments made by a sub-acquirer, over the preceding 12 months, on behalf of one or more issuers or acquirers with whom it maintains a current contract or agreement for this purpose, must be less than 50 per cent of the 1 per cent of the total payment amount to affiliated entities made by all acquirers governed by this regulation during the same period ('sub-acquiring threshold').

In any case, this exception shall not apply to companies that carry out cross-border acquiring, understood as the activity consisting of affiliating and assuming payment obligations with one or more merchants that are not domiciled or resident in Chile – which shall be considered foreign affiliated entities – settling abroad the payments corresponding to transactions made with payment cards, subject to compliance with the special rules and conditions regarding the capital requirements applicable to them under Chapter III.J.2 of the CNF.

Furthermore, companies that carry out cross-border sub-acquiring activities must demonstrate paid-in capital and reserves of no less than the equivalent of 2,000 *Unidades de Fomento* (UF).

In addition, the regulation establishes that if a PSP engaging in sub-acquiring activities reach or exceed, for two consecutive quarters, 50 per cent of the sub-acquiring threshold with respect to one or more issuers or acquirers, it must establish itself as a sub-acquiring acquirer, and comply with the following requirements.

It must enter into a contract or agreement with an issuer or another acquirer, explicitly stating that the issuer or acquirer has assumed or will assume the corresponding payment responsibility to affiliated entities, which must also be documented in the relevant affiliation contract.

This contract or agreement must specify the type of payment cards involved.

- It must demonstrate having paid-up capital and reserves equal to or greater than the equivalent of 1,000UF.
- Their bylaws must exclusively refer to the activity of acquiring payment cards under the sub-acquiring modality and any complementary activities authorised by the CMF through General Rules.
- It cannot enter into a contractual relationship with another sub-acquiring acquirer for the purpose of receiving sub-acquiring services.

Then, the PSP must apply for registration in the Card Acquirers Registry managed by the CMF, following the instructions issued by that entity.

Also, if the settlement and/or payments made by a sub-acquiring acquirer, on behalf of one or more issuers or acquirers with whom it maintains a current contract or agreement for that purpose, exceed, for two consecutive quarters, the 1 per cent of the total payment amount to affiliated entities made by all acquirers governed by this regulation over the preceding 12 months, it must

² This exception shall not apply to sub-acquiring acquirers engaged in cross-border acquiring.

comply, within the timeframe and under the terms and conditions established by the CMF, with the minimum capital and liquidity reserve requirements stipulated in this chapter for the acquirers, as well as make any necessary statutory and operational adjustments.

Payment initiation service providers

The Fintech Law, in Title III concerning the open finance system, regulates payment initiation service providers (PSIPs). The referred law provides that PSIPs shall be understood as entities that provide services to clients who hold checking accounts, demand deposit accounts or prepaid funds accounts, through which they may instruct, on behalf of the clients and before the bank or financial institution that provides the respective account, the execution of payment orders or electronic funds transfers, including predefined recurring payments in favour of third-party beneficiaries designated by the clients, charged to their respective accounts and means of payment.

In addition, the Fintech Law establishes specific operational restrictions for PSIPs. In this context, PSIPs may not access or hold, at any time, client funds associated with the instructed payment orders, nor may they access or retain client information for purposes other than the provision of the payment initiation service. Notwithstanding the above, the Fintech Law provides that, on an exceptional basis, PSIPs may include in their operating model the possibility of accessing and temporarily holding the funds of the referred clients, subject to compliance with the rules that will be established by the Central Bank of Chile. In any case, the maximum time period for the payment to third-party beneficiaries of the payment orders or electronic transfers may not exceed 72 hours.

Digital wallets

With regards to digital wallets, Law No 20,950 authorises the issuance and operation of prepaid means of payments by non-banking entities.

Pursuant to this law, in Chile there is a similar structure to the digital wallet, which is used for similar purposes. It consists of prepaid funds accounts (*Cuentas de Provisión de Fondos* or CPF), which are specifically regulated in Chapter III.J.1.3 of the CNF, regarding the issuance of prepaid payment cards.

This chapter sets forth that the sole purpose of these accounts is to receive funds destined to be used for prepaid payment cards, as a means of payment and for other purposes permitted by law.

Consequently, several apps that provide digital accounts associated to prepaid payment cards have appeared in recent years. These allow individuals to deposit funds in such accounts and use them via their associated prepaid payment cards to acquire goods or services or fulfil other payment obligations.

Furthermore, this chapter states that issuers may establish payment schemes using the cards they issue to facilitate fund transfers between their own cardholders or CPF. These operations may be initiated by the cardholder or by a third party specially authorised by the cardholder, and are executed through corresponding debits and credits within CPF, without needing to comply with the rules and affiliation schemes applicable to affiliated entities. The aforementioned schemes do not preclude the respective cards from being used for other purposes inherent to this payment method.

In addition, in the case of named cards, these may also be used to make cash withdrawals, whether over the counter, through ATMs, or via correspondent agents made available by the respective non-bank issuers. Likewise, they may be used to carry out electronic funds transfers to other CPFs linked to named cards, as instructed by the respective cardholder, or to bank checking accounts, demand savings accounts, and demand deposit accounts regulated under the CNF.

Finally, since the custody of crypto assets is regulated as a financial instruments custody service under the Fintech Law, a provider may offer crypto asset wallets to its clients. In this sense, crypto wallets may fall within the scope of the financial instruments' custody service.

4. Special support for fintechs: a description of special programmes supporting the fintech ecosystem, fintech startups (eg, regulatory sandboxes and accelerator programmes) and regulations regarding special support.

In Chile there is currently no regulatory sandbox, innovation hub or accelerator programme promoted by any regulatory entity to support innovation within the fintech ecosystem.

However, the proposed amendment to NCG No 514 introduces two mechanisms that, although they do not constitute a formal regulatory sandbox, share certain controlled-testing features. First, the proposal establishes that the CMF will make available a voluntary pre-launch testing environment that allows participating institutions to conduct early infrastructure and interoperability testing, before the regulation becomes effective.

Second, the proposal establishes a pilot period for the initial implementation of the open finance system, during which institutions may operate APIs with limited regulatory flexibilities – such as reduced SLA and throughput requirements – and may interact with real customers, provided that appropriate consent and disclosure standards are met. While these mechanisms facilitate staged implementation and controlled testing, they do not provide substantive regulatory waivers nor allow the testing of innovative business models, and therefore do not amount to a fully regulatory sandbox.

There are several state initiatives that promote different types of enterprises such as, for example, the entrepreneurship programmes of the Corporation for the Promotion of Production (CORFO); a public business accelerator called Start-up Chile, which promotes technological ventures and is under the umbrella of CORFO and the Chilean Government; and other initiatives, which coach and provide financing to entrepreneurs in various fields, including the fintech area, so that they can start, develop, and scale their business ideas and plans.

The Association of Fintech Companies of Chile (FinteChile), a private association, also aims to represent and promote the growth of the fintech industry in Chile. For this purpose, it has four key pillars:

- active participation in the design of public policies and regulation;
- development and attraction of talent to the industry;
- attraction of greater quantity and quality of investment to the industry; and
- massification of the use of fintech services.

One of the most recent manifestations of its active participation in regulation can be found in the Framework Agreement for data capture entered into with the banking entities, part of the Association of Banks and Financial Institutions of Chile AG (*Asociación de Bancos e Instituciones Financieras* or ABIF) and BancoEstado, for the purpose of establishing standards of responsibility and mechanisms for capturing customer data from the institutions that adhere to this Framework Agreement in a controlled manner via web scraping (extraction of information from websites), while other capture mechanisms are established and, without prejudice, to future regulations that may be issued in this regard.

Lastly, in 2023 the CMF established a Financial Innovation Centre whose objective is to create a bridge between the CMF and the private sector, enabling a communication channel between the regulator and the fintechs under supervision. Among its main tasks are guiding companies interested in conducting fintech activities in Chile and receiving/responding to their inquiries.

5. Open banking: a summary of regulations regarding open banking and direct or indirect regulations that affect open banking.

As previously mentioned, the Fintech Law regulates an open finance system³ – a system that goes beyond the open banking system – which allows (1) the exchange of information between different institutions, regarding financial customers who have expressly consented to it and other types of data set forth in the Law, and (2) the initiation of payment orders through APIs that enable interconnection and direct communication between the participating institutions, allowing the provision of new financial services.

As regards the open finance system, NCG No 514 regulates the:

- perimeter;
- operation;
- security and safeguards;
- information;
- temporary suspensions;
- sanctions; and
- terms of implementation.

Finally, as mentioned in the previous question, there is currently a Framework Agreement for data capture via web scraping between the banking companies' members of ABIF and BancoEstado, and the companies associated with FinteChile. This agreement regulates the standards of responsibility and ensures the mechanisms for capturing data from the clients of the institutions adhere to certain legal and best-practice standards. This Framework Agreement must be complemented by bilateral contracts entered into by interested parties, which specify the conditions under which the data capture would operate.

3 Open finance goes beyond open banking, as it includes not only the banking industry, but other sectors and participants such as the insurance industry.

6. Regulation of virtual asset service providers.

In Chile there is no specific and exclusive regulation for virtual asset service providers (VASPs). In this context, there are no specific categories nor definitions of VASPs under Chilean law.

However, Title II of the Fintech Law regulates crypto assets and FSPs, which may engage in the following financial services involving crypto assets:

- alternative trading systems (ATS);
- intermediation;
- custody;
- order routing;
- investment advisory; and
- crowdfunding platforms.

Accordingly, and for the purposes of the fintech legal frameworks project, the term VASP shall refer to FSPs providing the aforementioned financial services involving crypto assets.

In this regulatory framework, NCG No 502 regulates the registration, authorisation, and obligations of FSPs – including VASPs. Moreover, the main aspects regulated by NCG No 502 in relation to FSPs – including VASPs – include:

- registration in the RPSF;
- authorisation to provide financial services;
- disclosure and information delivery obligations to clients and the general public;
- corporate governance and risk management;
- minimum capital and guarantees of FSPs;
- operational capacity;
- ancillary activities; and
- record-keeping obligations of FSPs.

7. AML and the Travel Rule in crypto asset transactions.

As noted in Section 1, one of the main aspects of the enactment of the Fintech Law was the expansion of the perimeter of AML regulations, by amending Law No 19,913 on anti-money laundering and countering the financing of terrorism ('Law No 19,913'), including new reporting entities. Law No 19,913 establishes that the individuals and legal entities identified in the first

paragraph of its Article 3 are required to report any suspicious transactions detected in the course of their activities ('reporting entities').

As a result of this amendment, VASPs that are registered in the RPSF and provide alternative trading systems, intermediation, custody, or crowdfunding platform services involving crypto assets, are considered reporting entities subject to Law No 19,913 and to the supervision of the UAF, including its secondary regulation.

On 19 March 2025, the UAF issued Circular No 62, which provides general instructions to reporting entities and, for the first time in Chile, establishes an explicit regulatory regime for electronic transfers of funds and assets under Section I.

Section I of Circular No 62 establishes that all reporting entities that provide electronic funds and asset transfer services, whether cross-border or domestic – including those defined under the Fintech Law – must include accurate and meaningful information regarding the originator and the beneficiary for any transaction of US\$1,000 or more, in the related messages sent together with the transferred amount (the 'Travel Rule').

In addition, it establishes that reporting entities must verify the accuracy of such information and retain it for a minimum period of five years in the corresponding record. The information required to be included in the transfer and recorded is as follows.

- Amount, currency or asset, and date of the transaction.
- Name or corporate name of the originator.
- Originator's account number, when such account is used to process the transaction.
- National identification card number of the originator, for Chilean nationals and residents, or passport or similar identification document for non-resident foreigners. In the case of legal entities, the tax ID (RUT) or a similar identification number if the entity is foreign.
- Originator's address.
- Name or corporate name of the beneficiary.
- Beneficiary's account number, when such account is used to process the transaction.

Notwithstanding the above, the following transactions are exempt from this Travel Rule obligation.

- Transfers resulting from a transaction carried out using a credit card, debit card or prepaid payment card, provided that the number of such cards accompanies all transfers derived from the transaction. However, if the cards are used as a means of payment for a money transfer, this obligation applies in full.
- Transfers and settlements made between financial institutions, when both the originator and the beneficiary are the financial institutions acting on their own behalf.

Finally, Circular No 62 establishes that receiving institutions of transferred funds or assets must adopt all necessary safeguarding measures in order to isolate and manage transactions that do

not comply with the transmission of mandatory information by the remitting entity, and must determine – based on the associated risk – whether to settle, reject, cancel or suspend the transfer of funds or assets.

In conclusion, VASPs that qualify as reporting entities in Chile are currently subject to a fully enforceable AML/CFT regime – namely Law No 19,913 and Circular No 62 – which includes binding Travel Rule obligations under the supervision of the UAF as the competent supervisory authority.

8. Enforcement and cross-border recognition of tokenisation and structuring of secured transactions involving crypto assets.

Tokenisation refers to the process of representing an asset – whether from the real world or natively digital – such as real estate, digital works or financial instruments, in the form of digital tokens registered on a blockchain network. These tokens represent rights or economic benefits related to the underlying asset, depending on the structure used.

Once tokenised, such rights or economic benefits may be transferred and traded on blockchain-based platforms, including centralised and decentralised exchanges.

As previously indicated in Section 2, the Fintech Law provides that crypto assets are financial instruments consisting of digital representations of units of value, goods or services. The Law expressly recognises the possibility of tokenising units of value, goods or services, including financial instruments regulated under said law. Accordingly, tokens fall within the concept of crypto assets as defined in the Fintech Law.

However, it should be noted that the manner in which tokens are issued or created in Chile is not currently limited to the traditional concept of tokenisation described above, as they may be issued or created either on-chain⁴ or off-chain⁵ in relation to a blockchain network.

In this context, for the tokenisation of financial instruments as defined under the Fintech Law, it is possible to contemplate the incorporation of a company responsible for issuing tokens representing the relevant financial instruments, regardless of whether the tokenisation is carried out on-chain or off-chain. To the extent that such company does not provide intermediation and/or custody services in relation to said tokens, it will not be required to set up an additional special purpose vehicle (SPV) for these purposes.

Under current Chilean law, real estate assets cannot be tokenised directly on-chain. This is because, in Chile, the property system is jointly based on the legal institutions of title and mode of acquisition of ownership, and, in the case of real estate assets, the mode of acquisition of ownership is the registration of the title – namely, the purchase and sale agreement – in the real estate registry of the corresponding real estate registrar (*Conservador de Bienes Raíces*). These registries are not currently structured or connected to a blockchain network. Accordingly, ownership rights over real estate assets may currently only be transferred off-chain through registration of the title in the corresponding real estate registry.

4 On-chain: created directly through a smart contract linked to a blockchain network.

5 Off-chain: created outside the blockchain network through traditional legal structures.

As a result of the foregoing, since real estate assets cannot currently be tokenised directly on-chain, fintech companies and other entities have resorted to the traditional legal structure of incorporating an SPV to acquire the relevant real estate assets and register them in the name of such SPV in the corresponding real estate registry, and subsequently sell shares in the SPV. While such shares may be represented in digital form, the transfer of ownership thereof must comply with the formalities required under applicable law:⁶ namely, the existence of a written title and the registration of the transfer in the shareholders' registry of the relevant SPV.

Strictly speaking, there is currently no direct tokenisation of real estate assets in Chile, but rather real estate transactions that grant shareholders personal rights against the SPVs owning the real estate assets, in proportion to their shareholding in the company's capital – provided that the SPV is a capital company.

What types of collateral are typically used to secure obligations arising in such digital asset transactions?

The market for secured transactions involving crypto assets is still at an early stage in Chile. While there is currently no specific regulatory framework governing collateral or security interests over crypto assets, existing legal and contractual mechanisms are applied on the basis of general principles.

In practice, custodians of financial instruments regulated under the Fintech Law may hold crypto assets or other financial instruments as collateral, provided that such assets are deposited or segregated for the purpose of securing principal obligations arising from related transactions, such as loans granted by the custodian itself or by third-party financial institutions.

Additionally, crypto assets and other financial instruments may be used as collateral through non-possessory pledge agreements (*prenda sin desplazamiento*), which allow the creation of a security interest without transferring possession, subject to compliance with the formal requirements established under Chilean law.

6 In this regard, Article 12 of Law No 18,046 on Corporations ('Law No 18,046') provides that:

'Shares shall be registered (nominative), and their subscription must be evidenced in writing in the manner determined by the regulations. Transfers shall be carried out in accordance with such regulations, which shall also determine the information that share certificates must contain and the manner in which lost or misplaced certificates shall be replaced.'

Furthermore, Article 38 of the Regulations of Law No 18,046 establishes that:

'Any assignment of shares shall be executed by means of a private instrument signed by the assignor and the assignee, either before a notary public, or by each party before two witnesses of legal age, or before a stockbroker, all of whom must be duly identified by their national identity card or tax identification number, and such witnesses or broker may be the same if the assignor and assignee sign the instrument in the same act. The assignment may also be executed by means of a public deed signed by the assignor and the assignee, or in accordance with the provisions of Law No 18,876 (on the incorporation and operation of private securities depository and custody entities), if applicable.'

Describe the procedures to create and perfect a security interest in these types of collateral, including any requirements for notarisation, registration, stamp duty or other legal formalities.

Unnamed (innominate) contract

As indicated above, in order to structure the use of crypto assets or other financial instruments held in custody by a regulated financial instrument custodian as collateral to secure a principal obligation, the custodian may enter into an unnamed (innominate) contract with the owner of the crypto assets or other financial instruments, setting forth the terms and conditions of such arrangement. In this case, no additional formalities are required.

Non-possessory pledge agreement (prenda sin desplazamiento).

Alternatively, a non-possessory pledge agreement may be entered into pursuant to Law No 20,190 in order to pledge crypto assets or other financial instruments without transferring their custody to a third party.

This is supported by Article 1 of said law, which provides that a non-possessory pledge agreement 'is intended to constitute a security interest over one or more tangible or intangible movable assets, in order to secure obligations of the pledgor or of third parties, while the pledgor retains possession and use of the pledged asset'. Likewise, Article 5 of Law No 20,190 establishes that a pledge may be created over all types of tangible or intangible movable assets, whether existing or future. Accordingly, a non-possessory pledge may be created over crypto assets or other financial instruments, considering their legal nature as intangible movable assets.

With respect to the requirements to perfect a non-possessory pledge, Law No 20,190 provides that such agreement is a solemn contract. Therefore, the pledge agreement itself, as well as any amendment or release thereof, must be executed either (1) by means of a public deed or (2) by a private instrument whose signatures are authorised before a notary public and subsequently notarised (protocolised) by the same notary who authorised the signatures.

Additionally, the non-possessory pledge agreement must include, at a minimum, the following information:

- identification of the parties;
- indication of the secured obligations or a statement that the pledge constitutes a general security;⁷
- identification or characterisation of the pledged assets; and
- indication of the determined or determinable amount secured by the pledge, or the proportion in which it secures multiple obligations, if applicable.

⁷ Where the agreement merely refers to the documents evidencing the secured obligations and such documents are not recorded in a public registry, copies thereof must be notarised (protocolised) in simple copy form at the time the pledge agreement is executed.

Furthermore, Article 24 of Law No 20,190 provides that, within a period of three business days – excluding Saturdays – from the date of execution of the public deed evidencing the pledge agreement, its amendment or its release, or, in the case of private instruments, from the date of their notarisation, the notary public must submit the following for registration with the Non-Possessory Pledge Registry maintained by the Civil Registry: an authorised copy of the pledge agreement, its amendment, or its release, together with a copy of the documents evidencing the secured obligations that have been notarised in the notary's records, if such obligations are not specifically described in the pledge agreement.

It should be noted that the interested party may also appear directly before the Civil Registry to obtain the required registration.

In this context, the security interest (real right of pledge) is acquired, evidenced, and maintained through the registration of the non-possessory pledge agreement in the Non-Possessory Pledge Registry. Accordingly, the security interest will be enforceable against third parties only from the date of such registration.

Will the courts recognise and enforce a foreign governing law clause in a crypto asset-related contract?

As a general principle, Chilean courts may recognise and apply a foreign governing law clause in a contract related to crypto assets, based on the principle of party autonomy.

In this regard, Article 409 of the Code of Private International Law (the DIPRI Code) provides that the party invoking the application of the law of any contracting state of the DIPRI Code in another contracting state, or disputing its application, may prove its text, validity and meaning by means of a certificate issued by two practising attorneys in the country whose law is invoked, which must be duly legalised.

Additionally, Article 410 of the DIPRI Code provides that, in the absence of such proof, or if the court considers the evidence to be insufficient for any reason, it may, *ex officio* and prior to rendering a decision, request through diplomatic channels that the state whose law is applicable provide a report on the text, validity and meaning of such law.

Notwithstanding the foregoing, Chile made a reservation upon depositing the instruments of ratification of the DIPRI Code, pursuant to which 'under Chilean law and in relation to conflicts arising between Chilean law and foreign law, the provisions of Chilean legislation, whether current or future, shall prevail over the DIPRI Code in the event of any inconsistency'.

Accordingly, while Chilean courts may recognise and enforce a foreign governing law clause, such recognition is subject to the limitation that the foreign law must not contravene Chilean law or Chilean public policy.

In the case of a default, what enforcement procedures are available to secure lenders to realise their security interest and recover their claims?

In the event of a default, the contractual clauses agreed upon in the unnamed (innominate) contracts that established crypto assets or other financial instruments as collateral for a principal obligation may be enforced. This may include, among other remedies, the right to demand specific performance of the principal obligation, claim damages, execute the collateral, or request its restitution, as applicable under the terms of the contract.

On the other hand, where a non-possessory pledge has been created, enforcement must be carried out in accordance with the rules governing executive proceedings set forth in Title I of Book III of the Chilean Code of Civil Procedure, applicable to obligations to deliver,⁸ subject to certain modifications established under Law No 20,190.

In this regard, it should be noted that, pursuant to Article 30 of Law No 20,190, the public deed or the authorised copy of the notarised private instrument evidencing the non-possessory pledge agreement constitutes an enforceable title (*título ejecutivo*), without the need for prior recognition, with respect to the obligations contained therein or those precisely identified as to their origin, amount, term and interest. If the secured obligation is not expressly indicated in the non-possessory pledge agreement, it will be necessary to submit an additional enforceable title evidencing the secured obligation to initiate enforcement proceedings.

Is a public auction required for enforcement?

A public auction is not required where enforcement is carried out pursuant to the terms of unnamed (innominate) contractual arrangements entered into between financial instrument custodians and private parties, as enforcement may be conducted in accordance with the contractual provisions agreed by the parties.

However, where enforcement is pursued through a non-possessory pledge, enforcement must be carried out through a public auction, as such proceedings are governed by the rules applicable to executive proceedings under the Chilean Code of Civil Procedure.

Can a secured lender appropriate the collateral directly in certain cases?

Yes, direct appropriation of the collateral may be contractually agreed in the case of unnamed (innominate) contracts entered into between financial instrument custodians and private parties, provided that such right is expressly stipulated in the relevant agreement and does not contravene mandatory law or public policy.

However, in the case of a non-possessory pledge, direct appropriation of the collateral is not permitted. Enforcement must necessarily be carried out through a public auction, in accordance with the rules governing executive proceedings under Chilean law.

⁸ Pursuant to Article 1548 of the Civil Code, an obligation to deliver includes the obligation to hand over the thing; and if the thing is a specific item or determinate good (species or specific thing), it also includes the obligation to preserve it until delivery.

9. Litigation and jurisdiction on crypto assets: legal implications of disputes involving crypto assets.

Currently, in Chile there are no special rules on litigation and/or jurisdiction involving crypto assets. Accordingly, this response focuses on the general rules applicable in Chile to all types of disputes.

In accordance with current Chilean regulations, as a general rule, the submission to a foreign jurisdiction is legally binding and enforceable based on the principle of party autonomy (*autonomía de la voluntad*) that governs Chilean private law, provided that this is not contrary to Chilean public policy.

This is reflected in Article 318 of the DIPRI Code, ratified by Chile in 1934, which states that, in the first instance, the court having jurisdiction to hear disputes arising from the exercise of civil and commercial actions of any kind shall be the court to which the litigants have submitted, either expressly or tacitly, provided that at least one of them is a national of the contracting state to which the court belongs or has domicile therein, and subject to any contrary local law.

In this regard, Article 318 acknowledges the possibility for the parties to submit, expressly or tacitly, to a foreign jurisdiction, provided that such submission is not contrary to local law (for example, contrary to Chilean public policy).

In this scenario, on one hand, express submission should be understood as the parties' clear and unequivocal waiver of their own jurisdiction and the precise designation of the court to which they submit.

Tacit submission, on the other hand, is determined differently depending on whether it concerns the plaintiff or the defendant. For the plaintiff, it occurs when they file the lawsuit before a given court; for the defendant, it occurs when, after appearing in the proceedings, they perform any procedural act other than formally challenging jurisdiction.

Furthermore, Article 1462 of the Civil Code, which regulates illicit object, provides that: 'the promise to submit in Chile to a jurisdiction not recognised by Chilean law is null due to illicit object'. Therefore, *a contrario sensu*, the promise is lawful if the jurisdiction in question is recognised by Chilean law.

If we interpret Article 318 of the DIPRI Code and Article 1462 of the Civil Code harmoniously, we may conclude that, as a general rule, the parties may agree to submit to a foreign jurisdiction to resolve their disputes, without making any distinction regarding the type of dispute involved.

Regarding whether exclusive jurisdiction clauses are respected and enforceable in Chile, we can state that, as a general rule, they are also valid and enforceable. Chilean courts usually declare themselves incompetent when there is a validly agreed exclusive jurisdiction clause.

There are exceptions based on the place where the contracts are executed and/or performed. Concerning the regulation of the effects of the law and, in particular, the effects of contracts executed abroad, Article 113 of the Commercial Code establishes that 'all acts concerning the performance of contracts entered into in a foreign country and to be performed in Chile shall be

governed by Chilean law, in accordance with the provisions of the final paragraph of Article 16 of the Civil Code’.⁹

Thus, in principle, contracts that must be performed or fulfilled in Chile are governed by Chilean law. However, Article 113 of the Commercial Code includes a relevant exception, which is that the parties may agree otherwise. This allows interpreting that, even if a contract must be performed in Chile – and, therefore, be subject to Chilean law – this does not prevent the parties from validly agreeing on a foreign jurisdiction to hear disputes arising from such contract, including exclusive jurisdiction clauses, provided that such agreement does not contravene Chilean public policy.

In addition, it is important to note that foreign verdicts are also enforceable under Chilean law through the exequatur procedure regulated in Articles 242 to 251 of the Chilean Code of Civil Procedure. In such procedure, the Chilean Supreme Court recognises and authorises the enforceability of foreign verdict.

Finally, the above is without prejudice to the fact that courts, in each specific case, may reach a different interpretation, especially if the submission to a foreign jurisdiction or the verdict of a foreign court may violate Chilean public policy.

10. Intellectual property and crypto assets: legal protection, ownership, enforcement and monetisation of IP rights related to digital and virtual assets.

Currently, there is no special intellectual or industrial property regime that directly encompasses crypto assets or cryptocurrencies. Therefore, the general rules applicable in Chile must be applied.

The Political Constitution of the Republic of Chile (CPR) expressly recognises:

- property rights, in their various forms, over all types of tangible and intangible assets;
- the author’s rights over their intellectual and artistic creations of any kind;¹⁰ and
- industrial property rights over patents, trademarks, utility models, technological processes and other analogous creations.

Regarding property rights, the CPR establishes that ‘only the law may determine the manner of acquiring property, of using, enjoying, and disposing of it, and the limitations and obligations deriving from its social function’.

Consistent with the above, in relation to intellectual property, Law No 17,336 on Intellectual Property (‘Law No 17,336’) provides that it:

‘protects the rights acquired, by the mere fact of creation, by the authors of intellectual works in the literary, artistic, and scientific domains, regardless of their form of expression,

9 Article 16 of the Civil Code: ‘However, the effects of contracts executed in a foreign country to be performed in Chile shall be governed by Chilean law.’

10 Article 19, No 25, second paragraph, of the CPR provides that ‘copyright comprises ownership of works and other rights, such as authorship, publication, and the integrity of the work, all in accordance with the law.’

as well as the related rights specified therein. Copyright comprises both economic and moral rights, which protect the exploitation, authorship, and integrity of the work’.

Additionally, Article 3(16) of Law No 17,336 expressly provides that computer programs are protected, in any mode or form of expression, whether source code or object code, including preparatory documentation, technical descriptions and user manuals.

In this context, although such protection covers software and its preparatory documentation, technical descriptions, and user manuals as an intellectual work, it does not extend to crypto assets or cryptocurrencies that are created, registered, and/or transferred through such software, since they constitute intangible assets distinct from the underlying computer programs.

That said, the content – whether in whole or in part – of white papers used in blockchain-based or digital asset projects may qualify as preparatory documentation or technical description of a computer program and, therefore, fall within the scope of protection of Article 3(16) of Law No 17,336. This applies where the white paper technically and functionally describes the design, architecture, operation or implementation of a computer program, such as the structure of the protocol and/or the source code of the smart contracts used in the project.

If the content of a white paper does not fall under any of the aforementioned categories, it cannot be considered preparatory documentation or technical description of a computer program, and therefore cannot be protected under Article 3(16) of Law No 17,336. However, if the content of the white paper refers to matters such as the project’s tokenomics (ie, rules on issuance, distribution, use, incentives, etc), such content may still be protected as a literary work, but only in respect of its form of expression – not the underlying idea or economic model represented by the tokenomics.

On the other hand, with respect to industrial property, Law No 19,039 on Industrial Property (‘Law No 19,039’) regulates the existence, scope and exercise of industrial property rights, which include trademarks, patents, utility models, industrial drawings and designs, layout designs or topographies of integrated circuits, geographical indications and appellations of origin, and other protection titles that the law may establish.

In this regard, Law No 19,039 provides that any individual or entity, whether local or foreign, may enjoy the industrial property rights guaranteed by the CPR, provided that the corresponding protection title is obtained in accordance with the procedures set forth in said law. For these purposes, the processing of applications, the granting of titles, and other industrial property services are carried out by the National Institute of Industrial Property (INAPI).

Consistent with the foregoing, although crypto assets or cryptocurrencies currently do not have a special industrial property regime as digital assets in themselves, the name, logo, slogan and other branding elements associated with such assets or their related projects may indeed be protected as trademarks.

Regarding patents, Article 37(c) of Law No 19,039 provides that the following are not considered inventions and are therefore excluded from patent protection: ‘systems, methods, principles, or plans of an economic, financial, commercial, business nature, or of simple verification or supervision; and those relating to purely mental or intellectual activities or to games.’ In this sense, neither the computer programs associated with blockchain projects nor the tokenomics of such projects can be patented.

How such rights are enforced and defended against third-party claims

Intellectual property

With respect to copyright, Article 8 of Law No 17,336 establishes a presumption of authorship, unless proven otherwise, in favour of: (1) the person who appears as such when the work is disclosed, through the indication of their name, pseudonym, signature or any sign that usually identifies them; or (2) the person to whom the registered copy belongs according to the corresponding registration. In line with the foregoing, Article 72 of Law No 17,336 provides that copyright and related rights¹¹ established by said law must be registered in the Intellectual Property Registry.

Furthermore, the same article provides that, in the case of computer programs, the holders of the corresponding copyright shall be the individuals or entities whose employees, in the performance of their work duties, produced them, unless otherwise stipulated in writing.

Regarding the duration of copyright protection, Article 10 of Law No 17,336 establishes that ‘the protection granted by this law lasts for the entire life of the author and extends for an additional 70 years, counted from the date of their death’. It also provides that, in the case of computer programs, the protection lasts for 70 years counted from their first publication.

Under this framework, Law No 17,336 establishes that no one may publicly use a work that remains in the private domain without obtaining the express authorisation of the corresponding copyright holder. Infringement of this provision will subject the infringer(s) to the applicable civil and criminal sanctions. Accordingly, in the event of copyright infringement, offenders may be pursued both civilly and criminally.

Additionally, Law No 17,336 provides that infringements under said law and its regulations not expressly addressed in Articles 79 *et seq* – which relate to crimes against intellectual property – shall be sanctioned with a fine ranging from five to 50 monthly tax units (*Unidades Tributarias Mensuales* or UTM).

Industrial property

In accordance with Article 106 of Law No 19,039, holders whose industrial property rights have been infringed may file civil claims seeking:

- the cessation of acts that violate the protected right;
- compensation for damages;
- the adoption of the measures necessary to prevent the continuation of the infringement; and/or
- the publication of the judgment at the infringer’s expense, through notices in a newspaper selected by the claimant.

11 Article 65 of Law No 17,336: ‘Related rights to copyright are those granted by this law to performers, interpreters, and executing artists to authorise or prohibit the dissemination of their performances and to receive remuneration for the public use thereof, without prejudice to the rights that correspond to the author of the work.’

They may also request precautionary and pre-judicial measures.

How do you assess whether to seek protection in foreign jurisdictions, and what criteria are used to choose those jurisdictions?

Intellectual property

With respect to intellectual property, it should be noted that Article 2 of Law No 17,336 provides protection for the rights of Chileans and foreigners domiciled in Chile, and establishes that foreigners not domiciled in Chile shall enjoy the protection granted to them under the international conventions subscribed to and ratified by Chile.

In this context, and without prejudice to the international conventions that Chile may subscribe to and ratify in this matter, it is advisable to seek intellectual property protection in foreign jurisdictions when the rights holder is a foreign person not domiciled in Chile.

Industrial property

Regarding industrial property, and particularly patents of invention and utility models, Law No 19,039 regulates, in Title XI thereof, the processing of international applications in accordance with the Patent Cooperation Treaty (PCT). Under this treaty, a single international application may be filed in order to obtain protection in multiple countries.

On the other hand, with respect to trademarks, although crypto assets or cryptocurrencies cannot be protected as trademarks per se as digital assets, the name, logo and slogan, and/or those of their associated projects, may indeed be protected.

It should be noted that Chile acceded to the Madrid Protocol in 2022, which establishes a system that allows the filing of a single international trademark application through a centralised mechanism administered by the World Intellectual Property Organization (WIPO).

In this context, where the objective is to expand the trademark protection for the name, logo and slogan of a crypto asset or cryptocurrency and/or its associated project at an international level, it is advisable to file an application through the Madrid Protocol system in order to secure protection across multiple jurisdictions.

Can IP over crypto assets be monetised locally, and are there any legal restrictions?

As mentioned above, Chile does not currently have an intellectual or industrial property regime specifically designed to protect crypto assets or cryptocurrencies as digital assets in themselves. As a result, it is not currently possible to directly monetise the intellectual or industrial property of crypto assets or cryptocurrencies as such.

Notwithstanding the foregoing, software or computer programs, source code of smart contracts, and certain contents of white papers – under the terms described above – associated with crypto assets or cryptocurrencies may be protected by copyright and, therefore, may be monetised by their respective holders in accordance with applicable law.

In this context, copyright holders may authorise the use of a work or its commercial rental to the public in exchange for remuneration, and may also assign the economic rights associated with the copyright.

With respect to potential limitations on the monetisation of intellectual property relating to the elements described above, Article 73 of Law No 17,336 provides that any total or partial transfer of copyright and/or related rights must: (1) be registered with the Intellectual Property Registry within a period of 60 days counted from the date of execution of the corresponding act or agreement; and (2) be executed by means of a public deed or a private instrument authorised before a notary public. The same provision further requires that any termination or resolution of the agreement giving rise to the transfer be registered within the same period.

On the other hand, trademarks relating to the name, logo, slogan, or other branding elements of crypto assets or cryptocurrencies and/or their associated projects may be monetised through trademark licensing agreements or through the sale (assignment) of the trademark as an asset. However, to hold and exercise ownership over such trademarks, they must be duly registered with the INAPI, in accordance with Law No 19,039, in order to obtain industrial property protection enforceable against third parties.



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